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Fourth Edition

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Forward

The enactment of the Washington State Shoreline Management Act of 1971 gave rise to a new body of case law enunciated in the opinions of the Shorelines Hearings Board. Drawn from evidence in adversary proceedings, these opinions shed considerable light on the meaning of shoreline law in Washington. This Shoreline Digest presents, in organized form, a summary of each opinion.

The opinions are organized two ways in this volume. First by topic under the Analytic Outline, and second by case name and number under the Table of Final Decisions. In addition, there is a Table of Pertinent Court Cases reflecting the appellate case law.

The author of this edition is William H. Nielsen, whose insight and effort have made it possible.

Finally, it is only right to acknowledge the stimulus for these cases which is a common concern for Washington's shorelines. This volume is dedicated to the wise and lawful use of that exceptional resource.

HON. WILLIAM A. HARRISON
Administrative Appeals Judge
Shorelines Hearings Board

Olympia
1994

Analytical Outline

SHORELINES HEARINGS BOARD
DIGEST OF DECISIONS

1.JURISDICTION
1.1.Shoreline Developments
1.1.1.Development

The commercial cutting of timber is not a "development" subject to the permit system of the SMA. RCW 90.58.030(3)(d); WAC 173-16-060.
Department of Ecology and Attorney General v. Grays Harbor County and Ferguson, SHB No. 77.

The words "filling" and "dumping" are to be construed in accordance with the particular meaning given to them by the legislature for the purpose of the statute even though such words may have different meanings in other contexts.
Weyerhaeuser Company v. King County, SHB No. 155.

The harvesting of timber and other related forest practices do not require a permit since they are not substantial developments within the meaning of the SMA. However, a development which does not amount to a substantial development is prohibited if it is inconsistent with the policy, guidelines, or master program being developed. RCW 90.58.140(1).
Id.

A 200 ft. by 300 ft. by 5 ft. fill on a shoreline is a "development" within the meaning of RCW 90.58.030(d). Because it also materially interferes with the shorelines of the state, it is a "substantial development" within the meaning of RCW 90.58.030(e).
Department of Ecology and Attorney General v. Clallam County and Myers, SHB No. 159.

"Development," as described in RCW 90.58.030(3)(d), includes clam harvesting by mechanical means whenever it would involve dredging, dumping or filling, and is subject to the SMA.
English Bay Enterprises, Ltd. v. Island County and Save Susan Bay Commission, et al., SHB No. 185.

Although single family residences are exempt from the permit requirements of RCW 90.58.140(2), they are nonetheless "developments" subject to RCW 90.58.140(1).
Attorney General v. Grays Harbor County, Slenes, Lindgren and Department of Ecology, SHB No. 231 and 232. Order on Motion.

Construction of a single family residence for one's own use is a "development" under RCW 90.58.030(3)(d) and subject to master program provisions under RCW 90.58.140(1), but is not a "substantial development" by virtue of an exclusion under RCW 90.58.030(3)(e)(vi).
Green v. City of Bremerton, SHB No. 79-29.

Minor interior alteration of a building does not constitute a "development." A change in character of property use alone, does not bring a proposed river rafting launch site within the substantial development permit requirement.
McKee v. Chelan County, SHB No. 86-28.

A statutory exemption for "normal repair and maintenance" applies only to substantial developments and not to developments.
Larrance v. Jefferson County and DOE, SHB No. 92-49.

1.1.2.Substantial Developments

A proposed logging road and bridge, to be constructed partly within and out of the shorelines, is subject, in its entirety, to the permit requirements of the SMA.
Weyerhaeuser Company v. King County, SHB No. 155.

Road construction by itself is a substantial development because it requires dumping and filling activities within the shorelines.
Id.

The harvesting of timber and other related forest practices do not require a permit since they are not substantial developments within the meaning of the SMA. However, a development which does not amount to a substantial development is prohibited if it is inconsistent with the policy, guidelines, or master program being developed. RCW 90.58.140(1).
Id.

A 200 ft. by 300 ft. by 5 ft. fill on a shoreline is a "development" within the meaning of RCW 90.58.030(d). Because it also materially interferes with the shorelines of the state, it is a "substantial development" within the meaning of RCW 90.58.030(e).
Department of Ecology and Attorney General v. Clallam County and Myers, SHB No. 159.

Amending a permit for a landfill to include a single family residence will not remove the landfill from the permit requirements for substantial developments.
Id.

"Substantial development" as described in RCW 90.58.030(3)(d), includes clam harvesting by mechanical means whenever the development, whether by capital cost, operating cost, or value removed, exceeds $1,000. In such case, the permit requirements of the SMA would apply.
English Bay Enterprises, Ltd. v. Island County and Save Susan Bay Commission, et al., SHB No. 185.

Local government may not require a party to obtain a substantial development permit unless the development exceeds a fair market value of $1,000 or interferes with the public's normal use of the shoreline.
Twin Rivers, Inc. v. Clallam County, SHB No. 77-41.

Although a single family residence constructed on "wetlands" is exempt from the substantial development permit requirements, a proposed residence constructed on pilings over tidelands was not exempt.
Kargianis v. Mason County and Department of Ecology, SHB No. 78-44.

Repair and replacement of the existing I-5 bridge over the Nisqually River with a shorter bridge and landfill was not exempt from the permit requirements under RCW 90.58.030(3)(e)(i) because it involved new development as compared to the normal maintenance or repair of existing structures or development.
Braget v. Pierce County, Department of Transportation, and Department of Ecology, SHB No. 79-54.

A proposed landfill of 10,000 cubic feet of fill which would have a fair market value in excess of $1,000 is a substantial development under RCW 90.58.030(e).
Massey v. Island County, SHB No. 80-3.

A single-family residence on one lot does not exempt substantial development on the neighboring lot from permit requirements.
MacDonald v. Island County, SHB No. 80-29.

A fill for a personal residence on a wetland is not within the exemption of RCW 90.58.030(3)(e) when the fair market value of the fill is over $1,000. The personal residence exemption from the requirement of a substantial development permit, RCW 90.58.030(3)(e)(vi), does not include the antecedent fill.
Whittle v. City of Westport and Bowe, SHB No. 81-10.

Riprapping over the site of old but thoroughly dilapidated bank protection works does not constitute "routine maintenance and repair." The plan to arrest a pattern of gradual erosion does not represent "emergency construction." The project does not fit within the exemption for normal agricultural activities.
Groeneveld v. Snohomish County, SHB No. 86-17.

A landfill of 1600-2000 cubic yards at a cost of $10,000.00 is a shoreline substantial development. Landfill in a marsh is inconsistent with the Island County Shoreline Master Program. However, as to landfill outside of marshes, the master program limitation to water dependent use is inconsistent with the Shoreline Management Act since single family homes are entitled to such non-marsh fill also.
Hastings v. Island County and Department of Ecology, SHB No. 86-27.

A concrete bulkhead, 150 cubic yards of fill and dock at a single family residence on Lake Sammamish are not exempt from the requirement for a shoreline substantial development permit and fill may not be located below the ordinary high water mark.
Howe v. King County, SHB No. 86-48.

The actions by a lot owner on Pilchuck Creek to rip-rap a portion of bank constituted unlawful substantial development inconsistent with the master program and justified the $1,000.00 civil penalty imposed.
Mose v. Department of Ecology, SHB No. 87-19.

A swimming pool, tennis court, fencing and light standards are not exempt from the requirement of obtaining shoreline permits.
Yule v. Yarrow Point, SHB No. 87-22.

The building of a boat house exceeding $2,500.00 and thirty feet in height, require both a shoreline substantial development permit and a variance under the Mason County Shorelines Master Program.
Champion v. Mason County and DOE, SHB No. 89-67.

A single family residence exemption is not appropriate where proposed landfill exceeds a cost of $2,500. A shoreline substantial development permit is required.
Good v. Pacific County and DOE (Order), SHB No. 93-7.

There is not a requirement for a shoreline substantial development permit for a plat infrastructure where none of the development work occurs within 200 feet of the ordinary high water mark.
Kitsap Audubon Society, et al., v. Kitsap County, et al., SHB No. 92-19.

See: SHB Nos. 169; 77-38; 80-48.

1.1.3.Developments Prior to SMA

Developments on shorelines carried forward and completed after December 4, 1969 are in violation of the rights of the public.
Dabroe v. King County, Department of Ecology, and Attorney General, SHB No. 106.

Removal of unlawful substantial developments and restoration of a shoreline to its original condition are necessary where the continued existence of the developments will, over the long term, materially and substantially alter and adversely affect the aquatic and marine life of the tideland area.
Id.

1.1.4.Shorelines of the State

Contiguous bog and marsh lands, whose nearest margin are in close proximity, but further than 200 feet from the ordinary high water mark, are "associated wetlands" within the purview of RCW 90.58.030(2) if they are strongly influenced by a body of water subject to the provisions of the SMA.
Massey v. Island County, SHB No. 80-3.

A slough which does not flood with reasonable regularity and which can reasonably be expected to be protected from flood waters by Skagit River dikes is not a "wetland" or shoreline of the state under the SMA.
CFOG v. Skagit County and Department of Ecology, SHB No. 84-17.

The "wetlands" encompassed by the SMA include the portion of floodplains specified in the master program. Wetlands may be changed by artificial works done under permit.
Friends of the Columbia Gorge v. Skamania County and Jung Trust, SHB No. 84-57.

A landfill of 1600-2000 cubic yards at a cost of $10,000.00 is a shoreline substantial development. Landfill in a marsh is inconsistent with the Island County Shoreline Master Program. However, as to landfill outside of marshes, the master program limitation to water dependent use is inconsistent with the Shoreline Management Act since single family homes are entitled to such non-marsh fill also.
Hastings v. Island County and Department of Ecology, SHB No. 86-27.

A concrete bulkhead and 240 cubic yards of fill waterward of the ordinary high water mark (vegetation line) is inconsistent with the Island County Shoreline Master Program prohibition of fill on tidelands.
Reed and Newlin and Island County v. Department of Ecology, SHB No. 87-34.

1.2.Shorelines Hearings Board

1.2.1.Filing by Local Government with Department and Attorney General

"Delivery" of a permit to the department as provided by WAC 173-14-090 is made when the documents are deposited in the department's post office box.
Department of Ecology and Attorney General v. County of Snohomish and Rhodes, SHB No. 38.

Receipt of the final order as to persons not parties to permit proceedings before local government is measured from the time that the permit is issued to the permittee. The failure of local government to timely file the permit with the department does not affect the time measurement as to such private appellants.
McMillan, et al., v. Kitsap County and Port of Kingston, SHB No. 152.

Failure to file a copy of a permit within five days after final action by local government as provided by WAC 173-14-090 simply delays the date from which the department or attorney general may appeal.
Department of Ecology and Attorney General v. Clallam County and Myers, SHB No. 159.

1.2.2.Filing of Request for Review, Time Measurements

Under prior statute, timely filing of requests for review by the attorney general or the department is governed by RCW 90.58.180(2) which requires that a written request be filed with the Board and the appropriate local government within forty-five days from the filing of the final order.
Department of Ecology and Attorney General v. County of Snohomish and Rhodes, SHB No. 38.

The time period for appeal begins to run for the department and attorney general on the date that local government files its ruling with the department. Filing occurs when the documents are actually received by the department.
Department of Ecology and Attorney General v. Mason County and Hama Hama Company, SHB No. 115. Order on Motion.

Under prior law, where a person becomes timely involved with permit proceedings before local government, the time for appeal of any action taken begins to run upon receipt of the final order. Otherwise, the time begins to run from the time that the permit was issued.
Van Handel v. City of Mercer Island and Dorsey, SHB No. 141.

Under prior law, receipt of the final order as to persons not parties to permit proceedings before local government is measured from the time that the permit is issued to the permittee. The failure of local government to timely file the permit with the department does not affect the measurement as to such private appellants.
McMillan, et al., v. Kitsap County and Port of Kingston, SHB No. 152.

An appeal from the granting of a permit for a variance or conditional use by local government is not a final order until the department has ruled on it.
Attorney General v. Grays Harbor County, Lindgren and Department of Ecology, SHB No. 232. Order on Motion.

The time for an appeal by the department or attorney general begins to run when local government's final order has been received by the department, which by department regulation is at its regional office within which the project lies. Receipt of a permit by the department at its central offices of a permit addressed to the attorney general's office housed therein is not receipt by the department.
Department of Ecology and Attorney General v. Skagit County and Marine Construction and Dredging, Inc., SHB No. 244. Order on Motion.

The failure to timely file a request for review within 30 days of the date of filing of a permit prevents review by the Board. The SMA and its regulations must be uniformly applied and take precedence over subordinate governmental actions.
Flynn, et al., v. City of Kirkland, Department of Ecology, and Columbia Custom Homes, Inc., SHB No. 78-30.

A substantial development permit for a 94 slip marina which was invalidated by the Supreme Court because it was issued without an EIS when one was required, cannot be revived through a resolution by local government. A new substantial development permit, with a new opportunity for appeal, is required.
Sisley, et al., v. San Juan County and Carpenter, SHB No. 79-5.

The "date of filing" is the date that the department receives the complete and final decision issuing a permit.
Newlin v. Island County and Costello, SHB No. 79-31.

A complete filing which includes a detailed site plan, is necessary to comply with the filing requirements of the Shorelines Management Act and compute the proper date of "filing".
Babbitt, et al., v. Grant County, et al., SHB No. 93-5, 93-6 and 93-23.

The Shorelines Hearings Board loses jurisdiction if an appeal is not filed within thirty days of the date the permit is received by Department of Ecology. The failure of a city to comply with the notification process of RCW 90.58.140(4) does not expand the thirty day period.
Brooks v. City of Issaquah and Pickering Park Associates, SHB No. 89-1.

Neither the Shorelines Management Act nor the Shorelines Hearings Board rules require dismissal of an appeal for petitioner's failure to name a property owner as a party within the appeal period, unless there is actual prejudice shown.
Citizens Committee, et al., v. Skagit County (Order), SHB No. 93-14.

See: SHB Nos. 248; 83-19.

1.2.3.Filing of Request for Review with Department and Attorney General

Concurrent filing of a request for review with the department and attorney general is merely a step to perfect the jurisdiction of this Board.
McMillan, et al., v. Kitsap County and Port of Kingston, SHB No. 152.

1.2.4.Certification; Person Aggrieved; Standing

The Board cannot review and has no jurisdiction to review a request for review which has failed to be certified by the department or attorney general pursuant to RCW 90.58.180(1).
Seattle Audubon Society, et al., v. King County, SHB No. 59.
Citizens for Responsible Courthouse Siting and Planning, et al., v. Thurston County Commissioners, SHB No. 212.

The determination of who is a "person aggrieved" is made by the department under the legislative authority granted to it by RCW 90.58.180(1) and such determination is not further reviewed by the Board.
Moore v. City of Seattle and Kingen, SHB No. 204. Order on Motion.

The attorney general has standing to appeal the issuance of a variance by the Department of Ecology.
Attorney General v. Grays Harbor County, Slenes, Lindgren and Department of Ecology, SHB No. 231 and 232. Order on Motion.

SEPA issues may be raised by intervenors as "persons aggrieved" by the denial of a permit under RCW 90.58.180(1).
Department of Natural Resources v. San Juan County, SHB No. 78-18.

Appeals to the Board must be certified by the attorney general or department within 30 days of their receipt of a request for review if the Board is to have jurisdiction over the matter. Although the Board may not review an appeal that has not been certified, an appellant may obtain review in superior court under RCW 90.58.180(1).
Manasco v. City of Kelso and Department of Transportation, SHB No. 78-31.

An applicant's entitlement to a substantial development permit is not dependent upon an applicant's property interest in the site but upon the nature of the substantial development itself under the SMA, its implementing rules and master program.
Casey v. City of Tacoma, SHB No. 79-19.

The certification by the department and the attorney general confers standing upon an individual who requests review of a substantial development permit. Alternatively, under RCW 90.58.180(1), an appellant who personally uses agricultural land slated for bridge and highway development has standing to request review of a permit because such person has "a personal stake in the outcome of a controversy."
Foulks v. King County and Department of Transportation, SHB No. 80-17.

Where the department and the attorney general have certified that a person has valid reasons to seek review as a "person aggrieved" under RCW 90.58.180(1), such person has standing to request review by the Board. Alternatively, under RCW 90.58.180(1), appellants who personally use the shoreline in question for recreational purposes, and who reside adjacent to or own that shoreline, have standing in that they have a personal stake in the outcome of the controversy evidenced by a potential injury in fact.
Hildahl v. City of Steilacoom and Burlington Northern Railroad, SHB No. 80-33.

The hardship described in WAC 173-14-150 can be demonstrated by persons other than the owner at the time the relevant master program restriction became effective.
Nichols, et al., v. Department of Ecology and Knight, SHB No. 81-5.

An applicant for a substantial development permit need not have an "interest" in the property to apply for a permit. The department rules and the master program only inquire about an applicant's "relationship" to the property.
Nisqually Delta Association, et al., v. City of Dupont, Department of Ecology, and Weyerhaeuser Company, SHB No. 81-8.

The Department of Natural Resources, or its agent, may apply for a substantial development permit on state lands.
Department of Natural Resources v. Mason County, SHB No. 83-17.

Standing has been defined as the possession of a personal stake in the outcome of the controversy so that the dispute sought to be adjudicated will be presented in an adversary context and in a form historically capable of judicial resolution.
Friends of the Earth v. City of Westport, Port of Grays Harbor and Department of Ecology, SHB No. 84-63.

Without certification from DOE or the Attorney General pursuant to RCW 90.58.180 the Board has no jurisdiction to consider the appeal.
Orme v. Metro and City of Seattle (Order), SHB No. 91-8.

Without certification by DOE or the Attorney General the Board has no jurisdiction to consider the appeal.
Association of Lake Roesiger Property Owners v. Snohomish County and Snohomish County PUD No. 1, SHB No. 91-78.

Where there is no certification by the Attorney General or DOE the Shorelines Hearings Board has no jurisdiction to hear an appeal.
Perry v. Kitsap County, SHB No. 92-2.
Concerned Women v. Arlington, SHB No. 92-3.
Dean v. Jefferson County and DOE, SHB No. 92-4.
Owens v. City of Mercer Island, SHB No. 91-81.

See: SHB Nos. 224; 235; 77-28; 79-29; 80-37; 81-15; 83-20.

1.2.5.Jurisdiction, Subject Matter

The Shorelines Hearings Board has authority to order a remand to correct procedural irregularities before reviewing the case on its merits.
Reed and Newlin v. Island County and DOE, SHB No. 93-41.

1.2.5 (a)Necessity of Permit or Application

Board jurisdiction is derived only from RCW 90.58.180(1) (review of the granting or denial of a permit) or RCW 90.58.180(4) (appeal by local government of master programs adopted or approved by the department). Absent an action granting or denying a permit, the Board has no jurisdiction to hear a request for review filed by individual appellants.
Citizens for Responsible Courthouse Siting and Planning, et al., v. Thurston County Commissioners, SHB No. 212.

The Board has jurisdiction to hear requests for review of substantial development permits, substantial development permits with a conditional use or variance, and/or conditional use or variance permits.
Attorney General v. Grays Harbor County, Slenes, Lindgren and Department of Ecology, SHB No. 231 and 232. Order on Motion.

The Board has jurisdiction to entertain a request for review of any substantial development permit issued by local government.
Department of Ecology and Attorney General v. Skagit County and Powers, SHB No. 238.

Although no permit was required for structures located outside of the shoreline area, a permit was required for a water drainage system located within the shoreline area. To evaluate a permit for such system, it is necessary to know the location and coverage of structures located outside the shoreline area.
Howell, et al., v. City of Kelso, SHB No. 77-23.

The Board lacks jurisdiction to review regulatory orders issued by the department because the authorizing regulation, WAC 173-14-190, went beyond the framework and policy of the SMA. RCW 90.58.210 directing injunctive or declaratory action to a court evinces a legislative policy choice which places this relief with the courts and WAC 173-14-190 conferring jurisdiction on the board is invalid.
Corder, et al., v. Department of Ecology, SHB No. 78-47.
Nelson v. Department of Ecology and Fuller, SHB No. 79-11.

The Board has no jurisdiction under the SMA to hear an appeal from the denial of a building permit application.
Green v. City of Bremerton, Order on Motion, SHB No. 79-29.

The Board has jurisdiction to review the procedure by which a pertinent master program was adopted in the review of a shoreline permit.
Green v. City of Bremerton and Department of Ecology, SHB No. 81-37.

A shoreline permit modified by Board decision must be re-issued accordingly by local government. An appeal challenging the conformity of the re-issued permit with the Boards' decision can be taken to the Board within 30 days. Subsequent shoreline permits must respect the conditions of a prior shoreline permit.
SAVE v. City of Bothell and Department of Ecology, SHB No. 85-39.

The Board has jurisdiction over cases involving the extension of a shoreline permit.
Truly v. King County, SHB No. 88-3.

The Shorelines Hearings Board has jurisdiction over the issuance of a revision to a shoreline variance permit to determine conformity with the Settlement Order.
Farrell v. City of Seattle, Department of Ecology and Henney, SHB No. 88-34.

An original permit is “approved” under WAC 173-14-060, relating to expiration of a permit, when thirty days have passed after the permit is filed with Department of Ecology. Expiration of a permit may be considered in a revision appeal.
Silver Lake Action Committee v. City of Everett, et al., SHB No. 88-59.

Under WAC 173-14-060 the local government decision-maker has exclusive authority to fix the expiration date of a permit and exclusive authority to extend that expiration, not to exceed an initial period of five years plus a one year extension. There is no appeal of that decision provided in the Shorelines Management Act and therefore the Shorelines Hearings Board has no jurisdiction.
Taylor v. City of Langley and Schell, SHB No. 93-39.

See: SHB Nos. 185; 79-27; 81-18; 83-21.

1.2.5.(b)Ownership Issues

The Board has no jurisdiction to adjudicate disputes between parties as to ownership of tidelands.
Department of Ecology and Attorney General v. Kitsap County and Black, SHB No. 93.

A variance to construct a dock protruding 110 feet into Lake Washington is appropriate, but only if old piling now in existence is removed to avoid an obstruction to navigation. The Board is not empowered to quiet title to real property. Neither the SMA nor the rules of the department require an interest in the property before a permit to develop can be granted.
Plimpton v. King County and Department of Ecology, SHB No. 84-23.

A master program requiring applications for substantial development permits to be made "by the property owner" includes lessees and contract purchasers as well as owners in fee. Neither the County or this Board can quiet title to property in this permit proceeding.
Propst v. King County and Norquist, SHB No. 86-18.

The Shorelines Hearings Board has no jurisdiction to adjudicate property line issues; nor zoning issues unless zoning requirements have been incorporated into the applicable master program.
Groenig, et al., v. City of Yakima, et al., SHB No. 92-30 and 92-31.

1.2.5.(c)Substantive Constitutional Issues

The Board does not decide substantive constitutional issues and will presume that the government action complained of does not violate state or federal constitutions.
Adams v. City of Seattle, Department of Ecology and Attorney General, SHB No. 156.

The Board has no power to determine constitutional issues.
Sperry Ocean Dock and DNR v. City of Tacoma, et al., SHB No. 89-4 and 89-7.

1.2.5.(d)Limitation of Jurisdiction

The Board has no legal or equitable basis, beyond its statutory SMA and SEPA compliance review, upon which to challenge a sewer district's placement or design of a ten-inch sewer pipe.
Fisher Company v. King County, Des Moines Sewer District, Department of Ecology, and Attorney General, SHB No. 183.

The term "floodway" in RCW 90.58.030(2)(g) limits the definition of shorelines and wetlands in the SMA.
Skagit River League, et al., v. Skagit County and Valleys West, SHB No. 228.

A facial challenge brought by an individual to an administrative rule issued under the Shorelines Management Act is under the jurisdiction of the Superior Court. It is not within the jurisdiction of the Shorelines Hearings Board which may only review a rule, as applied, in a permit appeal.
Seawall Construction, et al., v. King County, SHB No. 90-51 and 90-52.

The Shorelines Hearings Board has no jurisdiction to decide whether a Shorelines Master Program provision is inconsistent on its face with the Shorelines Management Act.
Good v. Pacific County and DOE (Order), SHB No. 93-7.

The Board has no jurisdiction to decide whether a proposed project requires permits (NPDES) other than shoreline permits.
Skagit System Cooperative v. Skagit County and DOE, SHB No. 88-14.

The Board has no jurisdiction to determine whether a NPDES permit is required on a particular project.
Clean-up South Sound, et al., v. Swecker, et al. (Order), SHB No. 88-38.

The Shorelines Hearings Board has no jurisdiction to determine Indian Treaty Rights Issues.
Northwest Seafarms v. Whatcom County and DOE, SHB No. 89-76.

The Shorelines Hearings Board has no jurisdiction over a local government denial of a shoreline exemption.
Larrance v. Jefferson County and DOE, SHB No. 92-49.

The Shorelines Hearings Board has no subject matter jurisdiction to consider the issue of the financial capability of a particular project proponent.
Holland v. Kitsap County and Yukon Harbor Concerned Citizens, SHB No. 86-22.

1.2.5(e)Dismissal by Board

Jurisdictional issues may be raised by the Board on its own motion and the matter determined solely on the face of the request for review filed.
Citizens for Responsible Courthouse Siting and Planning, et al., v. Thurston County Commissioners, SHB No. 212.

1.2.5(f)Issues

The doctrine of collateral estoppel prevents the issues of potential flooding and of the impact of a proposed highway upon public recreation from being examined by the Board because the issues were actually and necessarily litigated at a prior proceeding.
Wilcox, et al., v. Yakima County and Department of Highways, SHB No. 77-28.

In a contested case, the Board has jurisdiction to review the consistency of a master program, as applied, with the SMA.
Massey v. Island County, SHB No. 80-3.
SAVE v. Koll Company, SHB No. 81-27.
CFOG v. Skagit County and Department of Ecology, SHB No. 84-17.
Friends of the Columbia Gorge v. Skamania County and Jung Trust, SHB No. 84-57 and 84-60.
Hastings v. Island County and Department of Ecology, SHB No. 86-27.
Risk v. Island County and Island Sea Farms, Inc., SHB No. 86-49 and 86-50.

When the adequacy of the final EIS for a project has been litigated in superior court, the doctrine of collateral estoppel prevents the issue from being brought before the Board.
Nisqually Delta Association, et al., v. City of Dupont, Department of Ecology, and Weyerhaeuser Company, SHB No. 81-8.

Because there was no substantial change in the nature of a proposal for a marina between the port's amendment to a harbor plan to accommodate the marina and the county's shoreline committee's recommendation to approve the proposal, a challenge to SEPA compliance should have occurred at the time of the port's action.
Protect the Peninsula's Future v. Clallam County and Port of Port Angeles, SHB No. 82-7.

The doctrine of res judicata and collateral estoppel are not applicable to an application for a substantial development permit that is different from an earlier application.
Save Port Susan Committee v. Department of Ecology and Sea Harvest Corporation, SHB No. 82-38.

After adoption of an applicable master program and its approval by the department, the Board does not review a proposed development with the Department of Ecology Guidelines, chapter 173-16 WAC.
Department of Ecology v. Pierce County and Martel, SHB No. 84-26.
Department of Ecology v. Pierce County; Murphy and Nelson, SHB No. 84-28.
Department of Ecology v. Pierce County and Wilson, SHB No. 84-54.

The board lacks jurisdiction to hear or decide challenges to the consistency of a master program, on its face, with the SMA.
Stump v. Kitsap County and Posten, SHB No. 84-53.
Tulalip Tribes v. Snohomish County, SHB No. 87-5.
Yule v. Yarrow Point, SHB No. 87-22.

The local government decision in a shoreline permit appeal to this Board functions like a pleading in an ordinary civil case. Therefore, once review is sought, if additional grounds supporting denial are thought to exist, the local government should raise them prior to the hearing before this Board and, upon such notice, make a case on these matters at the hearing.
Groeneveld v. Snohomish County, SHB No. 86-17.

Issues are controlled by the terms of the Pre-Hearing Order.
Tailfin, Inc. v. Skagit County and Department of Ecology, SHB No. 86-29.
Washington Environmental Council v. Department of Transportation, SHB No. 86-34.

Harm to an appellant's personal economic interests by a proposed development will not be reviewed by the Board as such review is not encompassed by the policy of the SMA.
Posten v. Kitsap County and Stump, SHB No. 86-46.

Issues, actually and necessarily litigated at a prior proceeding, cannot be relitigated in a subsequent hearing before this Board. Such issues are barred by collateral estoppel.
Anthony v. City of Hoquiam and Department of Ecology, SHB No. 87-2.

The board lacks jurisdiction over the subject matter of the consistency of a shoreline permit with federally secured treaty rights.
Tulalip Tribes of Washington v. City of Everett and Department of Ecology, SHB No. 87-33.

The Shorelines Hearings Board has jurisdiction to determine whether a DOE regulation “as applied” is within its statutory authority.
Larrance v. Jefferson County and DOE, SHB No. 92-49.

Issues not addressed by the parties are considered abandoned.
Schrick, et al., v. Chelan County, et al., SHB No. 91-4.

The Shorelines Hearings Board may raise a jurisdictional issue *sua sponte* at any time.
Groenig, et al., v. City of Yakima, et al., SHB No. 92-30 and 92-31.

The doctrine of latches applies to matters before the Shorelines Hearings Board.
Toandos v. Jefferson County, et al., (Summary Judgment Order), SHB No. 94-45 and 94-51.

Issues which are not set forth in the prehearing order are not considered.
Houghtelling v. Mason County, et al., SHB No. 90-50.

The doctrine of equitable estoppel does not apply where the act giving rise to reliance was *ultra vires* or void.
Houghtelling v. Mason County, et al., SHB No. 90-50.

The doctrine of equitable estoppel will be applied to a municipality operating in its governmental capacity only when the exercise of governmental powers will not be impaired.
Houghtelling v. Mason County, et al., SHB No. 90-50.

Evidence of equitable estoppel must be clear, cogent and convincing.
Houghtelling v. Mason County, et al., SHB No. 90-50.

An estoppel claim against the county was not proven under the facts of this case.
Engberg v. Skagit County and DOE, SHB No. 90-38.

Neither the Shorelines Management Act nor the Shorelines Hearings Board rules require dismissal of an appeal for petitioner's failure to name a property owner as a party within the appeal period, unless there is actual prejudice shown.
Citizens Committee, et al., v. Skagit County (Order), SHB No. 93-14.

The only issues to be decided by the Board are those fixed by the prehearing order or any subsequent modification thereof.
Holland v. Kitsap County and Yukon Harbor Concerned Citizens, SHB No. 86-22.

2.EXEMPTIONS FROM SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT REQUIREMENTS

Platted homesite lots, which could not be built upon without the proposed bulkheading and fill found inconsistent with the SMA, were nevertheless exempt from the permit requirements of the Act because the proposed development fell within the exemption provided by RCW 90.58.140(9)(a).
Isaak, et al., v. Snohomish County, Department of Ecology and Attorney General, SHB No. 19.

Construction of a bulkhead prior to the effective date of the SMA without a permit from the U.S. Army Corps of Engineers was unlawful. Such construction is not exempted by WAC 173-14-050.
Department of Ecology and Attorney General v. Mason County and Vincenzi, SHB No. 57.

In determining the two-year time limitation of RCW 90.58.140(9)(e), that period of time after the effective date of the SMA, should be tolled during the period from the date the construction was stopped by the Corps of Engineers and the date of the final adjudication of the request for review.
Id.

The plat exemption is not limited to developments which are described by or appear upon the face of the plat. The exemption runs to any development so long as it occurs within the physical boundaries of a plat and meets the conditions of RCW 90.58.140(9)(b, c, d, e).
Id.

The legislative purpose in granting the exemption of RCW 90.58.140(9) was to provide an exemption for any development so long as the development occurs within the confines of platted property, and is completed within two years. Any purchaser of such property may develop and construct such improvements as may be desired without any permit but only if the development is completed within two years.
Id.

A hydraulic permit required by RCW 75.20.100 applies only to rivers and streams. Construction in saltwaters without such permit is not unlawful within the meaning of WAC 175-14-050.
Id.

A filling and grading activity, which continued operation became unlawful prior to the effective date of the SMA because of a new requirement to obtain a county grading permit, is not exempted from the permit requirements of the SMA after its effective date.
Kaeser Company v. King County, SHB No. 79.

The filing of an application for a permit tolls the exemption provisions of RCW 90.58.140(9).
Graham v. Snohomish County, SHB No. 85.

For sites which qualify, the ancient plat exemption obviates the need to have a permit for developments until June 1, 1973. Beyond that date, no development could continue without a permit. The development must nevertheless be consistent with the SMA.
Id.

An exempt substantial development must nonetheless be consistent with the policy of the SMA.
Id. (See: SHB Nos. 19; 57.)

Construction on the shorelines without securing the necessary permits from the county and the Corps of Engineers prior to the effective date of the SMA, which construction would amount to a substantial development under the SMA, is not exempted from the permit requirements by WAC 173-14-050.
Dabroe v. King County, Department of Ecology, and Attorney General, SHB No. 106.

The SMA validates certain structures constructed in navigable waters prior to December 4, 1969.
Lane v. Town of Gig Harbor, SHB No. 129.

In order to claim a plat exemption under RCW 90.58.140(10), conditions of approved preliminary plats must be met within the time set by ordinance. Moreover, the exemption is not applicable if a different plat is involved.
Department of Ecology and Attorney General v. Skagit County and Powers, SHB No. 238.

A 230 foot bulkhead and 340 cubic yards of fill constructed on the shorelines of two residential lots and located waterward of the ordinary high water mark at a cost of $7,500 are not exempted from the requirement of a substantial development permit under RCW 90.58.030(3).
MacDonald v. Island County, SHB No. 80-29.

A proposed 254 foot railroad bridge with a 259 foot fill is not exempted from obtaining a substantial development permit under RCW 90.58.030(3)(e)(i) because the exemption is allowed only for "normal maintenance and repair" of existing structures and not for the replacement of an existing bridge with one of a different design.
Hildahl v. City of Steilacoom and Burlington Northern Railroad, SHB No. 80-33.

See: SHB Nos. 159; 231; 232; 81-10; 82-2.

3.REVIEW OF REGULATIONS

In a review of regulations adopted by the department, the fundamental inquiry is whether the rules are within the concept of the statutory authority of the SMA.
City of Seattle v. Department of Ecology, SHB No. 78-21.

The department may adopt, approve, or make suggestions on segments of a submitted master program within 90 days of its receipt. Non-action by the department does not result in approval. Master programs can only be approved using certain statutory procedures.
City of Marysville v. Department of Ecology, SHB No. 78-28.

Under RCW 90.58.090, the department has full authority following review and evaluation of a submitted master program relating to shorelines of statewide significance to develop and adopt an alternative master program if the submitted program fails to satisfy statewide interests.
Id.

The disapproval of a city's master program provision which allowed solid waste disposal within shorelines of statewide significance and the adoption by the department of an alternate master program provision prohibiting such use was consistent with WAC 173-16-060(14) and the policy of the SMA.
Id.

The Board lacks jurisdiction to review regulatory orders issued by the department because the authorizing regulation, WAC 173-14-190, went beyond the framework and policy of the SMA and is invalid.
Corder, et al., v. Department of Ecology, SHB No. 78-47.
Nelson v. Department of Ecology and Fuller, SHB No. 79-11.

The Board has jurisdiction to review the procedure by which a pertinent master program was adopted in the review of a shoreline permit.
Green v. City of Bremerton and Department of Ecology, SHB No. 81-37.

For shorelines of statewide significance, a county may propose revisions of its master program to the Department of Ecology. The department must either approve or suggest modifications. If the latter, a county may resubmit a further revision (RCW 90.58.090(2)). The county, absent agreement to the contrary, is the lead agency for SEPA compliance under WAC 197-10-203 and 205.
Kitsap County v. Department of Ecology and Willing, SHB No. 83-18.

4.PERMIT PROCEEDINGS BY LOCAL GOVERNMENT

4.1.Local Government As "State Agency"

Local government authorities are not state agencies subject to the Administrative Procedure Act, chapter 34.04 RCW, and need not hold hearings in conformance thereto.
League of Women Voters, et al., v. King County, et al., SHB No. 13.
Brachvogel, et al., v. Mason County and Twanoh Falls Beach Club, Inc., SHB No. 45.
Brachvogel, et al.; Department of Ecology and Attorney General v. Mason County and Twanoh Falls Beach Club, Inc., SHB No. 140.
Brachvogel, et al., v. Mason County and Twanoh Falls Beach Club, Inc., SHB No. 189.

4.2.Nature of Function

The city council, under the SMA, acts in a quasi-judicial capacity. The members of such body must, as far as practicable, be objective and impartial.
Haggard v. City of Everett and Schmelzer, SHB No. 67.

A majority of a multi-member local government body is needed to approve a shoreline permit and less than a majority voting in favor constitutes a denial.
Evergreen Rock Products v. Grays Harbor County and Department of Ecology, SHB No. 85-29.

A local government does have the authority to issue an after-the-fact shoreline permit.
Houghtelling v. Mason County, et al., SHB No. 90-50.

The mere fact of construction violating the procedural provisions of the Shorelines Management Act does not compel an abatement.
Houghtelling v. Mason County, et al., SHB No. 90-50.

The Board has the authority to stay illegal construction on a project which is under Board review.
Clifford, et al., v. City of Renton and Boeing, SHB No. 92-52.

4.3.Notice

Compliance with the statutory provisions of RCW 90.58.140(3) fulfills notice requirements for permit issuance.
Van Handel v. City of Mercer Island and Dorsey, SHB No. 141.

Compliance with WAC 173-14-070 provides constructive notice to the whole world of the proceedings concerning the activities therein described.
Id.

Reconsideration of a permit by local government upon direction of the Board is not subject to the notice provisions of RCW 90.58.140.
Brachvogel, et al., v. Mason County and Twanoh Falls Beach Club, Inc., SHB No. 189.

The requirement to make reasonable efforts to inform the people about the shoreline management program (RCW 90.58.130(1)) does not establish any additional notice requirement for permit applications.
Chumbley v. King County and Barron, SHB No. 224.

There is no requirement to give notice of proceedings of a substantial development permit application to persons expressing an interest in a different application for the same property or similar project.
Id.

Standing to assert a lack of notice of local agency proceedings is personal to the individual entitled to such notice.
Id.

The violation of a city ordinance which requires notice to certain state agencies of a permit application, which requirement goes further than the SMA provides, is harmless error.
Manette Peninsula Neighborhood Association v. City of Bremerton and Person, SHB No. 237.

The failure to give actual notice of a proposed project is not a denial of due process.
Id.

The published notice must meet only what is required by regulation and statute. Thus, where the location and purpose of the proposed substantial development is set forth, such notice is adequate.
Trask v. City of Winslow, SHB No. 248.

Notice requirements for shoreline permit applications only need meet that which is required by statute. A regulation which requires notice beyond that set forth by statute is done without authority.
Id.

Where a project remains the same throughout the proceedings, no published notice is required of an amended application under RCW 90.58.140(4).
Mentor v. Kitsap County and Larson, et al., SHB No. 78-27.

The failure of the city to mail notice of the application for a substantial development permit to neighboring landowners violated the city's own master program notice requirements and may have precluded other interested persons from participating in the proceedings.
Whittle v. City of Westport and Bowe, SHB No. 81-10.

A city must follow its own public notice requirements as a condition precedent to its own jurisdiction over a permit. Accordingly, a permit granted without proper public notice prevents the Board and the city from having jurisdiction.
Save Flounder Bay, et al., v. City of Anacortes and Mousel, SHB No. 81-15.

The effect of failing to follow the notice procedures set out in RCW 90.58.140(4) and WAC 173-14-070 and of failing to follow the notice procedure established by the master program invalidates a substantial development permit.
Id.

Two separate and distinct kinds of notice are required by RCW 90.58.140(4)(a) and (4)(b): general public notice and adjacent property owners notice. The combination of proper 4a and 4b notices working together are intended to alert the public and owners of adjacent land as early as possible about a substantial development permit and to inform them of their right to express their views by writing to local decision makers.
Id.

Newspaper publication of notice of a proposed marina extension was insufficient under RCW 90.58.140(4) because it failed to inform interested persons that they had the right to receive a copy of the city's final action on the application and thus decide whether to appeal.
Id.

The failure of a city to post notices in the immediate area of a proposed marina extension violated its own master program notice requirements and reduced the possibility that all interested parties joined the appeal.
Id.

Appellants did not waive their right to object to deficiencies in notice for a hearing by attending the hearing, nor can respondents cite their attendance as evidence of proper notice.
Id.

A person who notifies local government of their desire to receive a copy of the action on a shoreline permit application is entitled to notice of a permit revision.
Lundstad v. City of Westport and Bowe, SHB No. 83-51.

An omission of notice that written comments will be accepted on an application for substantial development is not fatal to the permit action unless it is shown to be prejudicial.
The Other Side of the Tracks v. Sumner, SHB No. 84-9.

See: SHB No. 84-63.

A notice of a shoreline application which states that the proposed development is not within the shoreline and which misleads interested persons is inconsistent with RCW 90.58.140(4).
Swinge v. Town of Friday Harbor, SHB No. 84-31.

Notice of a shoreline application which is not in substantial compliance with the statutory requirements will not lead to reversal of permit action unless such lack of compliance resulted in actual prejudice.
Strand v. Snohomish County and Department of Ecology, SHB No. 85-4

Substantial compliance is the standard for notice requirements under the Shorelines Management Act.
Committee of Concerned Citizens v. City of Seattle and Clark, SHB No. 89-69.

There is no requirement of public notice prior to a local government taking action approving or disapproving a revision to a permit.
Evergreen Islands v. City of Anacortes, et al. (Order), SHB No. 91-39.

See: SHB Nos. 231; 232; 79-5.

4.4.Hearing
4.4.1.Necessity of

The SMA and its regulations (WAC 173-14-080) do not require local government to provide a public hearing prior to action on a permit. Local government may itself provide for such a hearing, however.
Graham v. Snohomish County, SHB No. 85.

A public hearing on a permit application to allow the public to express their views before the county commissioners is not required by WAC 173-14-080.
Alexander v. Clallam County and West, SHB No. 170.

4.4.2Nature of

The local government authorities are not state agencies subject to the Administrative Procedure Act, chapter 34.04 RCW, and need not hold hearings in conformance thereto.
League of Women Voters, et al., v. King County, et al., SHB No. 13.
Brachvogel, et al., v. Mason County and Twanoh Falls Beach Club, Inc., SHB No. 45.
Brachvogel, et al., Department of Ecology and Attorney General v. Mason County and Twanoh Falls Beach Club, Inc., SHB No. 140.
Brachvogel, et al., v. Mason County and Twanoh Falls Beach Club, Inc., SHB No. 189.

The de novo hearing before the Shorelines Hearings Board cures procedural defects which occurred in review of the application by the local jurisdiction.
Yule v. Yarrow Point, SHB No. 87-22.

4.4.3.Appearance of Fairness

The appearance of fairness doctrine is violated when it is shown that an interest, though not necessarily a direct pecuniary one, might have influenced a member and not that it actually affected him. Thus, the participation in permit proceedings by a councilman, whose employer was the lessor of the subject property, violated the appearance of fairness doctrine and rendered the permit void.
Haggard v. City of Everett and Schmelzer, SHB No. 67.

The participation in the decision of local government by a city councilman, whose employer's railroad trackage ran adjacent to the site of the proposed development, and who co-chaired a committee which recommended rail service from the proposed site, did not violate the appearance of fairness doctrine.
Haggard v. City of Everett and Port of Everett, SHB No. 74.

The appearance of fairness doctrine does not require the Board of County Commissioners to hold a public hearing, as contrasted with a public meeting, before denying a permit.
Graham v. Snohomish County, SHB No. 85.

Where the evidence showed that the city made a thorough and impartial review of the permit application, there was no violation of the appearance of fairness doctrine.
Jaggard v. City of Vancouver and PUD #1 of Clark County, SHB No. 168.

The personal interests of a port commissioner in a particular design of a substantial development of a port project pending before a local government does not invalidate the action of such local government as violative of the appearance of fairness doctrine.
PROW, et al., v. City of Olympia, Port of Olympia, et al., SHB No. 225.

A mere showing of the existence of a mortgage held by the employer of a decision maker on the property under consideration does not, in itself, show the interest which might have substantially influenced the decision maker who was unaware of such.
Department of Ecology and Attorney General v. Skagit County and Powers, SHB No. 238.

The appearance of fairness doctrine is not violated even though the decision maker may be biased in a particular matter. Whether the bias is such so as to require a reversal of the action is dependent upon the facts of each case. No bias exists where the county commissioners may reject out of hand a proposal pursuant to procedures identical to those in consideration of plats and subdivisions.
Wesson v. Whatcom County, SHB No. 239.

The appearance of fairness doctrine only applies to the required hearings of legislative bodies acting in a quasi-judicial capacity and not to agency action under its rule making authority.
City of Marysville v. Department of Ecology, SHB No. 78-28.

The purchase of a car insurance policy by an applicant for a substantial development permit from a county commissioner does not violate the appearance of fairness doctrine.
Sisley, et al., v. San Juan County and Carpenter, SHB No. 79-5.

The rescheduling of a public hearing which resulted in the postponement of action on a permit did not violate the appearance of fairness doctrine.
Bryant v. San Juan County and Wareham, SHB No. 79-32.

The appearance of fairness doctrine is violated when a planning commission member in his individual capacity publicly supports the rezoning of the site from residential to commercial marine, votes approval of a permit for an expanded marina and moors his boat at the applicant's existing marina under an agreement which the applicant can terminate on 30 days notice.
Welchko, et al., v. City of Anacortes and Skyline Marina, Inc., SHB No. 79-45.

Changes to an environmental checklist before issuance of a declaration of non-significance, the receipt of a letter from an applicant's attorney and the exclusion of opposition letters from the city's filing with the department do not violate the appearance of fairness doctrine or invalidate the permit.
Lundstad, et al., v. City of Westport and Bowe, SHB No. 82-2.

A county commissioner did not violate the appearance of fairness doctrine by allowing a button supporting the marina to be pinned on him before he became a county commissioner and then supporting the project nine months later.
Protect the Peninsula's Future v. Clallam County and Port of Port Angeles, SHB No. 82-7.

The Shoreline Hearings Board will refrain from entertaining or resolving appearance of fairness or conflict of interest issues arising from local shoreline proceedings.
Washington Environmental Council v. Department of Transportation, SHB No. 86-34.

Because the Board's hearing is *de novo*, issues of appearance of fairness and proper cross examination before local officials are not properly part of the issues of the Board's hearing.
Jamestown Klallam Tribe, et al., v. Clallam County, SHB No. 88-4 and 88-5.

There is no conflict of interest or appearance of fairness issue presented when a challenge is made to a position on the Shorelines Hearings Board created by statute.
Toandos v. Jefferson County, et al., (Summary Judgment Order), SHB No. 94-45 and 94-51.

See: SHB No. 30.

5.APPEALS FROM LOCAL GOVERNMENT DECISIONS
5.1.Standards of Review

Review of permits prior to adoption of the guidelines is based on RCW 90.58.020.
Counter v. Whatcom County, SHB No. 8.

For purposes of review before the development of a master program, a permit for a development on other than natural shorelines of statewide significance is tested for consistency with the guidelines and the first, second and fifth numbered paragraphs of RCW 90.58.020.
Department of Ecology and Attorney General v. Chelan County and Schmitten, SHB No. 65.

Prior to master program development, but subsequent to adoption of the final guidelines, permit issuance is evaluated for compliance with the policy of the Act and the guidelines.
Id.

Where a permit was not issued based upon the consistency requirements of RCW 90.58.140 and environmental considerations, but upon other factors, the permit was invalid.
Doran v. Okanogan County, SHB No. 169.

Before a master program has become effective, a permit is reviewed for consistency pursuant to the standards set forth in RCW 90.58.140(2)(a):(i) the policy of RCW 90.58.020; (ii) the adopted guidelines and regulations of the department; (iii) so far as can be ascertained, the master program being developed for the area.
English Bay Enterprises, Ltd. v. Island County and Save Susan Bay Commission, et al., SHB No. 185.
Portage Bay-Roanoke Park Community Council, et al., and Hurlbut v. City of Seattle, SHB No. 194.
Department of Ecology and Attorney General v. City of Poulsbo and Xenos, SHB No. 201.
Wallingford Community Council, Inc., et al., v. City of Seattle, et al., SHB No. 203.

Where no master program can be ascertained a permit is judged by the policy of the Act and the guidelines.
Morrison v. City of Seattle and Low, SHB No. 120.

ECPA: Under prior statute, what the Shorelines Hearings Board may consider the policy of a local jurisdiction should be with regard to noise level restrictions cannot and should not act to vitiate an action of local government which, under the strict standard of review imposed under ECPA, was not clearly erroneous.
Carlson, et al., v. Valley Ready Mix Concrete Company and Yakima County, SHB No. 223.

Regional Goals and Policies developed as guidelines in the preparation of master programs pursuant to RCW 90.58.110(1) are not included in the standards for consistency governing issuance of substantial development permits in RCW 90.58.140(2)(a).
Chumbley v. King County and Barron, SHB No. 224.

Where special zoning conditions, such as density requirements, are established by local government, such local government has the discretion to interpret it.
Id.

ECPA: Under prior statute, the standards for review of appeals before the Shorelines Hearings Board of substantial development permits processed under the ECPA, chapter 90.62 RCW, are those found in RCW 34.04.130(6).
PROW, et al., v. City of Olympia, Port of Olympia, et al., SHB No. 225.

A draft land use proposal, prepared by a neighborhood association with no legislative authority, cannot be used to deny a permit when such permit is in conformance with the statutory standards.
Manette Peninsula Neighborhood Association v. City of Bremerton and Person, SHB No. 237.

A structure which normally accompanies a dwelling unit is to be judged by standards applicable to residential development.
Id.

There is no vested right to proceed with a project different from that authorized in a flood control zone permit. Moreover, the issuance of a flood control zone permit, whether vested or not, does not require the issuance of a shoreline permit.
Department of Ecology and Attorney General v. Skagit County and Powers, SHB No. 238.

Shoreline permits must be consistent both with the SMA and the underlying zoning requirements.
Tarabochia, et al., v. Town of Gig Harbor, et al., SHB No. 77-7.

The Board conducts de novo review of decisions.
Department of Natural Resources v. San Juan County, SHB No. 78-18.
Knapp v. Kitsap County and Hammer, SHB No. 85-17.
Lassiter v. Kitsap County, SHB No. 86-23.

The failure of county officials to object to an applicant's unauthorized landfill activity does not prevent the county from refusing a permit to continue the activity.
Massey v. Island County, SHB No. 80-3.

Failure of the City of Tacoma to strictly enforce building and health regulations on Salmon Beach does not prevent the department from enforcing the SMA.
Hanson, et al., v. Department of Ecology, SHB No. 80-14.

The establishment of harbor lines by the Harbor Lines Commission is not a prerequisite to approval of any type of shoreline permit for port facilities. Whether the harbor lines have been established, a shorelines permit may still be issued under the SMA.
Nisqually Delta Association, et al., v. City of Dupont, Department of Ecology, and Weyerhaeuser Company, SHB No. 81-8.

A proposed dock in a conservancy environment which would serve four lots and is designed to minimize aesthetic impacts, is a proper development under the master program and the SMA. Such a permit should not be denied because the county commissioners earlier granted a permit for a joint use dock to a neighbor of the applicant, and action in which the instant applicant did not take part.
Conner v. San Juan County, SHB No. 82-15.

The 1982 amendments to Chapter 90.62 RCW cannot be applied retroactively if the amendments affect substantive rights.
Save Port Susan Committee v. Department of Ecology and Sea Harvest Corporation, SHB No. 82-38.

Where neither the SMA or master program required that proposed developments be compared to the existing developments they replace, the existing developments would not be proper considerations for permit issuance.
Seattle Shorelines Coalition, et al., v. City of Seattle and H.C. Henry Pier Company, et al., SHB No. 82-46.

The Shorelines Hearings Board gives substantial weight to the County Commissioners construction of a provision of the Shorelines Master Program.
Department of Fisheries v. Mason County, SHB No. 91-33.

Undefined terms in local government ordinances will be given their usual and ordinary dictionary meanings.
Hutchins v. City of Seattle and Lee, SHB No. 91-69.

See: SHB Nos. 54; 183; 78-20; 78-28; 81-05.

5.2.Scope of Review

Hearings before the Board are de novo and evidence is not limited to that which was presented at the local government level.
Department of Ecology and Attorney General v. Mason County and Hama Hama Company, SHB No. 115. Order on Motion.

Review of county action on a permit is *de novo* before the Board.
Brachvogel, et al., Department of Ecology and Attorney General v. Mason County and Twanoh Falls Beach Club, Inc., SHB No. 140.

Each permit is reviewed as a special and peculiar matter to be adjudicated as the peculiar facts apply to the law.
Department of Ecology and Attorney General v. Chelan County and Smith, et al., SHB No. 151.

The SMA provides for a de novo hearing before the Shorelines Hearings Board. The particular procedural defects cited by appellant which may have accompanied the processing of the instant application were rendered immaterial and harmless as to the appellant by the de novo hearing held in the matters.
Attorney General v. Grays Harbor County, Slenes and Department of Ecology, SHB No. 231.

The hearing before the Board is de novo and evidence in not limited to that presented at the county level. All parties may submit evidence in support of their position.
Department of Natural Resources v. San Juan County, SHB No. 78-18.

When inadequate information exists to review the need for a variance, the matter may be remanded to the local government for further consideration.
Warner, et al., v. Department of Ecology, SHB No. 78-49.

See: SHB Nos. 77-37; 78-26.

5.3.Burden of Proof

The burden of proving inconsistency with the SMA is on the appealing party.
King County Chapter, Washington Environmental Council, et al., v. City of Seattle; Department of Highways, SHB No. 11.
Steinman v. City of Seattle, SHB No. 29.
Brulotte, et al., v. Yakima County and Morris, SHB No. 137.
Fisher Company v. King County, Des Moines Sewer District, Department of Ecology, and Attorney General, SHB No. 183.
Wallingford Community Council, Inc., et al., v. City of Seattle, et al., SHB No. 203.

The burden of proof is on a property owner to demonstrate the prior ordinary high water mark involving a retroactive permit to allow fill.
Osborne v. Mason County, SHB No. 88-37.

6.PERMITS AND APPLICATIONS
6.1.Adequacy, Description

A permit must precisely and adequately define the site upon which substantial developments are authorized.
Haggard v. City of Everett and Schmelzer, SHB No. 67.

A permit, which is too vague to ascertain with certainty what is authorized, cannot be properly reviewed by the Board and should be remanded. The permit itself should describe with particularity and certainty what is being authorized. The description of "marine industrial area," without more, does not meet the test.
Yount and Department of Ecology and Attorney General v. Snohomish County and Hayes, SHB No. 108.

A permit must sufficiently described and give adequate notice of what has been authorized.
Brachvogel, et al., Department of Ecology and Attorney General v. Mason County and Twanoh Falls Beach Club, Inc., SHB No. 140.

A permit to elevate an "existing" road does not authorize the construction of a new road.
Morris v. Yakima County and Brulette, SHB No. 142.

Where an application for a shoreline substantial development permit is vague and local government does not request further information nor does it deny the application based on vagueness or incompleteness, the Board will review what it can when the only parties involved are the permit applicant and issuing authority.
Society of St. Vincent de Paul v. City of Seattle, SHB No. 227.

A permit is limited to the construction and uses expressly sought and represented in the application for the permit. If a permit simply authorizes a development in general descriptive terms, the scope of the permit is of necessity limited by the application.
Tarabochia, et al., v. Town of Gig Harbor, et al., SHB No. 77-7.

A proposed storm drainage system, which differs from the design described in the permit, cannot be adequately evaluated. The proposed substantial development should be consistent with the description in the permit application.
Concerned Citizens of South Whidbey, et al., v. Island County and Milby, SHB No. 77-11.

A permit which depended on conditions of a future planned unit development permit approval, and which lacked an adequate description of proposed landfill and drainage, was incomplete and not ascertainable.
Mentor v. Kitsap County and Larson, SHB No. 77-39.

The failure of an applicant to specify a drainage plan, identify the source, composition and volume of fill material for a condominium project requires a permit to be remanded to local government.
Protection for River and Inland Environment for Bothell v. City of Bothell and Bothell Station Development Corporation, SHB No. 79-10.

A county may not unilaterally expand a substantial development application to include improvements for which the applicant did not apply.
MacDonald v. Island County, SHB No. 80-29.

A substantial development permit for a log export facility may be limited to only that use described in the permit and cannot expand except through application for another permit. Thus, the permit may require that only raw forest products be exported and prevent any cargo from being imported.
Nisqually Delta Association, et al., v. City of Dupont, Department of Ecology, and Weyerhaeuser Company, SHB No. 81-8.

A permit application together with the site plans and referenced EIS, described the proposed log export facility with enough specificity to inform the public as to the nature and scope of the proposal.
Id.

The city violated WAC 173-14-110 by failing to require a site plan than described the placement, composition, volume and other factors relating to the proposed fill.
Whittle v. City of Westport and Bowe, SHB No. 81-10.

The city's use of a "letter permit" violated WAC 173-14-120 because the local government, the public, and the reviewing board have no definite, documented statement of the development permitted.
Id.

Proposed changes in a substantial development which involve a change of purpose or activity require a new permit.
Gislason v. Town of Friday Harbor, SHB No. 81-22.

A substantial development permit for a moorage addition that is sufficiently complete, detailed and accurate to enable review for compliance with shoreline law and to serve as a clear statement of the development is adequate under WAC 173-14-120. Diagramatic and written components of a permit combine to produce complete authorization which is reviewable and enforceable.
Save Flounder Bay, et al., v. City of Anacortes and Skyline Marina, Inc., SHB No. 81-26.

A permit which is not within the "scope and intent" of the application and notice cannot meet the requirement of RCW 90.58.140 and WAC 173-14-070. A permit for a berm and drift sills is not within the "scope and intent" of an application and notice for a bulkhead and landfill, and a new or amended application and notice would be needed.
Bullitt, Ramamurti, et al., v. City of Seattle, SHB No. 81-29.

A substantial development permit application that lacks a site plan provides inadequate information to enable the Board and local government to determine the consistency of the proposal with the master program and the SMA.
Lundstad, et al., v. City of Westport and Bowe, SHB No. 82-2.

An application that contains two alternate bridge designs must specify one design in order to comply with RCW 173-140-110(7) and the master program, which require that a shoreline application contain the dimensions of proposed structures.
Trudeau, et al., v. City of Bothell and King County, SHB No. 82-12.

Design guidelines, a verbal composition from which only building envelopes may be derived, are inconsistent with WAC 173-14-110 relating to shoreline application, which requires a scale drawing showing dimensions and locations of structures. Failure to state specific uses of buildings leaves a proposed development without sufficient detail to determine the consistency of the structures with the policy of the SMA. The relocation of a suburban creek was not shown to be inconsistent with the SMA. To avoid piecemeal development construction of a proposed business park must not commence until permits for off-site sewer lines are obtained.
SAVE v. City of Bothell; The Koll Company and Department of Ecology, SHB No. 82-29.

Where an application fails to describe spoils material with sufficient specificity to allow the county or the Board to evaluate the proposal, consistency with the master program cannot be determined.
Department of Natural Resources v. Mason County, SHB No. 83-17.

To delay both final design of a marina breakwater and the decision as to the appropriateness of that design until after a shoreline permit is issued means that the permit is premature and should be reversed.
Department of Ecology v. City of Tacoma and Barden, SHB No. 84-27.

A permit for fill and a water dependent barge loading facility should be approved only as to those sections that specifically describe the permittee's plans in detail.
Friends of the Earth v. City of Westport, Port of Grays Harbor and Department of Ecology, SHB No. 84-63.

A substantial development "shall not be undertaken on shorelines of the state without first obtaining a permit..." RCW 90.58.140(2). The project should not be abated unless, however, it is inconsistent with the substantive requirements of applicable shoreline law.
Propst v. King County and Norquist, SHB No. 86-18.

Summary judgment is granted. A request for extension of a shoreline permit is timely under the undisputed facts.
Truly v. King County, SHB No. 88-3.

A detailed site plan is a requirement in the granting of any shoreline substantial development permit.
Babbitt, et al., v. Grant County, et al. (Order), SHB No. 93-5, 93-6 and 93-23.

See: SHB Nos. 78-2; 79-23; 79-24; 80-11; 80-29; 82-15.

6.2.Conditions

A permit allowing commercial building with non-water dependent areas upstairs requires that the first floor rowing club remain and a new permit revision is required if the status of the rowing club changes.
Eastlake Community Council, et al., v. City of Seattle, et al., SHB No. 90-8 and 90-9.

6.2.1.Requirement of, on Face of Permit

A permit which does not expressly state the certain conditions sought to be imposed on the applicant is technically defective.
Wolfsehr, et al., Department of Ecology and Attorney General v. Kittitas County and Keating, SHB No. 103.

If local government issues a permit upon certain conditions, those conditions should appear on the permit itself or by reference stated therein and with the references attached thereto.
Yount and Department of Ecology and Attorney General v. Snohomish County and Hayes, SHB No. 108.

A substantial development permit for a proposed gravel pit, which was consistent with the SMA when other permits and conditions therein were considered, must include compliance with those other permits as a condition of the substantial development permit and copies physically attached thereto.
Brulotte, et al., v. Yakima County and Morris, SHB No. 137.

Whenever local governments, in granting shoreline permits, rely upon and are persuaded by certain oral or written statements or promises of the applicant concerning the manner in which the work under the permit is to be performed or the condition in which the land will be left, then under such circumstances the permit itself should express such matters as conditions thereof.
Id.

Specific permit conditions that mandate provisions for public access along the shorelines to historical and archaeological sites can ameliorate the interference of a log export facility upon existing public access to the shorelines. Such provisions for public access should be specifically added to the permit because general provisions for public access which may or may not be added to the local comprehensive plan are not sufficient to ensure access.
Nisqually Delta Association, et al., v. City of Dupont, Department of Ecology, and Weyerhaeuser Company, SHB No. 81-8.

6.2.2.Basis, Reasonableness of Conditions

A substantial development permit for a natural recreational subdivision, with parcels of five acres or more each, is not required, by reason of the SMA, to conform with requirements applicable to more intensive land developments.
Baty v. Lewis County, SHB No. 97.

The guidelines and draft master program cannot impose a condition, on an otherwise consistent proposal, to provide adequate public services such as a police patrol.
Washington State Parks and Recreation Commission v. San Juan County, SHB No. 123.

A condition of a permit requiring continued monitoring of water quality, after it has been ascertained with reasonable certainty that the water quality will not be degraded, is unreasonable.
Weyerhaeuser Company v. King County, SHB No. 155.

Permit conditions based upon unsupported concerns of a hazard to navigation and aesthetic damage can be stricken from the permit as being unreasonable.
Linenschmidt v. City of Seattle, SHB No. 177.

Where there appears to be no supportable basis for a condition limiting the number of houseboats, such condition can be stricken from the permit and replaced with a condition conforming to density requirements.
Portage Bay-Roanoke Park Community Council, et al., and Hurlbut v. City of Seattle, SHB No. 194.

The reduction in the number of patrons at an existing restaurant below the number permissible prior to the permit application in order to reduce a parking problem in the area is unwarranted and unreasonable.
Moore v. City of Seattle and Kingen, SHB No. 204.

The test for reasonableness of the conditions imposed by a city for a permit is whether the conditions further the policy of the SMA or aid the implementation of the master program.
Green v. City of Bremerton and Department of Ecology, SHB No. 81-37.

It is implicit in the power of any local government to add reasonable conditions to a permit.
Department of Natural Resources v. Mason County, SHB No. 83-17.

See: SHB Nos. 239; 79-3.

6.2.3.Modification or Addition of Conditions

The Board has both the authority and obligation to review and determine independently the appropriateness of the issuance of the substantial development permit and the conditions imposed thereon by the city. Further, the Board has the obligation and authority to impose upon the permit any additional or modified conditions when it is in the public interest to do so.
King County Chapter, Washington Environmental Council, et al., v. City of Seattle; Department of Highways, SHB No. 11.

Although a permit for the purpose of creating land by filling is contrary to the policy and WAC 173-16-060(11)(e), such permit can be modified and conditioned so that protection of upland areas against further erosion can be achieved in a practical and economical manner consistent with the SMA.
Department of Ecology and Attorney General v. Grays Harbor County and Welti, SHB No. 62-A.

Additional conditions to a permit may bring the permit into consistency with the policy, guidelines and developing master program.
Brachvogel, et al., v. Mason County and Twanoh Falls Beach Club, Inc., SHB No. 45.
Haggard v. City of Everett and Schmelzer, SHB No. 67.
Kaeser Company v. King County, SHB No. 79.
Wolfsehr, et al., Department of Ecology and Attorney General v. Kittitas County and Keating, SHB No. 103.
Smith, Department of Ecology and Attorney General v. City of Seattle and New England Fish Company, SHB No. 158.
Kuzmick v. City of Redmond, et al., SHB No. 173.

Although mechanical harvesting of clams is a reasonable and appropriate use of the shorelines, it must also be consistent with RCW 90.58.020. If inconsistent therewith, such use may become consistent with appropriate conditions added to a permit.
English Bay Enterprises, Ltd. v. Island County and Save Susan Bay Commission, et al., SHB No. 185.

ECPA: In a review of appeals processed under ECPA, chapter 90.62 RCW, the Shorelines Hearings Board may require the addition of conditions to render the project consistent with the SMA.
PROW, et al., v. City of Olympia, Port of Olympia, et al., SHB No. 225.

A privately-owned campground on natural shorelines of statewide significance of the Skykomish River, which was not a water-dependent use, must promote a corresponding public interest. Where the permit was conditioned to ensure public access to the shoreline, the proposed development could become consistent with the SMA and master program.
Henderson v. Snohomish County and Barber, SHB No. 230.

Although not identified as a preferred use in the SMA, multiple dwellings can be a permitted use on the shoreline. Where, however, the design or density of such development is damaging to the shoreline, a permit therefor may be vacated or further conditioned as appropriate.
Coughlin v. City of Seattle and Condominium Builders, Inc., SHB No. 77-18.

Appropriate conditions may be added to a substantial development permit under SEPA or the SMA if the disclosed impacts justify it.
Seattle Shorelines Coalition, et al., v. City of Seattle and H.C. Henry Pier Company, et al., SHB No. 82-46.

A shoreline permit modified by Board decision must be re-issued accordingly by local government. An appeal challenging the conformity of the re-issued permit with the Board's decision can be taken to the Board within 30 days. Subsequent shoreline permits must respect the conditions of a prior shoreline permit.
SAVE v. City of Bothell and Department of Ecology, SHB No. 85-39.

A definite proposal may be conditioned by the Board on review within the confines of its original scope.
Holland v. Kitsap County and Yukon Harbor Concerned Citizens, SHB No. 86-22.

See: SHB Nos. 239; 79-23; 81-8.

6.2.4.Authority of Local Government

Authority and power to control trespass and nuisance resides in the police power of the county and not from the shoreline permit process.
Washington State Parks and Recreation Commission v. San Juan County, SHB No. 123.

Authority implicit in the power of any local government to grant a permit is the power to reasonably condition its use. If, however, the activity cannot be directly regulated, it clearly cannot be indirectly regulated.
Weyerhaeuser Company v. King County, SHB No. 155.

Until forest practices regulations are promulgated, local government is not prohibited from taking appropriate action to ensure that forest practice activities within its jurisdiction do not violate state water quality standards.
Id.

In setting conditions of a permit, chapter 90.58 RCW allows the responsible official some discretion and judgment.
Smith, Department of Ecology and Attorney General v. City of Seattle and New England Fish Company, SHB No. 158.

Permit conditions which are not within the authority of the SMA to require or are otherwise inconsistent with state law, will not be imposed on a development.
Department of Game v. Skagit County, SHB No. 240.

See: SHB No. 83-17.

6.3.Rescission

RCW 90.58.140(7) which provides that any permit may be rescinded for non-compliance with permit conditions is not the only basis on which a permit may be terminated.
Brocard v. San Juan County and Doe Bay Association, et al., SHB No. 181.

A permit may expire of its own terms earlier than provided by law.
Id.

A dock constructed at odds with the permit and which does not minimize visual impact is sufficient cause for local government to rescind the permit.
Conner v. San Juan County, SHB No. 83-48.

6.4.Operations Outside Scope of Permit

A permit for minor improvements on an existing racetrack cannot raise issues as to the continued operation of the existing use nor as to existing environmental impacts.
Alexander v. Clallam County and West, SHB No. 170.

Proposed changes in a substantial development which involve a change of purpose or activity require a new permit.
Gislason v. Town of Friday Harbor, SHB No. 81-22.

6.5.Finding of Inconsistency, Effect of

A finding of inconsistency of a permit with the SMA by the Board does not thereafter preclude local government from fashioning another permit consistent with the Act.
Department of Ecology and Attorney General v. Klickitat County and Morgan Ranch Investment Partnership, SHB No. 116.

6.6.Nature of

The validity of a substantial development permit, or a revision thereto, is not dependent upon an applicant's property interest in the site but upon the nature of the substantial development itself. Permits which are issued and sustained, including conditions imposed thereunder, run with the land for the permissible life of the permit.
Goodman v. City of Spokane, City of Spokane Parks and Recreation Department, Department of Ecology and Attorney General, SHB No. 214.

6.7.Revisions

A shoreline permit revision is needed to authorize the addition of balconies which change the dimensions of structures. The balconies bring no change in the nature or character of the nonconforming use and are a permissible intensification of it.
Neilson v. City of Seattle Condominium Builders and Lockhaven Marina, SHB No. 85-3.

A "revision appeal" is limited to the issue of whether the revised permit is "within the scope and intent of the original permit" and the merits of the revision are not within the jurisdiction of the Shorelines Hearings Board.
Evergreen Islands v. City of Anacortes, et al. (Order), SHB No. 91-39.

The relocation of a structure under a revision permit does not equate with a new structure and therefore it is not necessary for a new permit to issue.
Evergreen Islands v. City of Anacortes, et al. (Order), SHB No. 91-39.

An original permit is "approved" under WAC 173-14-060, relating to expiration of a permit, when thirty days have passed after the permit is filed with Department of Ecology. Expiration of a permit may be considered in a revision appeal.
Silver Lake Action Committee v. City of Everett, et al., SHB No. 88-59.

6.7.1.Scope and Intent of Original Permit

The "scope" of the original permit is defined as the specific substantial development or developments described (1) on the face of the permit itself, (2) in those documents specifically incorporated in the permit by reference or, (3) on the site plans which accompanied the original application.
Goodman v. City of Spokane, City of Spokane Parks and Recreation Department, Department of Ecology and Attorney General, SHB No. 214.

In order to ascertain the scope and intent of the initial permit, the parameters of such permit must first be determined. Because the SMA considers policies beyond "use" which extend to public health, vegetation, wildlife, water and their aquatic life, such latter impacts can be judged only when the specific dimensions or scope of the development are set forth in sufficient detail. Sufficient detail must be found on the permit itself or on specific supporting documents which include the application, the site plan, and those documents incorporated by reference on the face of the permit.
Department of Ecology and Attorney General v. Island County and Nichols Brothers Boat Builders, Inc., SHB No. 216.

Revisions involving new structures not shown on the original permit or its supporting documents, which in themselves are substantial developments, require a new permit.
Id.

As used in WAC 173-14-064, the "intent" of a permit relates to the type of land use authorized, while the "scope" of the permit relates to the actual substantial development(s) which may be constructed.
Id.

A permit which is not within the "scope and intent" of the application and notice cannot meet the requirement of RCW 90.58.140 and WAC 173-14-070. A permit for a berm and drift sills is not within the "scope and intent" of an application and notice for a bulkhead and landfill, and a new or amended application and notice would be needed.
Bullitt, Ramamurti, et al., v. City of Seattle, SHB No. 81-29.

If a permit is approved and alterations are thereafter desired, a formal amendment or a new permit application is in order. Reference WAC 173-14-064 concerning permit revision.
West Sound Marina v. San Juan County, SHB No. 84-2.

A change of use for a pre-existing structure requires a new shoreline permit.
Larkin and Names v. Department of Ecology, SHB No. 84-21.

A gravel access road to a marina is a "structure" and therefore cannot be added by permit revision.
Condominium Builders, Inc. v. City of Seattle and Lockhaven Marina, Inc., SHB No. 85-19.

See: SHB Nos. 77-10; 81-8; 81-22.

6.7.2.Granting of

Permit revisions under WAC 173-14-064 receive only cursory official review and no public comment. If a revision is found to be within the scope and intent of the original permit, the local agency can exercise no judgment as to the desirability of the revision but "shall approve" the revision.
Department of Ecology and Attorney General v. Island County and Nichols Brothers Boat Builders, Inc., SHB No. 216.

A revision to a substantial development permit for a condominium is evaluated under WAC 173-14-064 by comparing the proposed revision against the original permit.
Citizens for Sensible Residential Zoning, Inc. v. City of Bremerton and Weeks, SHB No. 79-35.

See: SHB Nos. 80-48; 82-37.

7.STATE ENVIRONMENTAL POLICY ACT

7.1.Review for SEPA Compliance Required

The Board must make its own independent examination of an EIS and judge it by the standards set forth in SEPA.
King County Chapter, Washington Environmental Council, et al., v. City of Seattle; Department of Highways, SHB No. 11.

The Board's jurisdiction to review SEPA allegations is derived from SEPA and not the SMA.
Coughlin v. City of Seattle and Condominium Builders, Inc., SHB No. 77-18.

The Board's function includes review of compliance with the requirements of SEPA.
Mack, et al., v. Kitsap County and Deffenbaugh, SHB No. 87-35.

The Board has jurisdiction to determine compliance with the procedural requirements of SEPA.
Clean-up South Sound, et al., v. Swecker, et al. (Order), SHB No. 88-38.

The Shorelines Hearings Board has jurisdiction to consider SEPA compliance which is supplemental to the issuance of a shoreline permit.
Clifford, et al., v. City of Renton and Boeing, SHB No. 92-52.

7.2.When Issues Must be Raised

In shoreline permit review, SEPA issues which could have been raised at the time of permit issuance but were not cannot be considered at a permit rescission hearing. Such issues must be raised within the time for appeal of the permit as provided by RCW 90.58.180(1).
Brocard v. San Juan County and Doe Bay Association, et al., SHB No. 181.

The doctrine of exhaustion of administrative remedies for SEPA appeals applies to the "judicial" type of review by the Shorelines Hearings Board.
Clifford, et al., v. City of Renton and Boeing, SHB No. 92-52.

It is not necessary to appeal SEPA determinations through the city's appeal process as a precondition to consideration by the Shorelines Hearings Board of the issue.
Eldridge, et al., v. City of Stanwood, SHB No. 91-62 and 91-70.

See: SHB No. 78-18.

7.3.Purpose

The basic purpose of SEPA is to provide the decision maker with a full disclosure of the environmental consequences of the proposed action and the alternatives thereto.
Jaggard v. City of Vancouver and PUD #1 of Clark County, SHB No. 168.

7.4.Application to Substantial Development Permits, Exemptions

An EIS must be prepared prior to permit issuance. It cannot be an after-the-fact justification for an already completely planned project.
League of Women Voters, et al., v. King County, et al., SHB No. 13.

The Board has the inherent authority and obligation to vacate a permit when it appears that such action was major and that such permit was issued in violation of the procedural requirements of SEPA.
Corey, et al., v. Pierce County and Lake Tapps Island Estates, Inc., SHB No. 42.

Compliance with SEPA is required prior to permit issuance.
Brachvogel, et al., v. Mason County and Twanoh Falls Beach Club, Inc., SHB No. 45.

A permit issued without consideration of environmental factors and thereby being in violation of SEPA is null and void.
Ball v. City of Port Angeles and the Port of Port Angeles, SHB No. 107.

The mandates of SEPA apply to actions involving substantial development permit issuance.
Department of Ecology and Attorney General v. City of Aberdeen and Forest Inv. Corporation, SHB No. 162.

In any review of a permit, the Board must test the permit with SEPA and the SMA.
U.S. Coast Guard v. City of Seattle and Greengo, SHB No. 209.

The comprehensive guidelines promulgated by the Council on Environment Policy supersede earlier department regulations as to single family dwellings. Under CEP guidelines, such dwellings are categorically exempt from the threshold determination and EIS provision of SEPA.
Attorney General v. Grays Harbor County, Lindgren and Department of Ecology, SHB No. 232.

Shoreline permit decisions to either grant or deny cannot be made until there is SEPA compliance. The matter is remanded.
Scott Paper Company v. Whatcom County, SHB No. 88-20.

See: SHB Nos. 169; 231.

7.5.Threshold Decision

Where the environmental impacts were not complex or obscure, but relatively simple and obvious, and an EIS would add nothing more, no remand to local government was necessary for initial SEPA consideration.
Citizens for the Responsible Development of the Port of Friday Harbor, Department of Ecology and Attorney General v. Town of Friday Harbor and Friday Harbor First Corporation, SHB No. 24.

Where the city did not consider an important element of SEPA in arriving at its negative impact determination, i.e., the known archaeological value of a site, its subsequent action granting a permit violated SEPA.
Haggard v. City of Everett and Port of Everett, SHB No. 74.

When the decision maker has identified some environmental impact, but has nevertheless concluded that a detailed EIS is not required, the decision maker must furnish or procure an “assessment,” containing convincing reasons why a project with “possible" significant environmental impact does not require a detailed impact statement, before taking final action on the project.
Department of Ecology and Attorney General v. Klickitat County and Morgan Ranch Investment Partnership, SHB No. 116.

When possible significant environmental impacts of major project action have been identified, an assessment containing sufficient factual information on environmental effects must be furnished to the decision maker before final action is taken so that it may be determined whether the proposed action does or does not significantly affect the environment. An assessment must contain convincing reasons why such a project does not require an EIS.
Brulotte, et al., v. Yakima County and Morris, SHB No. 137.

Local government's decision not to require a detailed EIS after consideration of environmental factors is sufficient compliance with SEPA for a project which is not a major action.
McCann, et al., Department of Ecology and Attorney General v. Jefferson County and Pleasant Tides Properties, SHB No. 144.

Where the county gave no consideration to environmental factors in granting a permit, the matter must be remanded for SEPA compliance.
Doran v. Okanogan County, SHB No. 169.

Adequacy standards for an EIS are not applicable to an "environmental impact assessment." An assessment is adequate if it provides a sufficient basis for determination that no detailed impact statement is required for a proposed project.
Fisher Company v. King County, Des Moines Sewer District, Department of Ecology, and Attorney General, SHB No. 183.

A negative declaration of significant impact which contained mistakes as to noise impacts from a helicopter, but which errors were not so important as to cause the city to withdraw its declaration, is binding upon the city until such declaration is withdrawn, even though the permit application had been denied for reasons other than those based on SEPA, Chapter 43.21C RCW.
Maloney, et al., and Seattle-First National Bank v. City of Seattle, SHB No. 190.

The assessment of the environmental impact of demand for parking spaces must be considered independently from the requirements for the provision of such spaces under the zoning code.
Moore v. City of Seattle and Kingen, SHB No. 204.

A finding of no significant impact which is based on an adequate environmental assessment sufficiently complies with SEPA.
Id.

A proposed 110 unit multi-family housing development near the Coweeman River on 12 acres of natural pasture which would completely change the use of an existing area will significantly affect, i.e., probably have more than a moderate effect on, the quality of the environment so as to require an EIS, and the negative threshold determination by the City was erroneous.
Howell v. City of Kelso and Strader, SHB No. 229.

A twenty unit condominium, located on one acre with two hundred feet of waterfront, which is consistent with the zoning and environmental designation and surrounding area, did not have more than a moderate effect on the quality of the environment and an EIS was not required.
Manette Peninsula Neighborhood Association v. City of Bremerton and Person, SHB No. 237.

Under CEP guidelines, an application for a permit to construct a road within a planned unit development when the road is a prerequisite to future condominium development requires the city to consider, in its SEPA threshold determination, the environmental impacts of both the road and the condominium.
Department of Ecology and Attorney General v. City of Bellevue and Bellefield Development Company, SHB No. 77-13.

While the Board may, in its discretion, consider evidence in addition to that which was before the local agency, it nonetheless must accord the negative threshold determination of such agency substantial weight.
Coughlin v. City of Seattle and Condominium Builders, Inc., SHB No. 77-18.

Where a proposed four-picnic site development was not coercive of future expansion and where environmental concerns for such expansion were considered, the concerns of the SMA were properly directed at the proposed development, which did not include future expansion.
Department of Natural Resources v. San Juan County, SHB No. 78-18.

A county's decision that the expansion of a marina to include 10 additional slips, a floating breakwater, and pump-out facility did not require an EIS was not clearly erroneous under SEPA.
Bryant v. San Juan County and Wareham, SHB No. 79-32.

A DNS for a proposed bridge improvement design was proper because project plans were modified to mitigate effects upon wetlands and possible flood impact on neighboring lands.
Braget v. Pierce County, Department of Transportation, and Department of Ecology, SHB No. 79-54.

A city's decision that a 45 unit condominium development with a fifty foot dock and parking places would not have a significant adverse impact on the quality of the environment was not clearly erroneous under SEPA.
Silver Lake Community Council v. City of Everett and Gabbert Association, SHB No. 80-4.

An environmental checklist for a beach access road need only include an analysis of impacts stemming from the proposed road; it need not analyze the proposed road in terms of "facilitating" future activity unless the future activity is proposed.
Miller v. Grays Harbor County, SHB No. 80-11.

A county DNS in regard to the impacts of a proposed beach access road which failed to analyze the need for human waste and solid waste disposal can be supported when the county stipulates to provide for disposal facilities and thus modify its proposal under WAC 197-109-350(1) and take mitigating measures under WAC 197-10-355(3).
Id.

King County DNS for a proposed 40 slip marina for commercial fishing vessels was proper as far as considering the development without any site specific improvements that may be imposed at the time of building permit issuance. At such time, fire code provisions may require other improvements on site which may require a new or revised permit.
Monsanto Industrial Chemicals Company v. King County and Johnson, SHB No. 80-48.

A DNS for a proposed 24 boat dock and pier requiring the dredging of at least 15,000 cubic yards of bottom material in a shallow, stream-fed back bay was erroneous.
Community Services Corporation v. Kitsap County, City of Winslow, et al., SHB No. 82-17.

A DNS for the expansion of a 50 slip marina to a 220 slip marina on Lake Chelan, with its attendant adverse environmental impacts, was clearly erroneous.
Reierson, et al., v. Chelan County and McClosky's Cove Marina, SHB No. 82-50.

A DNS for floats, lines, and anchors to allow the growing of nori on a seasonal basis was not erroneous.
Save Our Sound Citizen's Committee v. King County and American Sea Vegetable Company, SHB No. 82-51.

The environmental checklist and related information in the file provided the public with an opportunity to understand the department's decision to issue a DNS. The department actually considered the environmental factors before making its determination and its decision was not shown to be erroneous.
Pacific Northern Oil v. City of Port Angeles, Department of Ecology and Crown Zellerbach Corporation, et al., SHB No. 83-20.

A DNS for a project is reviewed by the Shorelines Hearings Board under the clearly erroneous standard.
Mack, et al., v. Kitsap County and Deffenbaugh, SHB No. 87-35.

Where a DNS was issued by the Washington Department of Transportation and the City did not thereafter assume "lead agency" status within 15 days the DNS is final and binding upon the City (summary judgment order).
4101 Beach Drive Northeast Association v. King County and DOT, SHB No. 88-47.
Washington Department of Transportation v. Lake Forest Park, SHB No. 87-50.

See: SHB Nos. 202; 77-2; 78-2; 82-2.

7.5.1.Who Makes Decision; Responsible Official

Whether or not permit issuance would be a "major action" of significant or insignificant effect on the environment must first be decided by local government before the Board can make a review thereof.
Corey, et al., v. Pierce County and Lake Tapps Island Estates, Inc., SHB No. 42.

As a matter of law, the Board is prevented from making the initial determination that the issuance of a permit was not a major action under SEPA. Rather, the record must affirmatively show that the county considered the environmental factors before determining whether or not an EIS must be prepared.
Brachvogel, et al., v. Mason County and Twanoh Falls Beach Club, Inc., SHB No. 45.

In the absence of city SEPA regulations or other evidence to the contrary, a city's designation of a SMA administrator implies that the same person is the responsible SEPA official for shoreline applications.
Lundstad, et al., v. City of Westport and Bowe, SHB No. 82-2.

See: SHB Nos. 24; 183; 229; 82-51.

7.5.2.Form Required

Prior to the SEPA guidelines (WAC 197-10-355), no specific format for expressing a determination that no detailed impact statement was required.
Fisher Company v. King County and, Moines Sewer District, Department of Ecology, and Attorney General, SHB No. 183.

The failure of the City to make a written threshold determination on a permit for landfill violates WAC 197-10-300.
Whittle v. City of Westport and Bowe, SHB No. 81-10.

7.5.3.Circulation and Comment

Failure to observe the 15 day comment period as provided by WAC 197-10-340 for a proposed DNS thereby preventing the department from commenting or assuming lead agency status was grounds to remand the substantial development and conditional use permits.
Moe and Grays Harbor County v. Department of Ecology, SHB No. 78-15.

The failure to send or circulate a negative declaration does not render a city's compliance with SEPA defective where circulation was not necessary.
Lundstad, et al., v. City of Westport and Bowe, SHB No. 82-2.

A county determination of non-significance under SEPA must be sent to affected Indian tribes. An approval of a shoreline substantial development permit where this is not done must be reversed.
South Point Coalition v. Jefferson County, SHB No. 86-47.

The SHB will presume that the notice required for a DNS was properly given; the burden of proving lack of such notice is on the one challenging the notice.
Mack, et al., v. Kitsap County and Deffenbaugh, SHB No. 87-35.

7.5.4.Record Considered

The environmental checklist considered when making a threshold determination under SEPA reveals the facts which support the determination, provides the public with an opportunity to understand and consider the determination, and presents a reviewable record on appeal.
Department of Natural Resources v. San Juan County, SHB No. 78-18.

The permit system of the Shoreline Management Act is inextricably interrelated with and supplemented by the requirements of SEPA. Failure to withdraw a DNS procured by misrepresentation and lack of material disclosure is error.
Lassiter v. Kitsap County, SHB No. 86-23.

See: SHB No. 82-51.

7.6.Draft EIS Preparation and Contents

7.6.1.Who Can Prepare Draft

A private applicant may develop a draft EIS for consideration by the agency responsible for SEPA compliance but the agency must retain "significant and active participation" therein and the draft must be carefully scrutinized to ensure that the document is not self-serving.
Brachvogel, et al., Department of Ecology and Attorney General v. Mason County and Twanoh Falls Beach Club, Inc., SHB No. 140.

Where the permit applicant, a PUD, prepared an EIS in which citizens and the city planning commission participated in hearings thereon at which all proposed and additional alternatives as a result of the hearings were considered, and where the PUD's EIS was thereafter available, discussed and used at all city-sponsored hearings and in its decision, the city acted in substantial compliance with and within the spirit of SEPA. The city played an active and significant role in the formulation of the EIS and did not delegate or abdicate its duties.
Jaggard v. City of Vancouver and PUD #1 of Clark County, SHB No. 168.

See: SHB No. 183.

7.7.Final EIS

7.7.1.Form

Although it may be desirable to integrate all factors and considerations into one document as the final EIS, such is not a requirement.
Brachvogel, et al., Department of Ecology and Attorney General v. Mason County and Twanoh Falls Beach Club, Inc., SHB No. 140.

7.7.2.Comments and Responses to Draft EIS

A governmental agency with expertise which, having ample opportunity to do so, but which does not timely point out deficiencies in a draft EIS forecloses its right to thereafter attack the adequacy of the final statement dealing with that deficiency.
Department of Ecology and Attorney General v. Mason County and Hama Hama Company, SHB No. 115.

Responses to alleged inadequacies in a draft EIS by way of written comments and public hearings adequately discloses environmental problems to the decision maker.
Brachvogel, et al.; Department of Ecology and Attorney General v. Mason County and Twanoh Falls Beach Club, Inc., SHB No. 140.

Although a substantial development permit was invalidated by the Supreme Court, information received from the county and through the EIS provided permit opponents with an adequate and informed opportunity to argue against the issuance of a subsequent permit. Public communication process and notice was adequate.
Sisley, et al., v. San Juan County and Carpenter, SHB No. 79-5.

7.7.3.Adequacy

The alternatives required to be discussed by SEPA are those which are reasonably available.
Department of Ecology and Attorney General v. City of Tacoma and Port of Tacoma, SHB No. 75.
Department of Ecology and Attorney General v. City of Tacoma, Port of Tacoma and Meaker, SHB No. 76.

There must be a reasonable investigation and discussion of the environmental effects of the proposed and alternative marina sites and sufficient information presented to permit a reasoned choice of alternatives.
Id.

It is sufficient that statements in an EIS are factually supported in light of the particular concerns involved.
Washington State Parks and Recreation Commission v. San Juan County, SHB No. 123.

An EIS for the expansion of an existing marina does not need to address alternative sites for the project.
Citizens Interested in LaConner v. Skagit County and Port of Skagit County, SHB No. 166.

Where the underlying zoning permitted a proposed commercial use, but not industrial use, the EIS was not inadequate because it failed to address such possible industrial uses which might be attracted by the proposed commercial use.
Id.

A reasonable and thorough discussion of environmental effects of all reasonable alternatives with sufficient information to permit a reasoned choice demonstrates substantial compliance with the purpose of SEPA.
Jaggard v. City of Vancouver and PUD #1 of Clark County, SHB No. 168.

Where the permit applicant, a PUD, prepared an EIS in which citizens and the city planning commission participated in hearings thereon at which all proposed and additional alternatives as a result of the hearings were considered, and where the PUD's EIS was thereafter available, discussed and used at all city-sponsored hearings and in its decision, the city acted in substantial compliance with and within the spirit of SEPA. The city played an active and significant role in the formulation of the EIS and did not delegate or abdicate its duties.
Id.

Where the environmental impact of new technology in aquaculture could not be predicted in advance and an EIS could not have been prepared with any degree of certainty, and where the decision makers had before them reports outlining possible environmental effects and public comments on the project, the decision makers could render an informed decision as mandated by SEPA.
Cruver v. San Juan County and Webb, SHB No. 202.

Where part of a proposed development is stricken from a permit, any SEPA error related to the stricken portion of the proposal is harmless.
Skagit River League, et al., v. Skagit County and Valleys West, SHB No. 228.

When determining the adequacy of an EIS, the question to be answered is whether the environmental effects of the proposed action and reasonable alternatives are sufficiently disclosed and discussed, and that they are substantiated by supportive opinion and data.
Department of Natural Resources v. Island County, SHB No. 77-8.

An EIS must fully describe the total proposal before it can adequately disclose adverse environmental effects. Where the EIS fails to show the development outside the shoreline area, the impacts within the shoreline area cannot be ascertained.
Howell, et al., v. City of Kelso, SHB No. 77-23.

An EIS for a proposed 94 slip marina is adequate when it considers alternatives to the proposed action, and its impact on each aspect of the human and physical environment, and is based upon investigations by qualified persons.
Sisley, et al., v. San Juan County and Carpenter, SHB No. 79-5.

An EIS that is phased to consider each part of a two part condominium and commercial development separately in relation to the development's environmental impacts, failed to consider "all proposed activity which is functionally related to the proposal." Both parts of the proposed development must be considered together in terms of the environmental impacts upon an undeveloped area. However, separate consideration of each of these parts is allowed if the development is limited to the condominiums and if the EIS were rewritten to include the impacts of the total proposal if the commercial developments as well as the residential development were undertaken. WAC 197-10-060.
Protection for River and Inland Environment for Bothell v. City of Bothell and Bothell Station Development Corporation, SHB No. 79-10.

An EIS for a proposed highway segment that addresses the relative impacts of five alternate routes and a "do-nothing" alternative was not shown to be inadequate in its consideration of alternatives to the proposed development.
Foulks v. King County and Department of Transportation, SHB No. 80-17.

A previously prepared EIS for a county water plan may be utilized to satisfy SEPA requirements for a single water line if the previous EIS meets the requirements applicable to the new proposed action. WAC 197-10-440(8)(a).
Clement v. Whatcom County and Water District No. 10., SHB No. 81-6.

An EIS for a proposed water line that considers the potential and uncertain impacts including increased population growth that might occur due to increased water supply from the water line is adequate insofar as it discusses within reason the indirect impacts of the proposal. WAC 197-10-440(8)(a).
Id.

A change in the location of a log export dock from the "proposed" location to the "alternate" location does not require a new threshold decision, a supplemental EIS, or additional notice when the locations of the dock are not substantially different.
Nisqually Delta Association, et al., v. City of Dupont, Department of Ecology, and Weyerhaeuser Company, SHB No. 81-8.

Where dry storage is not a reasonable alternative to wet moorage, it need not be considered as an alternative in the EIS.
Save Flounder Bay, et al., v. City of Anacortes and Skyline Marina, Inc., SHB No. 81-26.

An EIS that discussed reasonable alternatives for the property owned or controlled by the proponent, including retaining the existing marine-oriented services, was not shown to be inadequate.
Seattle Shorelines Coalition, et al., v. City of Seattle and H.C. Henry Pier Company, et al., SHB No. 82-46.

A marina with 340 slips in a dredged basin of 14.6 acres surrounded by 4.8 acres of breakwaters had an adequate environmental impact statement.
Franzen and Tulalip Tribes v. Snohomish County, BCE Development, Inc., and Department of Ecology, SHB No. 87-5 and 87-6.

A proposed inn of 26 units is inconsistent with the master program where it is out of scale with an existing two-story business district and is without a final parking plan. The EIS for the proposal is inadequate in not considering any alternative inn of lesser size, and by portraying the view impact inaccurately.
Front Street Inn v. Friday Harbor, SHB No. 87-27.

The adequacy of an environmental impact statement is judged by the "rule of reason".
Protect the Peninsula's Future v. Clallam County and City of Sequim, SHB No. 89-58.

The adequacy of a final environmental impact statement is a question of law to be decided under the "rule of reason".
DNR and Department of Fisheries v. Kitsap County, et al., SHB No. 91-51.

A local decision that an environmental impact statement is adequate will be given substantial weight.
Protect the Peninsula's Future v. Clallam County and City of Sequim, SHB No. 89-58.

See: SHB Nos. 166; 244; 77-28.

7.8.Supplements to Final EIS

Mitigative modifications to a project made responsive to environmental concerns in an EIS do not necessitate the preparation of a second or supplemental EIS.
Carlson, et al., v. Valley Ready Mix Concrete Company and Yakima County, SHB No. 223.
PROW, et al., v. City of Olympia, Port of Olympia, et al., SHB No. 225.

No supplemental EIS is required for a minor adjustment to the alignment of a road right of way or for mitigative measures that involve no significant adverse environmental impact.
Washington Environmental Council v. Department of Transportation, SHB No. 86-34.

See: SHB Nos. 224; 81-8.

7.9.Use of EIS

An EIS prepared for adjacent property may be adopted and supplemented and used by the city for its decision concerning the property under consideration.
Department of Ecology and Attorney General v. City of Aberdeen and Forest Inv. Corporation, SHB No. 162.

7.10.Supplementary Nature

SEPA is supplementary to, and does not replace, those statutory and regulatory obligations of local government. RCW 43.21C.060.
English Bay Enterprises, Ltd. v. Island County and Save Susan Bay Commission, et al., SHB No. 185.

8.SHORELINE MANAGEMENT ACT
8.1.Liberal Construction

The interpretation of a Shorelines Master Program is one of law.
Tunny v. Hopkins, et al., SHB No. 93-3.

Under WAC 173-14-155 the Board applies the most restrictive criteria between that set forth by DOE and that set forth by a particular county.
Weinberg v. Whatcom County and DOE, SHB No. 93-2.

The requirements that the Shorelines Management Act be liberally construed includes that any exceptions, i.e. variances, are to be narrowly construed.
Weinberg v. Whatcom County and DOE, SHB No. 93-2.

The provisions of the Shorelines Management Act are to be liberally construed and any exceptions in the nature of variances are to be narrowly construed.
Tunny v. Hopkins, et al., SHB No. 93-3.

The requirement of construing the Shorelines Management Act liberally also means that any exemptions from the Act are to be construed narrowly.
Mason County, et al., v. State of Washington and DOE, SHB No. 88-25, 88-31 and 88-36.

See: SHB Nos. 185; 190; 231; 79-40.

8.2.RCW 90.58.020
8.2.1.Unrestricted Construction Not in Best Public Interest

The policy of the SMA provides that unrestricted construction on privately-owned shorelines is not in the best public interest and that any permitted uses be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the environment and the public's use of the water. A large fill (3,250 cu. yds.) on an intertidal area near Alki Point for a private boat ramp and boat storage would be unnecessarily damaging to the intertidal area just to serve such a need and is inconsistent with the policy.
Steinman v. City of Seattle, SHB No. 29.

Where an area is being considered as a floodway designation, until a designation is made, the filling of such clearly potential floodway property is violative of the purposes of the SMA.
Graham v. Snohomish County, SHB No. 85.

The SMA does not prohibit all developments; it prohibits uncontrolled developments.
Department of Ecology and Attorney General v. Mason County and Bloom, et al., SHB No. 153.
English Bay Enterprises, Ltd. v. Island County and Save Susan Bay Commission, et al., SHB No. 185.

Private property owners should be permitted to use their land in a manner which does not unreasonably infringe on other private rights or the public interests. Accordingly, the SMA was designed so that all development on the shoreline would be controlled, with priorities of use established, with natural resources preserved to the greatest extent practical, and with adverse environmental impacts mitigated.
Chumbley v. King County and Barron, SHB No. 224.

The SMA intended to promote thoughtful planning of the state's shorelines and that such planning be expressed through the master programs.
Manette Peninsula Neighborhood Association v. City of Bremerton and Person, SHB No. 237.

See: SHB No. 3.

8.2.2.Prevention of Uncoordinated and Piecemeal Development

The purpose of the SMA is to prevent the inherent harm caused by the unrestricted and unplanned piecemeal development of the shorelines. This purpose is met prior to the adoption of a master program if a proposed development is consistent with the comprehensive plan and zoning ordinance.
Department of Ecology and Attorney General v. City of Kirkland and Bittman, Sanders, Hasson Corporation, SHB No. 3.

The SMA does not prohibit developments on shorelines but does mandate planning of reasonable and appropriate uses to prevent harm from uncoordinated and piecemeal developments.
English Bay Enterprises, Ltd. v. Island County and Save Susan Bay Commission, et al., SHB No. 185.

The segmentation into two phases of a road relocation project within the shoreline, primarily for economic reasons, does not constitute the piecemealing of development where the first phase was not coercive on the second phase, where environmental concerns for the entire project were considered as required by SEPA, and where the particular concerns of the SMA were considered for the first phase.
Wallingford Community Council, Inc., et al., v. City of Seattle, et al., SHB No. 203.

The SMA is a critical defense against abuses of the shorelines and is not a tool to dictate or deter land use decisions based on peripheral and de minimis impacts on the shoreline.
Id.

A proposed water-dependent industrial operation located in an agricultural setting, was an uncoordinated and piecemeal development which would set an undesirable precedent unless so conditioned to prevent encroachment into agricultural areas.
Department of Ecology and Attorney General v. Skagit County and Marine Construction and Dredging, Inc., SHB No. 244.

A landfill proposed for the sole purpose of providing area for a septic tank drainfield in contravention to the master program provision is contrary to the policies of the SMA as uncoordinated and piecemeal development.
Department of Ecology and Attorney General v. Sircovich, SHB No. 80-43.

A concrete boat ramp to serve a commercial dry storage boat yard is inappropriate as a conditional use in an area designated as “conservancy” by the master program because the cumulative effects of many such developments would set a precedent of uncoordinated and unplanned commercial activity which would be contrary to RCW 90.58.020.
Murray v. Jefferson County and Jefferson County Conservancy, SHB No. 81-14.

Some losses to bird and aquatic life in the development of a marina, are not prohibited by the master program or SMA. What is prohibited is uncoordinated, piecemeal development. *Protect the Peninsula’s Future v. Clallam County and Port of Port Angeles, SHB No. 82-7.*

A road for access to a parcel of land which will be subdivided is a substantial development but future buildings need not be contained in the same application where the location and other aspects of the building are not known.
Elliott v. King County and Jeffress, SHB No. 85-35.

A marina with 340 slips in a dredged basin of 14.6 acres surrounded by 4.8 acres of breakwaters accommodates the favored marina use with the favored fishing use. The proposal of a marina followed designation of the site as "urban" where marinas are expressly permitted and therefore results from the planning process set in motion by the SMA. The marina on Possession Sound will improve boating access to public waters and provide the means for the public at large to enjoy a waterfront site which is now all but inaccessible.
Franzen and Tulalip Tribes v. Snohomish County, BCE Development, Inc., and Department of Ecology, SHB No. 87-5 and 87-6.

A substantial development permit for land in a “marsh bog swamp” where timber had been cleared previously to a permit application in violation of the local Shorelines Master Program, a substantial development permit issued for fill only with no explanation of the prospective future development violates the anti-piecemeal provisions of both the Shorelines Master Act and State Environmental Policy Act.
DOE v. City of Bellingham, et al., SHB No. 89-2.

Even though a boat house is more than 200 feet from the shoreline when it is linked to a marine railway system providing for boat access to the water the entire project is determined to be within the shoreline and therefore requires a permit.
Moses v. Skagit County and Renner, SHB No. 90-7.

See: SHB Nos. 153; 224; 232; 81-8; 81-22.

8.2.3.Reasonable and Appropriate Uses

A proposed public boat launching ramp extension upon shorelines of statewide significance at Mukilteo State Park which would not adversely affect the public health, aquatic life and waterfowl, would nevertheless consume a valuable segment of a natural accretion beach and result in a park dedicated to the single purpose of launching boats of owners living outside of the geographic area. Notwithstanding the public benefits to such boaters and the need for such facilities, the proposed development was not consistent with the existing planning objectives for the area as determined by the city and the denial of permit was proper.
Washington State Parks and Recreation Commission v. City of Mukilteo, SHB No. 7.

A proposed bulkhead and fill on second class natural tidelands on Hat Island for the purpose of creating land for homesites is inconsistent with the policy of the Act and guidelines for bulkheads and fills.
Isaak, et al., v. Snohomish County, Department of Ecology and Attorney General, SHB No. 19.

A proposed commercial-residential complex to be constructed along a 75 foot cliff on leased waterfront property in Friday Harbor, which provides public access to the shoreline, and whose design was modified to be consistent with the SMA, was a permitted use on the shorelines.
Citizens for the Responsible Development of the Port of Friday Harbor, Department of Ecology and Attorney General v. Town of Friday Harbor and Friday Harbor First Corporation, SHB No. 24.

The SMA does not prohibit over-the-water structures such as on an environmentally abused portion of the Chehalis River, a shoreline of statewide significance, but such developments must be carefully planned, managed, and coordinated in keeping with the public interest. However, low priority shoreline uses, such as the proposed motel, parking area, and commercial area, should be located on the uplands.
Department of Ecology and Attorney General v. City of Aberdeen and Forest Inv. Corporation, SHB No. 162.

The SMA does not prohibit developments on shorelines but does mandate planning of reasonable and appropriate uses to prevent harm from uncoordinated and piecemeal developments.
English Bay Enterprises, Ltd. v. Island County and Save Susan Bay Commission, et al., SHB No. 185.

Although mechanical harvesting of clams is a "reasonable and appropriate" use of the shorelines, it must also be consistent with RCW 90.58.020. If inconsistent therewith, such use may become consistent with appropriate conditions added to a permit.
Id.

Provisions of a master program which allow unreasonable and inappropriate uses prohibited by RCW 90.58.020 would be invalid.
Maloney, et al., and Seattle-First National Bank v. City of Seattle, SHB No. 190.

Aquaculture is a desired and preferred water-dependent use of the shoreline. To deny an adequately conditioned permit on the basis of possible environmental impacts which could not be determined with any degree of certainty in an EIS would be contrary to the policies of the SMA, i.e., to promote and foster reasonable uses of the shorelines. The production of food may be a most reasonable use of certain shoreline areas.
Cruver v. San Juan County and Webb, SHB No. 202.

A substantial development, which would allow up to 94 families to live on 35 acres on Lake Washington waterfront without adversely affecting view and aesthetics, nor would lead to pollution, and which would preserve and allow the passive enjoyment of an important marsh habitat, is a reasonable and appropriate us of the particular property which would protect and preserve the public's opportunity to enjoy the physical and aesthetic qualities of the shorelines.
Chumbley v. King County and Barron, SHB No. 224.

A proposed forty-unit condominium and parking area on the Salmon Bay Waterway is an appropriate and permitted use of urban shoreline in Seattle where no significant parking or traffic congestion resulted, the view corridor provision of the master program was met, and public access along the shoreline was provided.
Coughlin v. City of Seattle and Condominium Builders, Inc., SHB No. 77-18.

A properly operated and conditioned Atlantic salmon net-pen facility is a preferred water dependent use.
Skagit System Cooperative v. Skagit County and DOE, SHB No. 88-14.

See: SHB Nos. 128; 227; 237; 77-2; 77-28; 78-2; 78-10; 78-21; 78-26; 79-16; 79-22; 79-43; 79-44; 79-52; 80-2; 80-26; 80-30; 81-8; 81-13; 81-21; 81-37; 82-7; 82-32.

8.2.4.Public Rights in Navigable Waters

Where a proposed moorage is to be constructed on private land, does not extend out beyond adjacent developments, is well within the outer harbor line, and there is no evidence presented of any interference of the public's use of navigable waters, the development has been shown to have minimized interference with the public's use of the water.
Department of Ecology and Attorney General v. City of Kirkland and Bittman, Sanders, Hasson Corporation, SHB No. 3.

A proposed public boat launching ramp expansion on shorelines of statewide significance which did not interfere with rights of navigation but facilitates public access to the shorelines and which would not adversely affect the public health, aquatic life and waterfowl, would nevertheless consume a valuable segment of a natural accretion beach resulting in a park dedicated to the single purpose of launching boats of owners living outside of the geographic area. Notwithstanding the public benefits to such boaters and the need for such facilities, the proposed development was not consistent with the existing planning objectives for the area as determined by the city and the denial of the permit was proper.
Washington State Parks and Recreation Commission v. City of Mukilteo, SHB No. 7.

A sufficient enhancement of the public interest from a proposed development is required to offset any reduction in public rights of navigation which occurs. Where the proposed development results in only a limited reduction in such public rights, and is itself an aid to navigation, the reduction is more than offset.
Department of Ecology and Attorney General v. Island County and Penn Cove Association, SHB No. 16.

The policy of the SMA provides that unrestricted construction on privately-owned shorelines is not in the best public interest and that any permitted uses be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the environment and the public's use of the water. A large fill (3,250 cu. yds.) on an intertidal area near Alki Point for a private boat ramp and boat storage would be unnecessarily damaging to the intertidal area just to serve such a need and is inconsistent with the policy.
Steinman v. City of Seattle, SHB No. 29.

Developments on non-natural shorelines of statewide significance may reduce the rights of the public in navigable waters only if, and to the extent that, the public interest is enhanced. Where the public's rights in an eroding shoreline on Lake Chelan were reduced only a small amount during the summer months, and where the public interest was enhanced by such considerations as an increased tax base, a landscaped shoreline where none was before, preservation of view, and protection of water quality, the competing interests were balanced and a permit for a landfill was properly issued.
Department of Ecology and Attorney General v. Chelan County and Schmitten, SHB No. 65.

Where a proposed 110 foot boat dock and 35 foot float in a commercially zoned area of Gig Harbor, a shoreline of statewide significance, did not interfere with the public's use of the waters, and, except for adequate parking, was otherwise consistent with the SMA, a permit should have been granted provided that adequate parking was added.
Morris, et al., v. Town of Gig Harbor, SHB No. 81.

A permit for protective bulkhead and fill 15 feet seaward of existing bulkhead was vacated because of adverse effects to the waters and aquatic life and rights of public navigation.
Department of Ecology and Attorney General v. Kitsap County and Black, SHB No. 93.

The proposed construction of a pier which would interfere with fishermen who elect to fish in shallower waters would impair the public's right of navigation.
Department of Ecology and Attorney General v. Mason County and Hama Hama Company, SHB No. 115.

A 3,300 cubic yard proposed landfill for a residence on natural shorelines of statewide significance of Hood Canal would reduce the rights of the public in navigable waters without promoting a corresponding public interest.
Department of Ecology and Attorney General v. Mason County and Bloom, et al., SHB No. 153.

A well-planned marina, which greatly enhances the public's right of navigation and facilitates public access to the shoreline through its fishing floats, camping facility and moorages, and which will be constructed in a manner that minimizes the adverse effect on the environment, is consistent with RCW 90.58.020.
Citizens Interested in LaConner v. Skagit County and Port of Skagit County, SHB No. 166.

Where the proposed operation of a mechanical clam harvester would destroy the ecological balance and sacrifice substantial aesthetic and recreational values, the intended use did not minimize interference with the public's use of the water.
English Bay Enterprises, Ltd. v. Island County and Save Susan Bay Commission, et al., SHB No. 185.

A project's location within a construction and harbor line obviates a recognition of rights of navigation. However, the project must otherwise conform to the policies of the SMA.
Portage Bay-Roanoke Park Community Council, et al., and Hurlbut v. City of Seattle, SHB No. 194.

Recreational activities are incidental to or corollary to the public's rights of navigation. However, no such traditional rights of navigation exist within designated harbor lines. The SMA requires a recognition of the public's rights in navigable waters, but it does not mandate the creation of such rights where none formerly existed.
Id.

Open waters are a valuable resource which must be protected and preserved. A balancing of such preservation with property rights must be made.
Id.

Although a proposed delicatessen to be constructed over privately owned tidelands of Liberty Bay in an urban environment would impair public rights of navigation at upper stages of the tide, such impairment would be insignificant because the proposed site was substantially blocked in four directions. The benefits of the proposed development outweighed the small impairment of navigational rights and the net effect would enhance the public interest.
Department of Ecology and Attorney General v. City of Poulsbo and Xenos, SHB No. 201.

Where an aquaculture use activity does not seriously interfere with large boats and a clearly indicated navigable passage remains, and where there is sufficient room for other uses such as water skiing, the project conforms with the Act and applicable guidelines.
Cruver v. San Juan County and Webb, SHB No. 202.

A proposed addition to an existing moorage is consistent with the SMA when it does not substantially interfere with navigation safety in terms of channel width, in light of winds, water depths, or frequency of use.
Save Flounder Bay, et al., v. City of Anacortes and Skyline Marina, Inc., SHB No. 81-26.

A marina with 340 slips in a dredged basin of 14.6 acres surrounded by 4.8 acres of breakwaters accommodates the favored marina use with the favored fishing use. The proposal of a marina followed designation of the site as "urban" where marinas are expressly permitted and therefore results from the planning process set in motion by the SMA. The marina on Possession Sound will improve boating access to public waters and provide the means for the public at large to enjoy a waterfront site which is now all but inaccessible.
Franzen and Tulalip Tribes v. Snohomish County, BCE Development, Inc., and Department of Ecology, SHB No. 87-5 and 87-6.

See: SHB Nos. 177; 77-8; 79-3; 81-25; 82-51.

8.2.5.Public Interest

A sufficient enhancement of the public interest from a proposed development is required to offset any reduction in public rights of navigation which occurs. Where the proposed development results in only a limited reduction in such public rights, and is itself an aid to navigation, the reduction is more than offset.
Department of Ecology and Attorney General v. Island County and Penn Cove Association, SHB No. 16.

The policy of the SMA requires that unrestricted construction on privately owned shorelines is not in the best public interest and that any permitted uses be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the environment and the public's use of the water. A large fill (3,250 cu. yds.) on an intertidal area near Alki Point for a private boat ramp and boat storage would be unnecessarily damaging to the intertidal area just to serve such a need and is contrary to the policy.
Steinman v. City of Seattle, SHB No. 29.

The proposed construction of a new railroad bridge and fill to replace an older bridge on the shorelines facilitated a necessary transportation system and was in the long term statewide interest. Any minor environmental impacts were outweighed by the public benefit conferred.
Burlington Northern, Inc. v. Town of Steilacoom, SHB No. 40.

Developments on non-natural shorelines of statewide significance may reduce the rights of the public in navigable waters only if, and to the extent that, the public interest is enhanced. Where the public's rights in an eroding shoreline on Lake Chelan were reduced only a small amount during the summer months, and where the public interest was enhanced by such considerations as an increased tax base, a landscaped shoreline where none was before, preservation of view, and protection of water quality, the competing interests were balanced and a permit for a landfill was properly issued.
Department of Ecology and Attorney General v. Chelan County and Schmitten, SHB No. 65.

Landfill for a private marina parking lot and other water-related structures in an area zoned heavy industrial is permissible where the proposed development will serve the recreational demands of a substantial portion of the general public.
Department of Ecology and Attorney General v. City of Tacoma, Port of Tacoma and Meaker, SHB No. 76.

The public interest is of paramount importance in establishing shoreline management priorities.
Eickhoff v. Thurston County and Zittel's Marina, Inc., SHB No. 104.

A proposed condominium, which provides public access to the shorelines where none was available before, would increase the public's opportunity to enjoy the shorelines of the state and would thereby serve a public interest.
Davis, et al., v. City of Winslow and Amco Investments, Inc., Department of Ecology and Attorney General, SHB No. 114.

Although aesthetic considerations tend to be more subjective than other considerations, it is nevertheless a major consideration in shoreline management. In such cases, public considerations are weighed more heavily than private considerations.
Lane v. Town of Gig Harbor, SHB No. 129.

In shoreline management considerations, the public interest is more important than private interests.
Id.

A great public good is gained when a shoreline development provides for public use, enjoyment and access to the shorelines.
Smith, Department of Ecology and Attorney General v. City of Seattle and New England Fish Company, SHB No. 158.

Although a proposed delicatessen to be constructed over privately-owned tidelands of Liberty Bay in an urban environment would impair public rights of navigation at upper stages of the tide, such impairment would be insignificant because the proposed site was substantially blocked in four directions. The benefits of the proposed development outweighed the small impairment of navigational rights and the net effect would enhance the public interest.
Department of Ecology and Attorney General v. City of Poulsbo and Xenos, SHB No. 201.

A proposed development, including residential, campsite, condominiums and commercial uses, which would alter a natural shoreline of statewide significance on the Skagit River without any corresponding benefit to the public interest, is inconsistent with RCW 90.58.020. Provision for public access at some part of the development would provide such a corresponding public benefit.
Skagit River League, et al., v. Skagit County and Valleys West, SHB No. 228.

Dredging for navigational purposes, and such necessary water disposal of spoils, facilitates a necessary transportation system and is in the long term statewide public interest.
Department of Natural Resources v. Island County, SHB No. 77-8.

See: SHB No. 115.

8.2.6.Adverse Effects to Environment

A proposed new boat moorage in Penn Cove, whose net environmental impact is small compared with the benefits conferred to the public, and the design and construction of which minimizes any resulting damage to the shorelines, is consistent with the SMA.
Department of Ecology and Attorney General v. Island County and Penn Cove Association, SHB No. 16.

The policy of the SMA requires that unrestricted construction on privately-owned shorelines is not in the best public interest and that any permitted uses be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the environment and the public's use of the water. A large fill (3,250 cu. yds.) on an intertidal area near Alki Point for a private boat ramp and boat storage would be unnecessarily damaging to the intertidal area just to serve such a need and is inconsistent with the policy.
Steinman v. City of Seattle, SHB No. 29.

The proposed construction of a new railroad bridge and fill to replace an older bridge on the shorelines, facilitated a necessary transportation system and was in the long term public interest. Any minor detrimental environmental impacts were outweighed by the public benefit conferred.
Burlington Northern, Inc. v. Town of Steilacoom, SHB No. 40.

The proposed disposal of cedar wastes in an ecologically fragile shoreline area of the Hoquiam River, which would degrade the environment and pollute the public waters, is not consistent with the policy of the SMA and the guidelines for landfills and solid waste disposal, and the issuance of a permit therefor was erroneous.
Department of Ecology and Attorney General v. Grays Harbor County and Dineen Shake and Shingle, Inc., SHB No. 63.

Where the risks to the environment are too great, a non-water dependent use, such as a waste disposal site, will not be permitted adjacent to waterways.
Id.

A proposed fill in an area zoned manufacturing on the Snohomish River, which would have negligible adverse effects but would improve the site and impart an improvement to the water quality, is consistent with the SMA.
Haggard v. City of Everett and Port of Everett, SHB No. 74.

The proposed filling of an unimproved excavated dump site near the Yakima River, which would restore the area to its original condition from its present environmentally abused condition, is consistent with the SMA.
Wolfsehr, et al., Department of Ecology and Attorney General v. Kittitas County and Keating, SHB No. 103.

Bulkheads and fills constructed primarily for the creation of residential land on natural shorelines of statewide significance of Hood Canal, which would damage the natural resources and environment, are inconsistent with the policy of the Act and the guidelines for bulkheads and landfills.
Department of Ecology and Attorney General v. Mason County and Bloom, et al., SHB No. 153.

A proposed helistop to be located in an area zoned manufacturing in Lake Union would produce no significant adverse non-exempt noise from the planned four flights per day which would be inconsistent with RCW 90.58.020.
Maloney, et al., and Seattle-First National Bank v. City of Seattle, SHB No. 190.

An ecologically and aesthetically blighted shoreline area, comprised of haphazard mixed uses, paucity of public recreation or scenic sites, and commercial uses, create a context for decision much different from a pristine or preservable shoreline. Thus, where the effect of roadway improvement would be increased access to commercial areas and to the shoreline of Lake Union, and there would be no corresponding conflict with existing or proposed parks or degradation in air quality and noise levels at the site, the net positive aspects of the project make the development desirable in the blighted area.
Wallingford Community Council, Inc., et al., v. City of Seattle, et al., SHB No. 203.

A substantial development, which would allow up to 94 families to live on 35 acres on Lake Washington waterfront without adversely affecting view and aesthetics, nor would lead to pollution, and which would preserve and allow the passive enjoyment of an important marsh habitat, is a reasonable and appropriate use of the particular property which would protect and preserve the public's opportunity to enjoy the physical and aesthetic qualities of the shorelines.
Chumbley v. King County and Barron, SHB No. 224.

Covered moorages for 86 boats in Day Island waterway in Pierce County are consistent with a flexible master program guideline calling for one moorage per acre where that guideline was exceeded before enactment of the SMA and it is not shown that exceedance of the guideline formula would have a significant adverse impact.
Day Island Community Club v. Pierce County, SHB No. 87-12.

To accommodate the berthing of 15 Navy ships, 3,305,000 cubic yards of material is proposed for dredging in Everett on Port Gardner Bay. The material is proposed for disposal one and two thirds miles away in 9,000 feet of water. The material would be "contaminated" due to prior practices in Port Gardner Bay. Therefore it would be capped with "clean" material to isolate it from the marine environment. Such capping can be done effectively (3 members conclude). Additional safeguards are feasible, practical and necessary to ensure compliance with the Shoreline Management Act (3 members conclude).
Friends of the Earth, et al., v. U.S. Navy, City of Everett and Department of Ecology, SHB No. 87-31 and 87-33.

See: SHB Nos. 7; 65; 128; 155; 159; 223.

8.2.6(a)Public Health

A proposed sewage system to be constructed over a city's water supply was a threat to public health and did not protect against adverse effects to the public health as required by RCW 90.58.020.
Counter v. Whatcom County, SHB No. 8.

Compliance with all public health standards will protect against adverse effects to public health as contemplated by the SMA.
Department of Ecology and Attorney General v. Island County and Penn Cove Association, SHB No. 16.

A proposed substantial development which does not control dust, noise, and visual pollution is not consistent with the policy of the Act.
Department of Ecology and Attorney General v. Mason County and Hama Hama Company, SHB No. 115.

Protection against adverse effects to the "public health" under the SMA includes those similar concerns under chapter 86.16 RCW (Flood Control Zones by State) and the regulations promulgated thereunder. The prohibition of permanent residential structures in a floodway under the latter regulations renders a permit which purports to allow such prohibited development inconsistent with RCW 90.58.020.
Skagit River League, et al., v. Skagit County and Valleys West, SHB No. 228. (See: *Department of Ecology and Attorney General v. Skagit County and Powers, SHB No. 238.*)

Where a campground is proposed at a location which can be dangerous to human health and safety, a permit must be conditioned to require a warning to the public of the hazards involved in order to be consistent with RCW 90.58.020 relating to public health.
Henderson v. Snohomish County and Barber, SHB No. 230.

Although a substantial development permit was approved for an on-site sewage disposal system for a Salmon Beach residence, it is desirable for the residence to connect to a community system when available.
Hanson, et al., v. Department of Ecology, SHB No. 80-14.

The Shorelines Hearings Board has jurisdiction to consider the environmental affects of a sewage disposal proposal involving shoreline.
Rosario Property Owners v. Carlton and San Juan County, SHB No. 90-66.

An outfall transmission pipe is not the same thing as the treatment of sewage but is classified under the Clallam County Shorelines Master Program as a utility.
Protect the Peninsula's Future v. Clallam County and City of Sequim, SHB No. 89-58.

A requirement under the Whatcom County Shorelines Master Program that trunk sewage lines be directed away from shorelines unless "infeasible" does not include nor mean economic infeasibility.
Whatcom County Water District #10 and Sun Valley Community Association v. Whatcom County, et al., SHB No. 92-41.

8.2.6(b)Land, Vegetation and Wildlife

Where the avowed purpose in constructing a sewer line is to mitigate seepage on the shoreline, which mitigation is expected to retard erosion and reduce pollution, such purpose is consistent with the policy of the SMA.
Fisher Company v. King County, Des Moines Sewer District, Department of Ecology, and Attorney General, SHB No. 183.

See: SHB Nos. 225; 230; 231; 232; 244; 82-7.

8.2.6(c)Water and Aquatic Life

Culverting of a stream, which could further restrict the use of the stream for fish spawning, should be consistent with requirements of the Department of Fisheries.
League of Women Voters, et al., v. King County, et al., SHB No. 13.

The construction of a proposed bulkhead and fill in the intertidal zone of natural shorelines of statewide significance on Hood Canal, which would destroy oysters and a smelt spawning area forever, does not preserve the natural character of the shorelines; it does not result in long term over short term benefits, protect the resources of the shorelines nor minimize damage to fish and shellfish habitats.
Department of Ecology and Attorney General v. Mason County and Krueger, SHB No. 90.

Permit for protective bulkhead and fill 15 feet seaward of existing bulkhead was vacated because of adverse effects to the waters and aquatic life and rights of public navigation.
Department of Ecology and Attorney General v. Kitsap County and Black, SHB No. 93.

Although the filling of only a part of an estuary of the Snohomish River would result in insignificant ecological or environmental impact to the estuary, the cumulative effect of other such developments would cause irreversible damage to the ecosystem at some unknown and unpredictable stage of development.
Yount and Department of Ecology and Attorney General v. Snohomish County and Hayes, SHB No. 108.

Although the SMA's primary thrust is to require local government to plan the uses and locations to be permitted within the shorelines, water quality is an important and vital consideration of such land use planning.
Weyerhaeuser Company v. King County, SHB No. 155.

A landfill of road spoils, which could itself be a source of pollution, and which is sought primarily to create land in order to qualify for a septic system, would destroy the physical and aesthetic qualities of the shoreline without a corresponding public benefit and is contrary to the policy of RCW 90.58.020.
Department of Ecology and Attorney General v. Clallam County and Myers, SHB No. 159.

Where the siltation of the water and beaches and destruction of the ecological balance will occur, and where substantial aesthetic and recreational values will be sacrificed with little or no public benefit, the intended preferred use, mechanical clam harvesting, was not designed or to be conducted in a manner so as to minimize damage to the ecology and environment of the shoreline, and minimize interference with the public's use of the water.
English Bay Enterprises, Ltd. v. Island County and Save Susan Bay Commission, et al., SHB No. 185.

A proposed addition to an existing moorage is consistent with the SMA when it does not substantially interfere with navigation safety in terms of channel width, in light of winds, water depths, or frequency of use.
Save Flounder Bay, et al., v. City of Anacortes and Skyline Marina, Inc., SHB No. 81-26.

See: SHB Nos. 75; 76; 115; 123; 128; 140; 153; 77-8; 82-7.

8.2.7.Aesthetics

The proposed concrete boat ramps on Seahurst Park, an area extensively used for park and shoreline recreational uses, which would render the entire beach and its natural areas less attractive, should be eliminated from a permit.
League of Women Voters, et al., v. King County, et al., SHB No. 13.

The location of a bulkhead and fill as proposed on ocean beaches at Moclips, whose primary purpose was to reclaim and recreate land which had slowly eroded over a long period of time, would interfere with the public's opportunity to enjoy the physical and aesthetic qualities of a natural shoreline of statewide significance without any enhancement of the public interest, but a small fill and bulkhead was permissible.
Department of Ecology and Attorney General v. Grays Harbor County and Welti, SHB No. 62-A.

The public's opportunity to enjoy the aesthetic qualities of certain shorelines and their preservation is given special treatment and emphasis in the Act. As such, aesthetics is an appropriate basis upon which to test a permit with the consistency requirements of the Act.
Department of Ecology and Attorney General v. Mason County and Hama Hama Company, SHB No. 115.

Because of the subjectivity of aesthetics, where there is a dispute as to whether a development is pleasing or displeasing, the determination of local government is entitled to greater weight than individual opinion thereon.
Lane v. Town of Gig Harbor, SHB No. 129.

The construction of a private 430 foot long pier-type dock on natural shorelines of statewide significance of Hood Canal would destroy an unobstructed view of the waters without promoting and enhancing a public interest and is therefore inconsistent with the policy of the Act, the guidelines for piers, and the draft master program. However, a 200-foot pier with a 230-foot float would preserve the view and is consistent with the SMA.
Brachvogel, et al., Department of Ecology and Attorney General v. Mason County and Twanoh Falls Beach Club, Inc., SHB No. 140.

A proposed private community boat ramp to be constructed on Hood Canal, a natural shoreline of statewide significance, with restrictions as to use, parking and material disposal, was nonetheless inconsistent with the guidelines for marinas because the proposed boat ramp was aesthetically incompatible with adjacent areas.
McCann, et al., Department of Ecology and Attorney General v. Jefferson County and Pleasant Tides Properties, SHB No. 144.

A proposed landfill for a construction site on natural shorelines of Port Susan is not a "priority" use, would not preserve the aesthetic qualities of the natural shorelines, and would not provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state.
Cleven v. Island County, Department of Ecology and Attorney General, SHB No. 150.

A landfill of road spoils, which could itself be a source of pollution, and which is sought primarily to create land in order to qualify for a septic system, would destroy the physical and aesthetic qualities of the shoreline of New Dungeness Bay without a corresponding public benefit and is contrary to the policy of RCW 90.58.020.
Department of Ecology and Attorney General v. Clallam County and Myers, SHB No. 159.

Electrical overhead transmission lines may be placed within the shoreline area where there is a demonstrated need for the service, where the cost of other alternatives is much higher than crossing through the shoreline area, and where there would be minimal damage to the aesthetic qualities of the shoreline area, such as scenic view.
Jaggard v. City of Vancouver and PUD #1 of Clark County, SHB No. 168.

Where the siltation of the water and beaches and destruction of the ecological balance will occur, and where substantial aesthetic and recreational values will be sacrificed with little or no public benefit, the intended preferred use was not designed or to be conducted in a manner so as to minimize damage to the ecology and environment of the shoreline, and minimize interference with the public's use of the water.
English Bay Enterprises, Ltd. v. Island County and Save Susan Bay Commission, et al., SHB No. 185.

Noise from a mechanical clam harvester, at a level which would disturb many beach residents, sacrifices aesthetic and recreational values and it inconsistent with RCW 90.58.020.
Id.

Absent a refined master program which might address the aesthetics of houseboats, the SMA cannot be read to preclude floating homes on aesthetic grounds.
Portage Bay-Roanoke Park Community Council, et al., and Hurlbut v. City of Seattle, SHB No. 194.

A context for decision in residential developments of a growing, bustling metropolitan area is different from that of a pristine area. When there would be only minimal obstruction of view and public access would be the same, it would be of little consequence to the public that a permitted use be allowed.
U.S. Coast Guard v. City of Seattle and Greengo, SHB No. 209.

Where there is a substantial dispute to a determination by local government based partly upon the aesthetics of a proposed development on natural shorelines of statewide significance, such determination as to aesthetics is not given heavy weight.
Mineral Heights Association, Inc. v. San Juan County and Mineral Point Community Club, SHB No. 77-25.

Where there is a dispute as to whether a development is aesthetically pleasing or displeasing, the determination of local government is entitled to greater weight. Public benefits conferred by a development may outweigh any diminished aesthetic values.
Wilcox, et al., v. Yakima County and Department of Highways, SHB No. 77-28.

A substantial development permit for a proposed railroad bridge and fill will not be vacated on the grounds of aesthetics when there is neither a master program provision addressing aesthetics or a violation of a specific standards such as height limitation.
Hildahl v. City of Steilacoom and Burlington Northern Railroad, SHB No. 80-33.

A proposed six story glazed office building resembling a shiny over-sized cube proposed on the narrow isthmus between downtown and West Olympia would be an aesthetically inappropriate development under the master program in terms of view obstruction and compatibility with surrounding structures. A smaller structure built with natural materials, containing more water-oriented uses and less surface parking would be more desirable.
Sato Corporation v. City of Olympia, SHB No. 81-41.

A proposed dock in a conservancy environment which would serve four lots and is designed to minimize aesthetic impacts, is a proper development under the master program and the SMA. Such a permit should not be denied because the county commissioners earlier granted a permit for a joint use dock to a neighbor of the applicant, an action in which the present applicant did not take part.
Conner v. San Juan County, SHB No. 82-15.

A pier on pilings extending from the bulkhead 135 feet into the water with an "L" at the waterward end of 20 feet and emanating from an unbuilt "recreation lot" on Mercer Island does not require a screening barrier.
Montgomery v. Mercer Island, SHB No. 87-17.

Aesthetics are a proper basis to test a permit for the consistency requirements of the Shorelines Management Act.
Port of Friday Harbor and Mercer v. The Town of Friday Harbor and Friday House Partnership, SHB No. 90-20 and 90-21.

The Shorelines Management Act does not require public access nor a view corridor in every case.
Northlake Marine Works v. City of Seattle and Lake Washington Rowing Club, SHB No. 92-16.

A Seattle Shorelines Master Program provision that prohibits new residences from locating water ward of existing residences to avoid blocking views applies even if the existing residence is a non-conforming use.
Batchelder v. City of Seattle and Ainsle, SHB No. 92-10.

See: SHB Nos. 24; 75; 76; 77; 108; 153; 162; 177; 202; 203; 224; 225; 227; 239; 77-2; 79-23; 81-8.

8.2.8.Preferred and Priority Uses

The SMA does not prohibit over-the-water structures but such developments must be carefully planned, managed, and coordinated in keeping with the public interest. However, low priority shoreline uses, such as a proposed motel, parking area, and commercial area, should be located on the uplands.
Department of Ecology and Attorney General v. City of Aberdeen and Forest Inv. Corporation, SHB No. 162.

While not identified as a preferred use in the SMA, multiple family dwellings can be a permitted use on the shorelines. However, under RCW 90.58.020, such uses shall be designed to minimize damage to the ecology and environment of the shoreline area.
Robinson v. City of Bremerton and Wowaras, et al., SHB No. 77-2.

A recreational preserve available to the general public through memberships is a preferred use of the shorelines under the SMA because it provides an opportunity for substantial numbers of people to enjoy the state's shorelines.
Pacific Rim Group, Inc., Cottrell, et al., v. Skagit County, SHB No. 77-30.

Preferred uses are either inherently compatible with the natural environment or those which are unique to or dependent upon a shoreline location.
Nisqually Delta Association, et al., v. City of Dupont, Department of Ecology, and Weyerhaeuser Company, SHB No. 81-8.

The SMA contemplates limited, planned alteration of the natural condition of the shorelines for certain enumerated "priority uses", such as ports, water dependent industrial and commercial developments, and other developments that will provide an opportunity for substantial numbers of the people to enjoy the shorelines. A commercial dock was an appropriate preferred and priority use where coordinated planning for reasonable uses has occurred.
Id.

A proposed marina in Sequim Bay is both a "preferred" shoreline use, because it is a water dependent use that provides for public access to the shorelines, and a "priority" use in a suburban environment because it is specifically contemplated by the master program as a use in a suburban designation.
Protect the Peninsula's Future v. Clallam County and Port of Port Angeles, SHB No. 82-7.

The three priority categories of shoreline use under the Shorelines Management Act, each of which is of equal dignity, are (1) single family residents; (2) water dependent uses; (3) uses affording public access for a substantial number of people to the shoreline.
Clifford, et al., v. City of Renton and Boeing, SHB No. 92-52.

See: SHB Nos. 65; 185; 216; 224; 237; 77-8; 77-18; 82-46.

8.2.8(a)Prevention of Environmental Damage

Although the landward portion of a shoreline on Hood Canal was not natural, the water portion of the shoreline which was in its natural state must be preserved for preferred uses which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline.
Department of Ecology and Attorney General v. Mason County and Hama Hama Company, SHB No. 115.

Although natural shorelines must be preserved, such preservation can be accomplished by preferring, i.e., limiting only those uses which control pollution and prevent damage to the natural environment or which are dependent upon the use of the shoreline. These preferred uses must also protect against those adverse effects of concern set forth in RCW 90.58.020.
English Bay Enterprises, Ltd. v. Island County and Save Susan Bay Commission, et al., SHB No. 185.

See: SHB Nos. 19; 62-A; 63; 90; 144; 153; 159; 202; 230; 231.

8.2.8(b)Shoreline Dependent

Food production through aquaculture is a preferred water dependent use of shorelines of state-wide significance. Aquaculture is an allowed use within the Aquatic Shorelines Environment under the SCSMP but also requires a conditional use permit because the area is within a shoreline of state-wide significance. An Atlantic salmon net-pen facility providing a maximum of 216,000 pounds annually does not involve adverse environmental affects nor interfere with public shoreline uses and is compatible with other permitted uses in the area.
Skagit System Cooperative v. Skagit County and DOE, SHB No. 88-14.

A gravel excavation mining operation is not a shoreline dependent use, however it may come within the umbrella of permitted and preferred uses if there are provisions for public access where none had previously existed.
Groenig, et al., v. City of Yakima, et al., SHB No. 92-30 and 92-31.

8.2.8(b)(1)Water Dependent

Boat moorage facilities are particularly dependent on the use of the shorelines.
Department of Ecology and Attorney General v. City of Kirkland and Bittman, Sanders, Hasson Corporation, SHB No. 3.

A proposed fill on an intertidal beach for the purpose of providing parking spaces for a boat launch is highly objectionable under any circumstance. Parking spaces for a boat launch is not a use dependent on the shoreline.
League of Women Voters, et al., v. King County, et al., SHB No. 13.

Private boat moorages for 260 small boats, which are open to the transient public, are unique to or dependent upon the shorelines and provide an opportunity for a substantial number of people to enjoy the shorelines of the state.
Department of Ecology and Attorney General v. Island County and Penn Cove Association, SHB No. 16.

Water-dependent uses include a boat rental enterprise, and exclude multi-story condominiums, restaurants, cocktail lounges, and boat sales rooms.
Ballard Elks Lodge No. 827 v. City of Seattle, Department of Ecology and Attorney General, SHB No. 22.

Moorages are a water-dependent use of the shorelines.
Department of Ecology and Attorney General, et al., v. City of Kirkland and Hadley, SHB No. 54.

An office building is not a water-dependent use even though some of the building's tenancy will be water-oriented. The issuance of a permit for such use is contrary to the provisions of WAC 173-16-060(4)(a and c) (shoreline dependency and view) and WAC 173-16-040(4)(b)(iv) (emphasizing water dependency and confining developments to already developed areas).
Id.

A proposed marine terminal and appurtenant structures, whose purpose is to meet the increasing requirements of waterborne commerce, is a water-dependent use.
Department of Ecology and Attorney General v. City of Tacoma and Port of Tacoma, SHB No. 72.

A proposed marina and its appurtenant structures are water-dependent uses of the shoreline.
Department of Ecology and Attorney General v. City of Tacoma, Port of Tacoma and Meaker, SHB No. 76.

A water-dependent commerce or industry, to which priority should be given, is one which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations. A water-related industry or commerce is one which is not intrinsically dependent on a waterfront location but whose operation cannot occur economically without a shoreline location.
Yount and Department of Ecology and Attorney General v. Snohomish County and Hayes, SHB No. 108.
Adams v. City of Seattle, Department of Ecology and Attorney General, SHB No. 156.

The operation of a pleasure craft marina and/or commercial boat facility and related activities, and the use by the public of a private beach, are unique to and dependent upon the use of the shorelines and are water-dependent uses.
Davis, et al., v. City of Winslow and Amco Investments Inc., Department of Ecology and Attorney General, SHB No. 114.

The mining of sand and gravel from an upland location outside of the 200 foot shoreline area and the loading thereof on barges from pier and barge loading facilities in the shorelines are not water-dependent uses.
Department of Ecology and Attorney General v. Mason County and Hama Hama Company, SHB No. 115.

A 30,000 cubic yard fill, which would convert a natural shoreline into a construction site by filling, is neither a water-dependent nor a public use within the meaning of the guidelines on landfills.
Cleven v. Island County, Department of Ecology and Attorney General, SHB No. 150.

An office building is not a use which is particularly dependent on a shoreline location. The construction of any office building which is not an integral part of, or related to, a water-dependent use would be inconsistent with the policy of the Act unless the entire development would "provide an opportunity for substantial numbers of the people to enjoy the shoreline of the state."
Adams v. City of Seattle, Department of Ecology and Attorney General, SHB No. 156.

RCW 90.58.020 does not mandate a water-dependent use. To the contrary, it allows non-water dependent use which permits public enjoyment of the shorelines.
Smith, Department of Ecology and Attorney General v. City of Seattle and New England Fish Company, SHB No. 158.

Construction of floating homes is a water-dependent use. Providing for the minimum number of parking spaces required by ordinance for such floating homes is a necessary accessory to such use.
Portage Bay-Roanoke Park Community Council, et al., and Hurlbut v. City of Seattle, SHB No. 194.

Although a delicatessen was proposed to meet increasing demand for land based services at a popular boating weekend destination and was economically desirable to its owner, such a facility could be built on the uplands rather than on the tidelands and was not unique to or dependent upon the shoreline.
Department of Ecology and Attorney General v. City of Poulsbo and Xenos, SHB No. 201.

A proposed use which is not unique to or dependent upon the shoreline is not thereby barred from an intruded, as opposed to natural, shoreline.
Id.

Aquaculture is a desired and preferred water-dependent use of the shoreline.
Cruver v. San Juan County and Webb, SHB No. 202.

A privately-owned campground on natural shorelines of statewide significance, which though not a water-dependent use is a priority recreational use, must promote a corresponding public interest. Where the permit was conditioned to ensure public access to the shoreline, the proposed development could become consistent with the SMA and master program.
Henderson v. Snohomish County and Barber, SHB No. 230.

Public access to publicly owned shorelines of statewide significance is beneficial even though portions of the development are not water-dependent. RCW 90.58.020 does not require water dependency where public enjoyment of the shorelines is enhanced.
Department of Game v. Skagit County, SHB No. 240.

Although a proposed development is neither water-dependent nor water-related, it is not necessarily barred from a shoreline location. Rather, if the public interest is promoted, and the proposed development is otherwise consistent with RCW 90.58, it may be allowed.
Department of Natural Resources v. Island County, SHB No. 77-8.

An integrated floating water-based aircraft facility located within an urban stable Lake Union environment designation, was a reasonable water-dependent use of the shoreline even though some parts of the facility could have been placed on land.
Seattle Shorelines Coalition, et al., v. City of Seattle and Airwest Airlines, Ltd., SHB No. 78-2.

A proposed four story, 48 unit condominium on Lake Washington does not depend on the shoreline for its location. Such a development could be allowed under RCW 90.58.020 if some corresponding public benefit is provided. A pedestrian walkway, picnic areas and limited boat launching on the shoreline provides such public benefit.
Juanita Condominium Homeowner's Association and City of Kirkland v. King County and Salant, SHB No. 78-20.

A 45 unit condominium development in an urban environment, which is not dependent upon a shoreline location, may be located thereon if a corresponding public benefit such as public access along the shoreline is provided.
Silver Lake Community Council v. City of Everett and Gabbert Association, SHB No. 80-4.

A proposed change in a partially completed substantial development plan from condominiums and shops to a motel that would substantially reduce public access to the shorelines is inconsistent with RCW 90.58.020 and the master program. Non-water dependent developments on shorelines must "provide an opportunity for substantial numbers of people to enjoy the shorelines of the state."
Gislason v. Town of Friday Harbor, SHB No. 81-22.

The master program preference for water dependent uses is not a prohibition of non-water dependent uses. It is a preference that is ideally made in the adoption of a master program.
Seattle Shorelines Coalition, et al., v. City of Seattle and H.C. Henry Pier Company, et al., SHB No. 82-46.

A landfill near a floodplain, which allows the expansion of an existing fish hatchery on the Skokomish River without causing significant damage to the ecology of the shoreline area, is a reasonable, preferred, water dependent shoreline use that will provide long term benefits to the people of the state.
Department of Fisheries v. Mason County, SHB No. 82-52.

A landfill of 1600-2000 cubic yards at a cost of $10,000.00 is a shoreline substantial development. Landfill in a marsh is inconsistent with the Island County Shoreline Master Program. However, as to landfill outside of marshes, the master program limitation to water dependent use is inconsistent with the Shoreline Management Act since single family homes are entitled to such non-marsh fill also.
Hastings v. Island County and Department of Ecology, SHB No. 86-27.

To accommodate the berthing of 15 Navy ships, 3,305,000 cubic yards of material is proposed for dredging in Everett on Port Gardner Bay. The material is proposed for disposal one and two thirds miles away in 9,000 feet of water. The material would be "contaminated" due to prior practices in Port Gardner Bay. Therefore it would be capped with "clean" material to isolate it from the marine environment. Such capping can be done effectively (3 members conclude). Additional safeguards are feasible, practical and necessary to ensure compliance with the Shoreline Management Act (3 members conclude).
Friends of the Earth, et al., v. U.S. Navy, City of Everett and Department of Ecology, SHB No. 87-31 and 87-33.

A concrete bulkhead and 240 cubic yards of fill waterward of the ordinary high water mark (vegetation line) is inconsistent with the Island County Shoreline Master Program prohibition of fill on tidelands.
Reed and Newlin and Island County v. Department of Ecology, SHB No. 87-34.

Shipment of cement by barge to a factory in the industrial district along the Duwamish River is an activity that is water dependent.
Greater Duwamish Neighborhood Council v. City of Seattle, et al., SHB No. 89-25.

Under the Seattle Shorelines Master Program only the ground floor of a commercial building need be water dependent.
Eastlake Community Council, et al., v. City of Seattle, et al., SHB No. 90-8 and 90-9.

Salmon net pens are a preferred water dependent use under the Shorelines Management Act.
Holland v. Kitsap County and Yukon Harbor Concerned Citizens, SHB No. 86-22.

The Shorelines Management Act policies are heavily weighted towards water dependent development which preserves the natural character of the shoreline and protects the ecology of the shoreline.
Larson v. Mason County, SHB No. 88-15.

See: SHB Nos. 225; 227; 244; 77-28; 79-5; 79-32; 80-3; 81-14; 82-7.

8.2.8(b)(2)Water-related

A water-dependent commerce or industry, to which priority should be given, is one which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operation. A water-related industry or commerce is one which is not intrinsically dependent on a waterfront location but whose operation cannot occur economically without a shoreline location.
Yount and Department of Ecology and Attorney General v. Snohomish County and Hayes, SHB No. 108.
Adams v. City of Seattle, Department of Ecology and Attorney General, SHB No. 156.

The construction of a commercial office building is a non-water related use. However, by assuring regulated public access to Lake Union, the project thereby becomes a use consistent with the policies of the SMA.
Allison Fairview Neighborhood Association v. City of Seattle and Jessup, SHB No. 205.

The fact that a commercial development is enhanced by proximity to the shoreline does not make such development a water related activity
BICC v. DOE, City of Winslow, and King, SHB No. 87-53.

Under the provisions under the Renton Shorelines Master Program definitions the incorporation of a public shoreline walkway within a project design means that the project is water related.
Clifford, et al., v. City of Renton and Boeing, SHB No. 92-52.

A retreat involving camp sites and a chalet is within a definition of water related activities under the Chelan County Shorelines Master Program.
Schrick, et al., v. Chelan County, et al., SHB No. 91-4.

See: SHB No. 80-30.

8.2.8(c)Alteration of Natural Shoreline Condition

Although natural shorelines must be preserved, such preservation can be accomplished by preferring, i.e., limiting only those uses which control pollution and prevent damage to the natural environment or which are dependent upon the use of the shoreline. These preferred uses must also protect against the adverse effects of concern set forth in RCW 90.58.020.
English Bay Enterprises, Ltd. v. Island County and Save Susan Bay Commission, et al., SHB No. 185.

See: SHB Nos. 65; 115; 201; 228; 230; 231.

8.2.8(c)(1)Other Developments Providing an Opportunity for the Public to Enjoy Shorelines

Private boat moorages for 260 small boats, which are open to the transient public, are unique to or dependent upon the shorelines and provide an opportunity for a substantial number of people to enjoy the shorelines of the state.
Department of Ecology and Attorney General v. Island County and Penn Cove Association, SHB No. 16.

On artificially altered shorelines with existing mixed uses, including some non-water dependent, the administration of the SMA must be done with a practical regard for the realities of past events. In such areas, over-the-water construction of a private clubhouse and restaurant which would provide an opportunity for substantial numbers of people to enjoy the shorelines may be permissible. Such proposed development must be otherwise consistent with the SMA and compatible with local features.
Ballard Elks Lodge No. 827 v. City of Seattle, Department of Ecology and Attorney General, SHB No. 22.

Public ownership, which is necessarily limited in amount, provides the highest benefit for a direct recreation opportunity for people to enjoy the limited shoreline resource. The next highest benefit is the joint or community ownership.
Brachvogel, et al., v. Mason County and Twanoh Falls Beach Club, Inc., SHB No. 45.

A proposed condominium development, which provides public access to the shorelines where none was available before, would increase the public's opportunity to enjoy the shorelines of the state and would thereby serve a public interest.
Davis, et al., v. City of Winslow and Amco Investments, Inc., Department of Ecology and Attorney General, SHB No. 114.

A private community floating dock provides an opportunity for substantial numbers of people to enjoy the shorelines of the state.
Brachvogel, et al., Department of Ecology and Attorney General v. Mason County and Twanoh Falls Beach Club, Inc., SHB No. 140.

A 30,000 cubic yard landfill on natural shorelines for a construction site is not a "priority" use, would not preserve the aesthetic qualities of the natural shorelines, and would not provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state.
Cleven v. Island County, Department of Ecology and Attorney General, SHB No. 150.

An office building is not a use which is particularly dependent on a shoreline location. Any office building which is not an integral part of, or related to, a water-dependent use would be inconsistent with the policy of the Act unless the entire development would "provide an opportunity for substantial numbers of the people to enjoy the shoreline of the state."
Adams v. City of Seattle, Department of Ecology and Attorney General, SHB No. 156.

RCW 90.58.020 does not mandate a water dependent use. To the contrary, it allows non-water dependent uses which permit an opportunity for public enjoyment of the shorelines.
Smith, Department of Ecology and Attorney General v. City of Seattle and New England Fish Company, SHB No. 158.

A well-planned marina, which greatly enhances the public's right of navigation and facilitates public access to the shoreline through its fishing floats, camping facility and moorages, and which will be constructed in a manner that minimizes the adverse effect on the environment, is consistent with RCW 90.58.020.
Citizens Interested in LaConner v. Skagit County and Port of Skagit County, SHB No. 166.

A proposed delicatessen which would provide an opportunity for substantial numbers of people to enjoy the shorelines of the state, would impair no scenic view, and would be located in an intensively developed urban environment, is not inconsistent with WAC 173-15-040(4)(b)(iv) (Urban Environment) and WAC 173-16-060(4) (Commercial Development) even though the proposed use is not water-dependent.
Department of Ecology and Attorney General v. City of Poulsbo and Xenos, SHB No. 201.

A proposed forty unit condominium and parking area on the Salmon Bay Waterway is an appropriate and permitted use of urban shoreline in Seattle where no significant parking or traffic congestion resulted, the view corridor provision of the master program was met, and public access along the shoreline was provided.
Coughlin v. City of Seattle and Condominium Builders, Inc., SHB No. 77-18.

A marina with 340 slips in a dredged basin of 14.6 acres surrounded by 4.8 acres of breakwaters accommodates the favored marina use with the favored fishing use. The proposal of a marina followed designation of the site as "urban" where marinas are expressly permitted and therefore results from the planning process set in motion by the SMA. The marina on Possession Sound will improve boating access to public waters and provide the means for the public at large to enjoy a waterfront site which is now all but inaccessible.
Franzen and Tulalip Tribes v. Snohomish County, BCE Development, Inc., and Department of Ecology, SHB No. 87-5 and 87-6.

It is not necessary nor appropriate to segregate the restaurant function and the lounge function of that restaurant under the criteria of the Master Program for measuring public access.
Concerned Southside Citizens v. City of Bellingham and Port of Bellingham, SHB No. 89-73.

See: SHB Nos. 162; 224.

8.2.9.Permitted Uses, Necessity of Minimizing Adverse Effects

A proposed single family dwelling to be constructed over a city water supply did not minimize insofar as practical, any resultant damage to the ecology and environment of the shoreline in that it was practical to site the proposed dwelling on the available upland, thereby eliminating the threat to the public water supply and minimizing the intrusion on the shoreline environment.
Counter v. Whatcom County, SHB No. 8.

A proposed new boat moorage, whose net environmental impact is small compared with the benefits to the public interest, and the design and construction of which minimizes any resulting damage to the shorelines is consistent with the SMA.
Department of Ecology and Attorney General v. Island County and Penn Cove Association, SHB No. 16.

The policy of the SMA requires that any permitted use be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the environment and the public's use of the water. A large fill (3,250 cu. yds.) on an intertidal area for a private boat ramp and boat storage would be unnecessarily damaging to the intertidal area just to serve such a need.
Steinman v. City of Seattle, SHB No. 29.

A closely monitored expansion of an existing marina rather than construction of a new facility would result in less total adverse impact on the environment. Such development, which meets the needs of the people and is in the public interest, is consistent with the SMA.
Eickhoff v. Thurston County and Zittel's Marina, Inc., SHB No. 104.

The proposed construction of a road alongside the Little Klickitat River, without any demonstrated effort to minimize adverse effects through alternatives or construction techniques, is inconsistent with the policy of the Act.
Department of Ecology and Attorney General v. Klickitat County and Morgan Ranch Investment Partnership, SHB No. 116.

A well-planned marina, which greatly enhances the public's right to navigation and facilitates public access to the shoreline through its fishing floats, camping facility and moorages, and which will be constructed in a manner that minimizes the adverse effect on the environment, is consistent with RCW 90.58.020.
Citizens Interested in LaConner v. Skagit County and Port of Skagit County, SHB No. 166.

Where siltation of the water and beaches and destruction of the ecological balance will occur, and where substantial aesthetic and recreational values will be sacrificed with little or no public benefit, the intended preferred use was not designed or to be conducted in a manner so as to minimize damage to the ecology and environment of the shoreline, and minimize interference with the public's use of the water.
English Bay Enterprises, Ltd. v. Island County and Save Susan Bay Commission, et al., SHB No. 185.

Given the tentative and experimental nature of an aquaculture enterprise, it is reasonable and permissible to proceed with a discrete portion of a project until it can be determined if it is biologically and economically feasible.
Cruver v. San Juan County and Webb, SHB No. 202.

A permit for a proposed campsite on natural shorelines of statewide significance of the Skykomish River, which is not conditioned to assure preservation or replacement of trees and vegetation, is not designed and conducted in a manner which would minimize any resultant damage to the ecology and environment.
Henderson v. Snohomish County and Barber, SHB No. 230.

While not identified as a preferred use in the SMA, multiple family dwellings can be a permitted use on the shorelines. However, under RCW 90.58.020, such uses shall be designed to minimize damage to the ecology and environment of the shoreline area.
Robinson v. City of Bremerton and Wowaras, et al., SHB No. 77-2.

A proposed storm drainage system that would transport storm water over a bluff for dispersal along the shoreline must be designed and conducted in a manner to minimize damage to the ecology and environment in the shoreline area under RCW 90.58.020.
Concerned Citizens of South Whidbey, et al., v. Island County and Milby, SHB No. 77-11.

See: SHB Nos. 162; 244; 77-8; 77-18.

8.2.10Shorelines
8.2.10(a)Shorelines of Statewide Significance

A proposed public boat launching ramp extension upon shorelines of statewide significance at Mukilteo State Park which would not adversely affect the public health, aquatic life and waterfowl, would nevertheless consume a valuable segment of a natural accretion beach and result in a park dedicated to a single purpose of launching boats of owners living outside of the geographic area. Notwithstanding the benefits to such boaters and the need for such facilities, the proposed development was not consistent with the existing planning objectives for the area as determined by the city and the denial of the permit was proper.
Washington State Parks and Recreation Commission v. City of Mukilteo, SHB No. 7.

Before a proposed condominium can be constructed on the Spokane River, a shoreline of statewide significance, it must be shown that overriding considerations of public interest will be served.
Department of Ecology and Attorney General v. City of Spokane and Pedco, SHB No. 33.

The location of a bulkhead and fill as proposed whose primary purpose was to reclaim and recreate land which has slowly eroded over a long period of time, would interfere with the public's opportunity to enjoy the physical and aesthetic qualities of a natural shoreline of statewide significance without any enhancement of the public interest, but reduced fill and bulkhead was allowed.
Department of Ecology and Attorney General v. Grays Harbor County and Welti, SHB No. 62-A.

Developments on non-natural shorelines of statewide significance may reduce the rights of the public in navigable waters only if, and to the extent that, the public interest is enhanced. Where the public's rights in an eroding shoreline on Lake Chelan were reduced only a small amount during the summer months, and where the public interest was enhanced by such considerations as an increased tax base, a landscaped shoreline where none was before, preservation of view, and protection of water quality, the competing interests were balanced and a permit for a landfill was properly issued.
Department of Ecology and Attorney General v. Chelan County and Schmitten, SHB No. 65.

Manufacturing activity on non-natural shorelines of statewide significance upon an environmentally abused site was consistent with the policy of the SMA.
Haggard v. City of Everett and Schmelzer, SHB No. 67.

RCW 90.58.150 prohibits the clear-cutting of timber on shorelines of statewide significance unless selective cutting is ecologically detrimental due to topography, soil conditions or silvicultural practices necessary for regeneration.
Department of Ecology and Attorney General v. Grays Harbor County and Ferguson, SHB No. 77.

Where a proposed 110 foot dock and 35 foot float in a commercially zoned area on shorelines of statewide significance did not interfere with the public's use of the waters, and, except for adequate parking, was otherwise consistent with the SMA, a permit should have been granted provided that adequate parking was added.
Morris, et al., v. Town of Gig Harbor, SHB No. 81.

The construction of a proposed bulkhead and fill in an intertidal zone on natural shorelines of statewide significance on Hood Canal, for the purpose of creating land to meet sanitary drainfield requirements and which is not necessary for the protection of existing facilities, is inconsistent with WAC 173-16-060(11)(e).
Department of Ecology and Attorney General v. Mason County and Krueger, SHB No. 90.

Preferred developments on shorelines of statewide significance are those uses which favor public and long-range goals. While the removal and use of gravel from a hill may ultimately increase the productivity of the land and hence can be said to favor long-range goals and further the statewide interest, the same is not true for pier construction, which is a permanent installation whose ultimate use is unknown.
Department of Ecology and Attorney General v. Mason County and Hama Hama Company, SHB No. 115.

Landfills, whose purpose is to create land in waters of shorelines of statewide significance without enhancing any public interest, are inconsistent with the policy of the Act.
Department of Ecology and Attorney General v. Mason County and Frint, SHB No. 128.

The construction of a private 430 foot pier-type dock on scenic and natural shorelines of statewide significance would destroy an unobstructed view of the waters. However, a 200-foot pier with a 230-foot float would preserve the view and is consistent with the SMA.
Brachvogel, et al., Department of Ecology and Attorney General v. Mason County and Twanoh Falls Beach Club, Inc., SHB No. 140.

A proposed private community boat ramp on natural shorelines of statewide significance of Hood Canal is inconsistent with the guidelines because it does not favor public and long-range goals. It is inconsistent with the policy because it would not preserve natural shorelines but rather, would bring about a major environmental change on the shoreline.
McCann, et al., Department of Ecology and Attorney General v. Jefferson County and Pleasant Tides Properties, SHB No. 144.

A proposed 3,300 cubic yard landfill for a residence on natural shorelines of statewide significance of Hood Canal would reduce the rights of the public in navigable waters without promoting a corresponding public interest.
Department of Ecology and Attorney General v. Mason County and Bloom, et al., SHB No. 153.

Bulkheads and fills constructed primarily for the creation of residential land on natural shorelines of statewide significance, which would damage the natural resources and environment, are inconsistent with the policy of the Act and the guidelines for bulkheads and landfills.
Id.

The shoreline of Elliott Bay is not "of statewide significance" as defined in RCW 90.58.030(a).
Smith, Department of Ecology and Attorney General v. City of Seattle and New England Fish Company, SHB No. 158.

A proposed delicatessen to be constructed over privately owned tidelands, landward from the line of extreme low tide and seaward of the mean higher high water, was not shown to be developed on a shoreline of statewide significance as defined by RCW 90.58.030(2)(e)(iii).
Department of Ecology and Attorney General v. City of Poulsbo and Xenos, SHB No. 201.

Proposed dredging in the Swinomish Channel seaward from the line of extreme low tide occurs in shorelines of statewide significance.
Department of Ecology and Attorney General v. Skagit County and Marine Construction and Dredging, Inc., SHB No. 244.

Shorelines of statewide significance are those shorelines existing as of June 1, 1971 and natural changes thereto.
Id.

A private residence constructed on tidelands would set an undesirable precedent for new construction on shorelines of statewide significance and would infringe upon the public right of navigation without providing a corresponding public benefit.
Kargianis v. Mason County and Department of Ecology, SHB No. 78-44.

To be consistent with the master program and SMA, a permit for a proposed marina in Sequim Bay can be conditioned to allow for a public boat ramp and picnic area to provide for adequate public access on a shoreline of statewide significance.
Protect the Peninsula's Future v. Clallam County and Port of Port Angeles, SHB No. 82-7.

Condominiums which are not water dependent are consistent with the SMA, including criteria for shorelines of statewide significance when development includes a park affording public access to the shoreline. A shift from a condominium-restaurant proposal to a condominium-public park proposal is not piecemeal development.
Alesse and Hansen v. Whatcom County and Mace, SHB No. 83-15.

A project which is not likely to be completed does not "recognize and protect the statewide interest over local interest" or "result in long term over short term benefits" and is inconsistent with these use preferences for shorelines of statewide significance.
Friends of the Columbia Gorge v. Skamania County and Jung Trust, SHB No. 84-57.

A two lane state highway segment down the Columbia River shoreline near East Wenatchee does not "result in long term over short term benefits" or "recognize and protect statewide interest over local interest" or meet other criteria for shorelines of statewide significance. All development proposed on shorelines of statewide significance must be reviewed for consistency with the policy of the Shoreline Management Act for shorelines of statewide significance.
Washington Environmental Council v. Department of Transportation, SHB No. 86-34.

There is not a requirement of a compelling showing of enhanced public interest in cases of small private shoreline developments even when a portion of the shoreline is designated a shoreline of statewide significance.
Mack, et al., v. Kitsap County and Deffenbaugh, SHB No. 87-35.

In a shoreline of state-wide significance location the Shorelines Management Act policies are heavily weighted toward water dependent developments which preserve the natural character of the shorelines and protect the resources and ecology of the shorelines.
Larson v. Mason County, SHB No. 88-15.

A permit condition which limits the size of two large vessel berthing slots because of a small reduction in local aesthetics is inconsistent with the shorelines of statewide significance policies of minimal reduction of the right of navigation and does not appropriately balance the requirement of statewide interest prevailing over local interest as set forth in the SMA.
Sperry Ocean Dock and DNR v. City of Tacoma, et al., SHB No. 89-4 and 89-7.

An aquaculture proposal for a 40-foot by 40-foot float with suspended mussel lines in a shoreline of state-wide significance is consistent with the criteria and is a preferred water dependent use.
Puget Sound Mussells, Inc. and DNR v. Kitsap County, SHB No. 90-59.

Ten salmon pens located between 30 feet to 50 feet below the surface, 3/4 of a mile from a shoreline when properly conditioned is a project that is consistent with the Kitsap County Shorelines Master Program and the Shorelines Management Act for Shorelines of state-wide significance.
Holland v. Kitsap County and Yukon Harbor Concerned Citizens, SHB No. 86-22.

See: SHB Nos. 54; 67; 85; 103; 169; 228; 230; 231; 232; 238; 77-9; 78-44; 80-32.

8.2.10(a)(1)Order of Preference

The priority schedule of uses on shorelines of statewide significance set forth in the policy of the Act is to be considered when developing master programs and in permit review on such shorelines.
Department of Ecology and Attorney General v. City of Kirkland and Bittman, Sanders, Hasson Corporation, SHB No. 3.

The construction of a proposed bulkhead and fill on natural shorelines of statewide significance in an intertidal zone, which would destroy oysters and a smelt spawning area forever, does not preserve the natural character of the shorelines, result in long term over short term benefits, protect the resources of the shorelines nor minimize damage to fish and shellfish habitats.
Department of Ecology and Attorney General v. Mason County and Krueger, SHB No. 90.

Where a substantial development on a shoreline of statewide significance cannot meet the six preferences of RCW 90.58.020 because of peculiar location conditions, these conditions will weigh heavily when reaching a practical result.
Department of Ecology and Attorney General v. Chelan County and Smith, et al., SHB No. 151.

An interpretive center facility and its related trails and developments involve a recreational and educational use of the shorelines. Such developments, which do not cause significant detriment to the resource, promote and enhance the public interest in a manner consistent with the order of preference in RCW 90.58.020 for shorelines of statewide significance.
Department of Game v. Skagit County, SHB No. 240.

Mechanical clam harvesting constitutes an activity of statewide interest which can result in long-term over short-term benefits and can protect the resources and ecology of the shoreline as prescribed for on shorelines of statewide significance.
Department of Natural Resources, et al., v. Kitsap County, SHB No. 78-37.

See: SHB Nos. 40; 115; 224; 77-8; 77-25.

8.2.10(b)Natural Shorelines

Although the landward portion of a shoreline on Hood Canal was not natural, the water portion of the shoreline which was in its natural state must be preserved for preferred uses which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline.
Department of Ecology and Attorney General v. Mason County and Hama Hama Company, SHB No. 115.

A proposed private community boat ramp on natural shorelines of statewide significance of Hood Canal is inconsistent with the guidelines because it does not favor public and long-range goals.
McCann, et al., Department of Ecology and Attorney General v. Jefferson County and Pleasant Tides Properties, SHB No. 144.

Bulkheads and fills constructed primarily for the creation of residential land on natural shorelines of statewide significance of Hood Canal which would damage the natural resources and environment, are inconsistent with the policy of the Act and the guidelines for bulkheads and landfills.
Department of Ecology and Attorney General v. Mason County and Bloom, et al., SHB No. 153.

Natural shorelines which were periodically inundated with fresh and salt water during each winter fall within the description of an "estuary zone" and floodplain.
Department of Ecology and Attorney General v. Clallam County and Myers, SHB No. 159.

Although natural shorelines must be preserved, such preservation can be accomplished by preferring, i.e., limiting only those uses which control pollution and prevent damage to the natural environment or which are dependent upon the use of the shoreline. These preferred uses must also protect against the adverse effects of concern set forth in RCW 90.58.020.
English Bay Enterprises, Ltd. v. Island County and Save Susan Bay Commission, et al., SHB No. 185.

A proposed use which is not unique to or dependent upon the shoreline is not thereby barred from an intruded, as opposed to a natural, shoreline.
Department of Ecology and Attorney General v. City of Poulsbo and Xenos, SHB No. 201.

A proposed development, including residential, campsite, condominiums and commercial uses, which would alter a natural shoreline of statewide significance on the Skagit River without any corresponding benefit to the public interest, is inconsistent with RCW 90.58.020. Provision for public access at some part of the development would provide such a corresponding public benefit.
Skagit River League, et al., v. Skagit County and Valleys West, SHB No. 228.

A permit for a proposed campsite on natural shorelines of statewide significance of the Skykomish River, which is not conditioned to assure preservation or replacement of trees and vegetation, is not designed and conducted in a manner which would minimize any resultant damage to the ecology and environment.
Henderson v. Snohomish County and Barber, SHB No. 230.

A privately-owned campground on natural shorelines of statewide significance of the Skykomish River, which though not a water-dependent use is a priority recreational use, must promote a corresponding public interest. Where the permit was conditioned to ensure public access to the shoreline, the proposed development could become consistent with the SMA and master program.
Id.

Permitting any structure to be built on such an environmentally sensitive, limited, and important natural shoreline area as the unintruded coastal dune in not consistent with the "general purpose and intent" of the master program which specifically protects the "natural character of the shoreline" and limits "anything that will detrimentally alter the natural conditions."
Attorney General v. Grays Harbor County, Slenes and Department of Ecology, SHB No. 231.

A relatively large 200-foot floating dock for dinghy moorage to be placed in a small 200-foot by 400-foot cove on scenic and natural shorelines of statewide significance of San Juan Island was aesthetically incompatible with the area and thereby inconsistent with the SMA; a smaller floating dock or boat winch installation would, on the other hand, be more appropriate.
Mineral Heights Association, Inc. v. San Juan County and Mineral Point Community Club, SHB No. 77-25.

See: SHB Nos. 45; 140; 239; 244; 81-15; 81-41.

8.2.10(c)Non-natural Shorelines

On artificially altered shorelines with existing mixed uses, including some non-water dependent, the administration of the SMA must be done with a practical regard for the realities of past events. In such areas, over-the-water construction of a private clubhouse and restaurant which would provide an opportunity for substantial numbers of people to enjoy the shorelines may be permissible. Such proposed development must be otherwise consistent with the SMA and compatible with local features.
Ballard Elks Lodge No. 827 v. City of Seattle, Department of Ecology and Attorney General, SHB No. 22.

Where the shoreline on Lake Chelan, a shoreline of statewide significance, was previously developed as an orchard it was not a "natural" shoreline. As such, certain provisions of RCW 90.58.020 requiring the application of special considerations to natural shorelines were not applicable, although the remainder of such provisions were applicable.
Department of Ecology and Attorney General v. Chelan County and Schmitten, SHB No. 65.

A shoreline on Elliott Bay, constructed by man with fill material and rock riprap, is not a natural shoreline.
Smith, Department of Ecology and Attorney General v. City of Seattle and New England Fish Company, SHB No. 158.

A proposed use which is not unique to or dependent upon the shoreline is not thereby barred from an intruded, as opposed to a natural, shoreline.
Department of Ecology and Attorney General v. City of Poulsbo and Xenos, SHB No. 201.

"Natural" shorelines as contemplated by RCW 90.58.020 are unintruded shorelines, and do not include a shoreline with fills, buildings, floats, pilings and floating moorage storage.
Id.

An ecologically and aesthetically blighted shoreline area of Lake Union, comprised of haphazard mixed uses, paucity of public recreation or scenic sites, and commercial uses, create a context for decision much different from a pristine or preservable shoreline. Thus, where the effect of roadway improvement would be increased access to commercial areas and to the shoreline, and there would be no corresponding conflict with existing or proposed parks or degradation in air quality and noise levels at the site, the net positive aspects of the project make the development desirable in the blighted area.
Wallingford Community Council, Inc., et al., v. City of Seattle, et al., SHB No. 203.

A lake originally formed by a gravel mining operation conducted by the State of Washington is a non-natural shoreline and presents a different context for decision than a natural shoreline.
Groenig, et al., v. City of Yakima, et al., SHB No. 92-30 and 92-31.

See: SHB Nos. 3; 67; 74; 103; 209; 224; 244.

8.3.Timber Cutting

RCW 90.58.150 prohibits the clear-cutting of timber on shorelines of statewide significance unless selective cutting is ecologically detrimental due to topography, soil conditions or silviculture practices necessary for regeneration.
Department of Ecology and Attorney General v. Grays Harbor County and Ferguson, SHB No. 77.

The legislative purpose of prohibiting the clear-cut timber harvesting method in certain areas is to assure the preservation of a 200-foot buffer strip of timber adjacent to shorelines of statewide significance. This results in the preservation of the water quality and aesthetic values of the adjacent waterway.
Id.

8.4.Height Limitations

A proposed six story office building, which could obstruct substantial residential views, is contrary to RCW 90.58.320. Such provision bars issuance of permits for any structure exceeding a height of 35 feet above average grade level that will obstruct the view of a substantial number of residences on adjoining shoreline areas unless exception is provided therefor in the master program.
Department of Ecology and Attorney General, et al., v. City of Kirkland and Hadley, SHB No. 54.

A permit for the proposed construction of a multiple-dwelling addition, in an area zoned for such use and in keeping with the existing uses, but which proposed use impaired only the immediate marine view from two duplex structures, was nevertheless consistent with the SMA.
Morrison v. City of Seattle and Low, SHB No. 120.

Slight impairment of the immediate shoreline view, but with no obstruction of territorial views from residences on the uplands resulting from a proposed structure 80 feet in height, does not violate RCW 90.58.320.
Smith, Department of Ecology and Attorney General v. City of Seattle and New England Fish Company, SHB No. 158.

Where the only visible portion of a proposed aquaculture development will normally be the buoys placed as an aid to navigation, the views of a substantial number of residences would not be obstructed from the proposed project.
Cruver v. San Juan County and Webb, SHB No. 202.

A proposed inn of 26 units is inconsistent with the master program where it is out of scale with an existing two-story business district and is without a final parking plan. The EIS for the proposal is inadequate in not considering any alternative inn of lesser size, and in portraying the view impact inaccurately.
Front Street Inn v. Friday Harbor, SHB No. 87-27.

For purposes of a height variance for over-water structures the proper measurement begins at the line of the ordinary high water mark.
Donovan v. City of Tacoma and DOE, SHB No. 92-17.

See: SHB Nos. 209; 78-20; 78-27; 78-35; 80-4; 81-41; 82-27.

8.5.Prior to Adoption and Approval of Master Program
8.5.1.Guidelines
8.5.1(a)Nature of Provisions

The provisions of the guidelines are two types: mandatory and suggestive. A suggestive guideline provides scant justification for overruling a considered decision of local government which is otherwise consistent with the policy of the Act.
Department of Ecology and Attorney General v. Chelan County and Schmitten, SHB No. 65.

Department guidelines relating to filling, breakwaters and vehicular parking are not mandatory, but are suggestive and flexible depending upon local conditions.
Department of Ecology and Attorney General v. City of Tacoma and Port of Tacoma, SHB No. 75.
Department of Ecology and Attorney General v. City of Tacoma, Port of Tacoma and Meaker, SHB No. 76.

Suggestive, and not mandatory, provisions of a draft master program or guideline should be given careful consideration.
Department of Ecology and Attorney General v. City of Aberdeen and Forest Inv. Corporation, SHB No. 162.

See: SHB No. 65.

8.5.1(b)Cases With No Specific Application

Although the guidelines may not specifically apply to a proposed use, several of the provisions may provide keys to particular concerns which various other use activities have in common with the proposed use, and the proposed use may be judged for consistency against those guidelines.
English Bay Enterprises, Ltd. v. Island County and Save Susan Bay Commission, et al., SHB No. 185.

See: SHB No. 190.

8.5.1(c)Authority to Vary Provisions

In developing its master program and in permit application review, local government has the authority by WAC 173-16-040 and -060 to vary the interpretation and application of the guidelines to meet local conditions. After a master program is adopted and approved, it is expected that the necessary deviations from the guidelines have been made.
Department of Ecology and Attorney General v. City of Poulsbo and Xenos, SHB No. 201.

See: SHB No. 65.

8.5.1(d)Restrictions Contemplated

Guidelines providing for planning to enhance public visual access to water and the term "use regulations" indicate that the SMA contemplates restrictions such as side yard requirements in master programs.
Benton v. City of Seattle, SHB No. 175.

8.5.1(e)Variances and Conditional Uses

In the issuance of a permit for a road, a conditional use under the draft master program, extraordinary circumstances in the form of a need to resolve land use and traffic concerns existed and where appellants had not shown that the public interest would suffer any substantial detrimental effect, the standard in the SMA for conditional uses was met. Similarly, the standard in WAC 173-16-070(1) which provides the circumstances upon which a conditional use permit can be granted was also met.
Wallingford Community Council, Inc., et al., v. City of Seattle, et al., SHB No. 203.

8.5.1(f)Relation to Master Program

As between the draft master program and the guidelines, until a master program is adopted and approved, the guidelines control.
Brachvogel, et al., Department of Ecology and Attorney General v. Mason County and Twanoh Falls Beach Club, Inc., SHB No. 140.

See: SHB No. 201.

8.5.2.Developing Master Program

A Department of Ecology Order adopting the Lake Forest Park Program into the Washington Administrative Code made the program effective as a state regulation and therefore the applicable use regulation for the shorelines within the city boundaries. The best evidence of the contents of that program is to be found in the Department of Ecology file.
4101 Beach Drive Northeast Association v. King County and DOT, SHB No. 88-47.
Washington Department of Transportation v. Lake Forest Park, SHB No. 87-50.

8.5.2(a)Nature of Provisions

Suggestive, and not mandatory, provisions of a draft master program or guideline should be given careful consideration.
Department of Ecology and Attorney General v. City of Aberdeen and Forest Inv. Corporation, SHB No. 162.

8.5.2(b)Validity of Provisions

Where a master program is more restrictive than the policy, there is no inconsistency with RCW 90.58.090(1). On the other hand, provisions of a master program which allow unreasonable and inappropriate uses prohibited by RCW 90.58.020 would be invalid.
Maloney, et al., and Seattle-First National Bank v. City of Seattle, SHB No. 190.

Where a city's master program incorporates its zoning ordinance by reference, the sections so incorporated would apply to a proposed project.
Moore v. City of Seattle and Kingen, SHB No. 204.

8.5.2(c)Deviation From Guidelines

In developing its master program and in permit application review, local government has the authority by WAC 173-16-040 and -060 to vary the interpretation and application of the guidelines to meet local conditions. After a master program is adopted and approved, it is expected that the necessary deviations from the guidelines have been made.
Department of Ecology and Attorney General v. City of Poulsbo and Xenos, SHB No. 201.

8.5.2(d)Present Effect

By using the present tense in the statutory language of RCW 90.58.140(2)(a) ("the master program being developed for the area"), by requiring that the Act be liberally construed (RCW 90.58.900), and by vesting local government with the primary duty of administering its provisions, the legislature intended that a developing master program be accorded some present effect.
Maloney, et al., and Seattle-First National Bank v. City of Seattle, SHB No. 190.

8.5.2(e)Ascertainability

Board review of a permit for consistency with the master program so far as can be ascertained is necessarily limited to the status of the master program as of the date of denial by local government.
Lane v. Town of Gig Harbor, SHB No. 129.

Where two drafts of a master program provided for height reductions but a third draft did not, such limitation was not ascertainable.
Smith, Department of Ecology and Attorney General v. City of Seattle and New England Fish Company, SHB No. 158.

Provisions in a draft master program which have remained unchanged through four draft stages are ascertainable. When such provisions are ascertainable, but not yet adopted, they will be enforced.
Benton v. City of Seattle, SHB No. 175.

Where a provision in a draft master program consistently, clearly and succinctly prohibits land-based aircraft facilities, the provision can be ascertained.
Maloney, et al., and Seattle-First National Bank v. City of Seattle, SHB No. 190.

Where the city expressed uncertainty with regard to the most desirable treatment of floating homes under its master program, the provisions therefor were not ascertainable. Any attempt to either establish or limit property rights on the bases of decision making which has been demonstrably subject to such uncertainties would prompt serious constitutional concerns.
Portage Bay-Roanoke Park Community Council, et al., and Hurlbut v. City of Seattle, SHB No. 194.

Where the permit granted was inconsistent with the city's draft master program which provided that commercial developments be set back ten feet from the ordinary high water mark, and where the draft master program had neither been adopted by the city nor approved by the department, such draft was nevertheless ascertainable and should have been considered by the city.
Department of Ecology and Attorney General v. City of Poulsbo and Xenos, SHB No. 201.

A draft master program provision requiring conditional use permits to be submitted to the department is not ascertainable until the master program is approved by the department.
Wallingford Community Council, Inc., et al., v. City of Seattle, et al., SHB No. 203.

Until a master program has been approved by the department, the conditional use provisions therein are not ascertainable. However, the more stringent standards of RCW 90.58.100(5) and WAC 173-16-070(1) for those conditional use designations which are ascertainable can be applied.
Id.

In determining the ascertainability of a draft master program or sections thereof, the Board considers the following: 1) is the language of the draft in being at the time the permit was issued clear and unambiguous on its face; 2) does the language exceed statutory authority for development of master programs; 3) was the challenged designation or requirement treated inconsistently in prior and/or subsequent draft master programs; 4) has a master program for the issuing agency been approved to date?
Allison Fairview Neighborhood Association v. City of Seattle and Jessup, SHB No. 205.

Where the subject property was annexed by the city, and the city's draft master program was not amended to include the site until after issuance of a permit, no provision of any draft master program could be ascertained.
Robinson v. City of Bremerton and Wowaras, et al., SHB No. 77-2.

No ascertainable master program existed for the Town of Steilacoom for the purpose of evaluating a substantial development permit for a railroad bridge because the challenged requirements were treated inconsistently in the prior, existing and subsequent draft master programs.
Hildahl v. City of Steilacoom and Burlington Northern Railroad, SHB No. 80-33.

See: SHB No. 153.

8.5.2(f)Standards Developed After Permit Issuance

Whether the permit is consistent with the master program "so far as can be ascertained" [RCW 90.58.140(a)(iii)] is necessarily limited to the status of the master program as of the date of the issuance of the permit by the local government and not as of the date of the hearing before the Board.
Wolfsehr, et al., Department of Ecology and Attorney General v. Kittitas County and Keating, SHB No. 103.

Substantial development permits must conform to master programs insofar as they can be ascertained on the date a permit is issued and are not required to be consistent with standards developed subsequently.
Eickhoff v. Thurston County and Zittel's Marina, Inc., SHB No. 104.

8.5.2(g)Permit Consistency Required

A proposed office structure on shorelines of statewide significance, which is contrary to the published but not adopted goals and policies in a master program relating to water dependency, aesthetic values, and view preservation, is not consistent with the developing master program.
Department of Ecology and Attorney General, et al., v. City of Kirkland and Hadley, SHB No. 54.

In a permit review proceeding, alleged inadequacies of a draft master program on issues not connected with the permit are not properly before the board.
Brachvogel, et al., Department of Ecology and Attorney General v. Mason County and Twanoh Falls Beach Club, Inc., SHB No. 140.

Apparent inconsistency with some non-mandatory provisions of a draft master program, when balanced with consistency with other provisions, will not, without more, invalidate a permit.
Citizens Interested in LaConner v. Skagit County and Port of Skagit County, SHB No. 166.

Upon its completion and adoption, the Seattle master program will provide the vehicle for land use controls and design standards on lands adjoining shorelines. In the interim of master program development before adoption by the city, if the provisions of a master program (including design standards) can be ascertained, they will be enforced.
Benton v. City of Seattle, SHB No. 175.

Absent different or inconsistent treatment of land-based aircraft facilities from one draft of a master program to a later draft, it is proper for local government and the Board to test a proposed substantial development permit for consistency with a draft master program which has not yet been adopted by the local legislative authority.
Maloney, et al., and Seattle-First National Bank v. City of Seattle, SHB No. 190.

Where the permit granted was inconsistent with the city's draft master program which provided that commercial developments be set back ten feet from the ordinary high water mark, and where the draft master program had neither been adopted by the city nor approved by the department, such draft was nevertheless ascertainable and should have been considered by the city.
Department of Ecology and Attorney General v. City of Poulsbo and Xenos, SHB No. 201.

8.5.2(h)Variances and Conditional Uses

Provisions for conditional uses and variances must be included in master programs. In order to procure a conditional use permit or permit for a variance, it is necessary to prove a hardship and to show that the policy of RCW 90.58.020 will not be thwarted.
Department of Ecology and Attorney General v. City of Poulsbo and Xenos, SHB No. 201.

A draft master program provision requiring conditional use permits to be submitted to the department is not ascertainable until the master program is approved by the department.
Wallingford Community Council, Inc., et al., v. City of Seattle, et al., SHB No. 203.

Until a master program has been approved by the department, the conditional use provisions therein are not ascertainable. However, the more stringent standards of RCW 90.58.100(5) and WAC 173-16-070(1) for those conditional use designations which are ascertainable can be applied.
Id.

Under RCW 90.58.140(11) permits for conditional uses are to be submitted to the department for approval only under approved, not draft, master programs.
Allison Fairview Neighborhood Association v. City of Seattle and Jessup, SHB No. 205.

A master program cannot become effective until adopted or approved by the department in accordance with the Administrative Procedure Act.
Green v. City of Bremerton, SHB No. 79-29.

See: SHB No. 239.

8.5.2(i)Rejection, Effect of

A master program, which has been completely rejected by the department, is not ascertainable.
Department of Ecology and Attorney General v. Mason County and Bloom, et al., SHB No. 153.

8.5.2(j)Relation to Guidelines

As between the draft master program and the guidelines, until a master program is adopted and approved, the guidelines control.
Brachvogel, et al., Department of Ecology and Attorney General v. Mason County and Twanoh Falls Beach Club, Inc., SHB No. 140.

Once the Shorelines Master Program has been adopted by DOE and codified in the Washington Administrative Code, the guidelines, even if adopted later in time, are not applicable.
DNR and Department of Fisheries v. Kitsap County, et al., SHB No. 91-51.

8.6.After Adoption and Approval of Master Program

See: SHB Nos. 239; 77-25; 79-45.

8.6.1.Master Program

A master program presumptively invokes the policies of the Shorelines Management Act and the Act itself remains ultimately controlling.
Eastlake Community Council, et al., v. City of Seattle, et al., SHB No. 90-8 and 90-9.

A Shorelines Master Program that is less restrictive than the policies of the Shorelines Management Act is inconsistent with the Act. A Shorelines Master Program that is more restrictive than the provisions of the Shorelines Management Act is not inherently inconsistent with the Act.
Seawall Construction, et al., v. King County, SHB No. 90-51 and 90-52.

The use of the term "should" is not a mandatory directive in a Shorelines Master Program.
Port of Kingston v. Kitsap County, SHB No. 91-43.

8.6.1(a)Nature of Provisions

Deference will be accorded a local agency's reasonable interpretation of an ambiguous provision in its own master program where the underlying purpose of the requirement and the result are not violative of any provision of the SMA or department regulations.
Coughlin v. City of Seattle and Condominium Builders, Inc., SHB No. 77-18.

An administering agency's interpretation of its own master program, where there is no counter construction from DOE, is an important consideration to the Shorelines Hearings Board.
Hubman v. King County and DOE, SHB No. 91-40.

8.6.1(b)Validity of Provisions

ECPA: Where the master program provided that a conditional use may be authorized only if its noise pollution will not be "more severe" than the noise pollution that would result from permitted uses, it was a reasonable exercise of the county's prerogatives as the legislative body interpreting and applying its own master program for it to rely on the Department of Ecology regulation regarding noise control.
Carlson, et al., v. Valley Ready Mix Concrete Company and Yakima County, SHB No. 223.

By failing to address "use" variances in its regulations, the department should apply the criteria found in the applicable master program in its review of variances.
Seattle Shorelines Coalition v. City of Seattle, Department of Ecology and Dennis, SHB No. 79-41.

Over-the-water construction of a residence in a conservancy management environment designation requires a "use variance" under the master program and is governed by WAC 173-19-250(21) and not WAC 173-14-150.
Severns v. Department of Ecology, SHB No. 80-2.

A zoning regulation which is not incorporated by reference in the master program and not approved by the department is not part of the master program.
Id.

The sideyard setback requirement of the City of Tacoma zoning ordinance does not become part of the master program unless adopted therein and approved by the department. Thus an over-the-water residence need not comply with the zoning sideyard setback requirement with the issuance of a substantial development permit.
Hanson, et al., v. Department of Ecology, SHB No. 80-14.

Where the local government has developed a master program preference for uses on shorelines of statewide significance that the department has approved, there is a presumption that the local government plan gives proper preference to statewide uses.
Nisqually Delta Association, et al., v. City of Dupont, Department of Ecology, and Weyerhaeuser Company, SHB No. 81-8.

A master program can incorporate the city zoning code by reference.
Pier 67, Inc., v. City of Seattle, SHB No. 81-13.

A landfill of 1600-2000 cubic yards at a cost of $10,000.00 is a shoreline substantial development. Landfill in a marsh is inconsistent with the Island County Shoreline Master Program.. However, as to landfill outside of marshes, the master program limitation to water dependent use is inconsistent with the Shoreline Management Act since single family homes are entitled to such non-marsh fill also.
Hastings v. Island County and Department of Ecology, SHB No. 86-27.

Island County Shoreline Master Program "aquaculture districts" are a planning level arrangement which is consistent with the SMA except for failure to consider aesthetics at the permit level.
Risk v. Island County and Island Sea Farms, Inc., SHB No. 86-49 and 86-50.

Covered moorages for 86 boats in Day Island waterway in Pierce County are consistent with a flexible master program guideline calling for one moorage per acre where that guideline was exceeded before enactment of the SMA and it is not shown that exceedance of the guideline formula would have a significant adverse impact.
Day Island Community Club v. Pierce County, SHB No. 87-12.

A swimming pool, tennis court, fencing and light standards on Lake Washington must be set back 50 feet from the ordinary high water mark to minimize view impairment. The master program incorporates the zoning ordinance in the Town of Yarrow Point.
Yule v. Yarrow Point, SHB No. 87-22.

A previously approved master program in a later annexed area will continue to be valid until a new master program is adopted by the city and approved by DOE under the provisions of WAC 173-19-044.
DOE v. City of Issaquah and Samamish Development Company, SHB No. 89-35.

See: SHB No. 82-41.

8.6.1(c)Permit Consistency Required

Each portion of an interpretive center facility and related system of trails, canoeing area and reviewing platforms which lie in different environmental designations, must be compatible with those designations.
Department of Game v. Skagit County, SHB No. 240.

When a city's master program is proposed, yet not approved by the department for an area annexed from the county, the city should review a proposed substantial development using the county's master program.
Department of Ecology, et al., v. City of Anacortes and Anacortes-Fidalgo Bay Marina, SHB No. 81-23.

8.6.1(d)Amendments, Omissions

The failure of a master program to provide an environmental designation for an area subject to a permit causes the matter to be remanded to the local government to either amend its program to include the omitted area or reconsider the proposal under RCW 90.58.020 and the Guidelines.
Welchko, et al., v. City of Anacortes and Skyline Marina, Inc., SHB No. 79-45.

The function of changing environmental designations belongs to local government and is not a function of the Board.
Oliver v. King County, SHB No. 80-26.

Any change to a master program is for the legislative authority of the city to make.
Seattle Shorelines Coalition, et al., v. City of Seattle and H.C. Henry Pier Company, et al., SHB No. 82-46.

Areas which are annexed subsequently to the adoption of a city shoreline master plan remain governed by the county master plan until proper amendments to the city's master plan are approved by DOE.
Eldridge, et al., v. City of Stanwood, SHB No. 91-62 and 91-70.

A proposed project is reviewed under the Master Program as it existed at the time the completed application was filed. Substantial changes to the Master Program thereafter are not considered in the SHB No. review.
Seattle Yacht Club v. Jefferson County, et al., SHB No. 89-45.

8.6.2.Variances and Conditional Uses

Variances are strictly and narrowly construed.
Northrop v. Klickitat County and DOE, SHB No. 92-40.

A three story, 3,000 square foot structure adjacent to a 720 square foot non-conforming structure which is to be removed is not an expansion of the non-conforming structure under the Tacoma Shorelines Master Program definition.
Donovan v. City of Tacoma and DOE, SHB No. 92-17.

Neither the conditional use nor variance criteria are met in this case for the filling of wetlands without a permit.
Engberg v. Skagit County and DOE, SHB No. 90-38.

8.6.2(a)Variances

Even though no substantial development permit may have been required for a single family dwelling, where a variance from a master program is required, a permit for a variance is necessary.
Attorney General v. Grays Harbor County, Lindgren and Department of Ecology, SHB No. 232.

WAC 173-14-150(4) requires a balancing of the projected detrimental effects to the shoreline area from approval of a variance, with the projected consequences of denial thereof to the applicant.
Id.

Failure to meet any one of the required criteria for variance is fatal to granting that variance.
Gambriell v. Mason County and DOE, SHB No. 91-26.

A variance cannot be granted for a use which is prohibited under the Skagit County Shorelines Master Program.
Engberg v. Skagit County and DOE, SHB No. 90-38.

The criteria for variances are contained in WAC 173-14-150(2) and are not met in this case of a request for a boat house.
Champion v. Mason County and DOE, SHB No. 89-67.

A variance is properly granted for a home on Lake Chelan where a large rock and health department septic tank requirements make compliance without the variance impossible.
Hurlen v. Chelan County, et al., SHB No. 90-22.

A single family residential addition, a portion of which is directly over water because of changes in a 1977 permit that occurred with direct county participation, combined with the passage of time since those changes were made means that the addition is both non-conforming and legal.
Browne v. Pierce County, et al., SHB No. 90-31.

A request for a variance from the 100 foot setback requirements for a single family residence was properly denied where the necessity for the request was a result of the owners own actions and the cumulative impacts of the request would violate the policies of the Shorelines Management Act for shorelines of state-wide significance.
Wiswall v. Clark County and DOE, SHB No. 90-37.

A variance for two piers as an accessory use to a single family residence is properly denied because it does not meet the criteria of WAC 173-14-150 for a variance.
Keating and Fujii v. City of Seattle and DOE, SHB No. 91-10.

A second story addition in this case meets the variance criteria of WAC 173-14-150 and does not violate the anti-expansion requirements of WAC 173-14-055(2) concerning non-conforming uses.
Browne v. Pierce County, et al., SHB No. 90-31.

A setback requirement for decks is properly determined by using the distance from adjoining houses to the OHWM. A variance is properly denied for expansion of a five foot deck built in 1959.
Kurd and Johnsrud v. City of Seattle and DOE, SHB No. 89-26.

A mobile home variance for the Kettle River, a shoreline of statewide significance, is properly denied as not meeting the required criteria.
Roeben v. Ferry County and DOE, SHB No. 90-23.

The construction of a dining room over an existing deck does not increase the non-conforming nature of the basic structure and therefore a variance is not required under the Mason County Shorelines Master Program.
Gambriell v. Mason County and DOE, SHB No. 91-26.

See: SHB No. 231.

8.6.2(a)(1)Types of Variances

Variances are of two types, i.e., "use" and "area." A "use variance" authorizes a use of land which otherwise is proscribed by the zoning regulation in which it is located. An "area variance" authorizes deviation from restrictions upon the construction and placement of structures which serve permitted uses. Both types of variances are contemplated by the SMA.
Kooley and Pierce County v. Department of Ecology, SHB No. 218.

The criteria for a height variance for a residence was not met under the facts of this case.
Severns v. City of Seattle and DOE, SHB No. 91-30.

See: SHB No. 82-41.

8.6.2(a)(2)Review

The standards by which local government grants or denies requests for variances are established by the SMA, the department's regulations, and the applicable master program. The Board, in its review, will apply these standards in determining the validity of the variance.
Kooley and Pierce County v. Department of Ecology, SHB No. 218.

The unnecessary hardship test is applied to a use variance. This test requires the applicant for a variance to show the equivalent of a taking in the constitutional sense. The practical hardship test is applied to an area variance. This test, which is less stringent than the "unnecessary hardship" test, can be met without proof that a literal application of the zoning regulations would deny the applicant all beneficial or reasonable use of his land. The department's regulation adopts the more stringent hardship standard for all variances.
Id.

In order to obtain a variance which is in conformance with the department's regulations, an appellant must show that if he complies with the provisions of the master program, he cannot make any reasonable use of his property. If that test is satisfied, appellant must show practical difficulties.
Id.

The department's regulation for variances, WAC 173-14-150, requires a showing of both unnecessary hardship and practical difficulties.
Spencer and Pierce County v. Department of Ecology, SHB No. 242.

Under WAC 173-14-150, a variance is not authorized to accommodate the highest and best use of the property or on the mere showing that use will not change the essential character of the neighborhood or that personal hardship or inconvenience would otherwise result. It must be shown that without the variance there would be no reasonable use of the property.
Id.

The department has the power to approve shoreline variances with conditions not found in the variance permit issued by local government.
Corning Land and Cattle Company v. Department of Ecology, SHB No. 80-1.

The most stringent rule for variances applies. Variance rules must be adopted either by the department or within an approved shoreline master program.
Strand v. Snohomish County and Department of Ecology, SHB No. 85-4.

The "reasonable use" criteria of the variance provisions of
WAC 173-14-150(3) is whether the proposed use of the property is reasonably compatible to the surrounding property.
Hoschek v. City of Mercer Island and DOE, SHB No. 91-42.

The correct test for a "reasonable use" under WAC 173-14-150(2)(a) is whether the proposed use of the property is a reasonable use not prohibited by the master program.
Barer and Morgan v. City of Seattle and DOE., SHB No. 91-58.

See: SHB No. 91-42.

The "reasonable use of property" test for a variance of a non-conforming use is an objective standard, not simply the desires of the applicant.
Northrop v. Klickitat County and DOE, SHB No. 92-40.

If the denial of a variance still leaves a reasonable use of the property which is consistent with the neighborhood the criteria to grant a variance has not been met.
Weinberg v. Whatcom County and DOE, SHB No. 93-2.

The criteria necessary to grant a variance is not met unless the owner is denied "all reasonable uses" under the provisions of Pierce County Shorelines Master Program.
Tunny v. Hopkins, et al., SHB No. 93-3.

A person who purchases with notice of a Shorelines Management Program restriction is not qualified to receive a variance to relieve him of that restriction.
Weinberg v. Whatcom County and DOE, SHB No. 93-2.

8.6.2(a)(3)Master Program

A variance from a master program's 100 foot setback requirement in a conservancy environment was not authorized where an applicant would not be deprived of a reasonable use of the property and when the enforcement of the setback requirement created a hardship which was the result of the applicant's own action.
Hill v. Department of Ecology, SHB No. 77-38.

Where the department regulations and the master program did not rule out a "use variance," a variance from a provision prohibiting new residential structures over water on Lake Washington was authorized. To obtain a variance, the land owner must show that compliance with the provisions of the master program would prevent any reasonable use of the property.
LaValley and City of Seattle v. Department of Ecology, SHB No. 78-7.

A shoreline master program may authorize a prohibited use by variance since the SMA does not prohibit use variances.
Id.

A restaurant situated over the waters of Lake Union, an existing nonconforming use, could not enclose a deck without a variance from the provisions of the master program. Because the applicant could not show that without a variance there could not be any reasonable use of the property, the application was denied.
Limantzakis v. City of Seattle, SHB No. 78-10.

A variance for the construction of a 6 foot by 24 foot over-the-water deck for a single-family residence was a reasonable use where neighboring lots were almost completely developed and many houses enjoyed similar decks. To deny the variance where the deck was behind the "common line" of neighboring structures would unduly penalize the applicants without promoting any substantive public interest.
Schall and Mason County v. Department of Ecology, SHB No. 78-26.

Setback requirements for a proposed deck to a residence built prior to the SMA will not be strictly applied when the effect would be to preclude a reasonable, permitted use of the property. Variance requests are decided upon the specific facts of each case and are granted when consistent with the policies of RCW 90.58.020 and where it would not produce adverse effects to the shoreline environment.
Williams and Chelan County v. Department of Ecology, SHB No. 78-33.

A variance is inappropriate for a residence on tidelands when an applicant has a reasonable use of the property.
Kargianis v. Mason County and Department of Ecology, SHB No. 78-44.

The increased view reduction of the water from a 100 foot setback requirement as compared to a smaller setback was not a significant interference with the use of residential property or the result of unique conditions specifically related to the property such that a variance from the provision was appropriate.
Riley and Thurston County v. Department of Ecology, SHB No. 78-45.

A request for a variance to add a bulkhead and landfill to meet drainfield requirements was premature when it was possible that an acceptable septic tank system could be designed without the landfill.
Warner, et al., v. Department of Ecology, SHB No. 78-49.

A variance from the King County master program setback requirement of 20 feet from the upland edge of a steep slope was granted when it would allow a permittee to construct his single family residence.
Hell v. King County, SHB No. 79-13.

Although removal of sand near the base of a house to prevent wood rot was permissible under the master program, a variance for the removal of the top 18 inches of seaward dunes to improve ocean views was not. The cumulative impact of such modification to dunes in a designated protective strip could produce substantial adverse impacts to the shoreline environment.
Smith v. Department of Ecology, SHB No. 79-15.

A variance for a proposed 80 foot long pier that violates master program depth restrictions was inappropriate when an existing 54 foot pier meeting depth restrictions allowed a reasonable use of the property.
Dean, et al., and City of Bellevue v. Department of Ecology, SHB No. 79-16.

A variance from a 25 foot shoreline setback requirement of the master program is not allowed for a pool enclosure proposed for a pre-existing pool when enforcement of the setback does not preclude a reasonable use of the property.
Salant v. City of Normandy Park, SHB No. 79-22.

An over-the-water residence is allowable under the master program when it would be in character with the surrounding neighborhood, in harmony with the general purpose and intent of the master program and when the applicant would be denied any reasonable use of his property because of the master program and not through his own actions.
Seattle Shorelines Coalition v. City of Seattle, Department of Ecology and Dennis, SHB No. 79-41.

Under the master program, "adjacent structures" are those principal structures immediately adjacent to the subject property. Setback lines based on adjacent structures are drawn between those points where principal structures are closest to the shoreline. A variance for a proposed addition to a single family residence that would extend past the shoreline setback line was properly denied where applicants could still make reasonable use of their property without the proposed addition.
Spoerl v. City of Seattle, SHB No. 79-43.

A variance is required under the master program for any structure, including decks, to be built within the setback line which is established by subtending a line between adjacent principal structures. When applicants can make reasonable use of their property as a single family residence without a deck which would extend into the setback line, a variance will be denied.
Divelbiss v. City of Seattle, SHB No. 79-44.

A variance permit for an unauthorized deck was denied because the applicants built the deck over the water and beyond the common setback line established by their house. Applicants had reasonable use of their property without the deck and any hardship caused them was the result of their own actions.
Johnson and Mason County v. Department of Ecology, SHB No. 79-52.

Under the master program, a variance may be granted to allow a bulkhead with fill which smoothly aligns the lake edge with neighboring lots. A variance for a 10 foot by 15 foot fill protruding beyond the lake edge where a boat house once existed, and which is not for a purpose expressed in the SMP, is inappropriate.
Corning Land and Cattle Company v. Department of Ecology, SHB No. 80-1.

A variance allowing over-the-water residential structures is proper under the master program when residences on neighboring lots extend over the water, denial of the variance will preclude any reasonable use of the property, over-the-water construction is necessary due to the size and natural features of the lot and granting of the variance will not be detrimental to the public welfare.
Severns v. Department of Ecology, SHB No. 80-2.

A variance application for a landfill and replacement bulkhead which would extend up to 12 feet waterward from an existing deteriorating bulkhead involved more landfill than was necessary and was denied under the master program since the proposed extension was not necessary to alleviate any hardship.
Brown v. Chelan County, SHB No. 80-18.

A variance from the master program's 20 foot shoreline setback requirement may be granted for a replacement residence under WAC 173-14-150(2) and the master program when topographic conditions cause strict application of the setback requirement to substantially interfere with a reasonable use of the land, little view impairment would occur, and the residence would still be setback further than the existing residence and several neighboring residences.
Castle v. King County, Department of Ecology and Knutzen, SHB No. 80-24.

Under the master program, each subdivided residential lot in a conservancy environment must meet the minimum lot size requirement. A variance from the requirement is not appropriate where an applicant has a reasonable use of the property, the applicant would enjoy a special privilege not available to others, and the subdivision would be incompatible with the conservancy environment designation.
Oliver v. King County, SHB No. 80-26.

A fence is a "structure" under the master program which requires a variance for residential structures constructed waterward of the extreme high water mark.
Madden v. Pierce County and Grenley, SHB No. 80-30.

Under the master program, a variance is not required for the setback of residences that are at least 15 feet from the ordinary high water mark, do not extend beyond the common line of neighboring structures, and do not substantially reduce the view from neighboring structures. The shoreline configuration, lot orientation and view of individual lots should be considered in determining the common line.
Thomas v. Mason County, Department of Ecology and Debban, SHB No. 81-3.

The hardship described in WAC 173-14-150 is related to the specific property and the application of the master program. Such hardship can be demonstrated by persons other than the owner at the time the relevant shoreline restrictions became effective.
Nichols, et al., v. Department of Ecology and Knight, SHB No. 81-5.

Under the master program, the enclosure of 1,100 square feet of the upper floor of an over-the-water hotel is not allowed because such a hotel is a non-conforming use. Such use may not be expanded, extended or structurally altered. A variance to allow an addition can only be granted if the applicant is precluded from any reasonable use of the property without the additional offices.
Pier 67, Inc., v. City of Seattle, SHB No. 81-13.

Where the master program limits free-standing signs within the shoreline area to those 6 feet in height, a variance was properly denied for a 35 foot high billboard which was incompatible in terms of height, bulk and lighting with other permitted and existing structures and was not a "reasonable use" under WAC 173-14-150(2).
Ackerley Communications, Inc. v. King County, SHB No. 81-21.

When a permit issued for a development that requires a conditional use or variance without the same having been issued, the permit must be remanded to the local government. Thus, a permit for a marina that will utilize landfills in an aquatic environment must be remanded because such landfills are conditional uses under the master program. In addition, the proposed marina structures would exceed height limitations and would thus require a variance.
Department of Ecology, et al., v. City of Anacortes and Anacortes-Fidalgo Bay Marina, SHB No. 81-23.

The city properly denied a shoreline setback variance for two duplexes under a master program provision that allowed such variance only when an applicant was precluded from any reasonable use of the property. This requirement is more restrictive than the department criteria, WAC 173-14-150, which allows variances when the strict application of a setback requirement "precludes or significantly interferes with a reasonable use of the property."
Green v. City of Bremerton and Department of Ecology, SHB No. 81-37.

A city's shoreline setback requirement does not impose an unnecessary hardship upon an applicant when strict application of it would require the proposed multi-family units to be slightly smaller or fewer in number.
Id.

A variance is inappropriate to allow parking between a proposed office building and an urban shoreline where the parking was not required by law and could be located away from the shoreline.
Sato Corporation v. City of Olympia, SHB No. 81-41.

A variance from the master program shoreline setback requirement within a conservancy environment designation was proper to allow remodeling of a residence located on a tiered lot. The denial of the variance would impose an unnecessary hardship due to lot configuration. However, a variance to extend a deck past the bulkhead and over the water was properly denied. Such an extension would constitute a special privilege not enjoyed by neighboring property owners.
Carr v. King County and Department of Ecology, SHB No. 82-11.

A proposed link between two bicycle trails which would require the use of some fill to support paving and rip-rap near bridges is allowed as both a conditional use and variance in a conservancy environment under the master program and the SMA because the link would develop and improve public access to the shorelines.
Trudeau, et al., v. City of Bothell and King County, SHB No. 82-12.

A variance from the shoreline setback requirement may be granted to allow an applicant to remodel the existing two stories of a residence where the natural features of the lot prevent landward expansion. An additional story may not be added within the applicable shoreline setback because it would obstruct a neighbor's view, provide more relief than necessary from the shoreline setback, and induce a cumulative impact from additional requests for like actions.
Mohr v. King County and Lohse, SHB No. 82-27.

Under WAC 173-14-150(5), use variances for prohibited uses are not authorized. Thus, a variance from the master program prohibiting over-water recreational residential structures was properly disapproved.
Parker and Mason County v. Department of Ecology, SHB No. 82-41.

Construction of a deck within the 15 foot setback does not entitle the builder to a variance under Mason County SMP chapter 7.28.020 where the builder cannot show that if the setback were met he cannot make any reasonable use of his property.
Drake v. Mason County and Department of Ecology, SHB No. 83-4.
Schumsky v. Mason County and Department of Ecology, SHB No. 83-11.

A bulkhead with sufficient landfill landward of it to serve as a roadway is a substantial development because of its fair market value despite its minimal cost. Where the master program prohibits such a use, no variance can be granted.
Griggs and Thurston County v. Department of Ecology, SHB No. 83-31.

The absence of a deck or balcony where it does not impose any economic hardship and where it comes down merely to the lack of an amenity does not rise to the level of interference with a reasonable use as required for a variance under WAC 173-14-150.
4101 Beach Drive Homeowners Association v. City of Seattle and Department of Ecology, SHB No. 84-49.

A fence 6 feet high and 30 feet long running along the lot line to the water and separating a single family home from a public park is necessary to provide homeowner with any reasonable use of his property on these unique facts.
Houghton v. Mason County, Nilsson and Department of Ecology, SHB No. 84-56.

No special equities arise merely because a development was built in ignorance of permit requirements. When water recreation can be enjoyed either without a dock or with a dock in a different location, a dock already built is not entitled to a variance permit.
Labusohr v. King County and Department of Ecology, SHB No. 84-62.

Once within an approved master program, variance provisions more stringent than those of the department's rules must be applied until amended or repealed by local government and approved by the department under the procedure of RCW 90.58.190. A beach cabana within the prescribed setback is inconsistent with the master program where the proponent has any reasonable use of his property.
Simchuck and Pierce County v. Department of Ecology and Stottenberg, SHB No. 84-64.

The most stringent rule for variances applies. Variance rules must be adopted either by the department or within an approved shoreline master program.
Strand v. Snohomish County and Department of Ecology, SHB No. 85-4.

A beach cabana is not a proper subject for a variance permit where the owner can make any reasonable use of his property without it. This results from application of the shoreline master program. A master program cannot, however, universally forbid dimensional variances.
Renkel v. Mason County and Department of Ecology, SHB No. 85-6.

A residence which encroaches within a 15 foot setback is not entitled to a variance under the master program standard which allows variances only when the owner cannot make any reasonable use of his property.
Wilson v. Mason County and Department of Ecology, SHB No. 85-8.

A one of a kind boat repair shed may be installed on Lake Union where only 8% of lot coverage and 7 feet of height are at issue. To do otherwise would preclude a reasonable, permitted use of the property.
The Board Yard v. City of Seattle and Department of Ecology, SHB No. 86-10.

A 49 foot x 22 foot storage building is not necessary to prevent significant interference with reasonable enjoyment of property and is not entitled to variance.
Crane v. King County and Department of Ecology, SHB No. 86-38.

A residential deck, 18' x 24' (430 square feet) approximately 16 feet back from the ordinary high water mark of Budd Inlet in Thurston County is not entitled to a shoreline setback variance where the appellant is not precluded from a reasonable use of the property.
Slater v. Department of Ecology and Sceva, SHB No. 87-15.

Five proposed trailer sites less than 50 feet from the ordinary high water mark of Liberty Lake are not entitled to a variance where 29 trailers were approved as being consistent with the 50 foot setback.
Dolphin v. Spokane County, SHB No. 87-37.

A double-wide manufactured home set back less than 50 feet from the ordinary high water mark of the Little Spokane River is not entitled to a variance where its sanitary disposal system would adversely affect water quality.
Bell v. Spokane County, SHB No. 87-38.

A proposal to move a house to a point 36 feet from the ordinary high water mark is entitled to a variance where the 50 foot setback significantly interferes with a reasonable use of the property due to unique topography.
Ysabel Jordan v. Skagit County and Dr. Harry Worley, SHB No. 88-18.

See: SHB Nos. 77-28; 78-9; 78-21; 79-29; 80-14.

8.6.2(b)Conditional Uses

A proposed highway is compatible with rural and conservancy environment designations as a conditional use under the master program because the pollution resulting from the proposed highway is not more severe than pollution resulting from other uses allowed in that environment.
Wilcox, et al., v. Yakima County and Department of Highways, SHB No. 77-28.

A flood control structure to be located and operated in an aquatic environment of Big Lake, which would create a significant risk to natural resources for a small corresponding benefit was inconsistent with the conditional use provisions of the master program.
Skagit County v. Department of Ecology and Attorney General, SHB No. 78-1.

Although allowed in a "rural" environment as a conditional use under the master program, a proposed 50,000 cubic yard wood waste landfill near a stream failed to meet the requirements of WAC 173-14-140(1) because the toxic leachates produced by the waste would contaminate the surface and ground waters. The purpose of the landfill, for access, could be achieved by the use of other materials which would not endanger the water quality.
Brueher and Grays Harbor County v. Department of Ecology, SHB No. 79-18.

An asphalt batch plant which uses heat and asphalt to process naturally occurring material is classified as an "industrial activity" under the master program and is not an allowable conditional use in a conservancy environment. In contrast, a gravel mining plant which processes naturally occurring material without the use of products imported to the site could be classified as a "mining activity" under the master program as a potential conditional use.
Bohannon and Yakima County v. Department of Ecology, SHB No. 79-38.

A conditional use permit will not be issued for a wood waste fill located on a shoreline of statewide significance because unconfined leachates from the wood adversely affect the water quality, marsh and aquatic life. These pollutants cause the proposed wood waste fill to be inconsistent with the policies of RCW 90.58.020, the master program and the public interest under WAC 173-14-140(1).
Daniels Cedar Products v. Department of Ecology, SHB No. 80-32.

A proposed mining operation which is a conditional use under the master program must meet the stringent requirement therein to not produce noise pollution which would be more severe than that resulting from permitted uses.
Valley Ready Mix Concrete Company and Yakima County v. Department of Ecology and Carlson, et al., SHB No. 80-37.

Under the master program, wood waste may only be used for fill in an urban environment as a conditional use when the fill will not cause unreasonable adverse effects to the shoreline designation of its location and will not cause detrimental effects to the public interest. The leachate resulting from wood waste fill degrades water quality, harms aquatic and fish life and thus fails to meet the requirements of the SMA, WAC 173-14-140(1) or the master program.
Roderick Timber Company v. Department of Ecology, SHB No. 80-39.

When considering the application of a conditional use criteria, the master program is read as a whole, including the goals, policies, use regulations, to avoid making an otherwise contemplated use illusory.
Nisqually Delta Association, et al., v. City of Dupont, Department of Ecology, and Weyerhaeuser Company, SHB No. 81-8.

Because "conditional uses" are deemed in the master program to be the "least desirable" of competing shoreline uses, proposals for such uses must meet additional criteria. Consequently, while a proposed commercial boatyard may be consistent with the performance standards of the master program, it may still be inappropriate as a conditional use with the master program goals for shoreline use and conservation as applied within conservancy environment designation.
Murray v. Jefferson County and Jefferson County Conservancy, SHB No. 81-14.

When a permit is issued for a development that requires a conditional use or variance without the same having been issued, the permit must be remanded to the local government. Thus, a permit for a marina that will utilize landfills in an aquatic environment must be remanded because such landfills are conditional uses under the master program. In addition, the proposed marina structures would exceed height limitations and would thus require a variance.
Department of Ecology, et al., v. City of Anacortes and Anacortes-Fidalgo Bay Marina, SHB No. 81-23.

A proposed link between two bicycle trails which would require the use of some fill to support paving and rip-rap near bridges is allowed as both a conditional use and variance in a conservancy environment under the master program, Department of Ecology rules, and the SMA because the link would develop and improve public access to the shorelines.
Trudeau, et al., v. City of Bothell and King County, SHB No. 82-12.

A change of use for a pre-existing structure requires a new shoreline permit. A small, isolated space within a pre-existing structure involving a use not listed in the master program nor having any cumulative impact is consistent with the conditional use criteria of WAC 173-14-140(2).
Larkin and Names v. Department of Ecology, SHB No. 84-21.

A sundeck on the Puget Sound side of Day Island in Pierce County is not a "dock" or "pier" and is prohibited because it is waterward of the extreme high water mark. It may not be approved as a conditional use.
Picton v. Pierce County and Department of Ecology, SHB No. 86-58.

Fill for a mobile home and RV park in the 100-year floodplain of the Willapa River which does not cause detriment to the public interest is consistent with the SMA and conditional use requirements.
Erickson v. City of Redmond, SHB No. 86-61.

The conditional use criteria considered in accordance with the Shorelines Management Act involves consistency with SMA and master program policies, non-interference with normal public use of the shoreline, compatibility with other uses in the area, no adverse affect to the shoreline environment and no substantial detrimental affect to the public interest.
Davis and Culbertson v. Hoover, et al., SHB No. 89-59.

Expanding public access through increasing the size of a scenic trail for a commercial development within the fifty foot set-back of the OHWM, which requires a conditional use permit, overcomes the Shorelines Master Program policy of avoiding disruption of scenic views.
BICC v. DOE, City of Winslow, and King, SHB No. 87-53.

A separate studio building is a "normal appurtenance" to a residence in the same way a garage, deck or fence is and therefore no conditional use permit is required under the San Juan County Shorelines Master Program.
Sacks and San Juan County v. DOE, SHB No. 89-38.

A gravel road serving several homes along a beach is a conditional use under the Island County Shorelines Master Program and therefore is subject to the criteria of WAC 173-14-140(1).
Wells, et al., v. DOE, et al., SHB No. 90-10.

A conditional use permit cannot be issued for an activity that is prohibited under the Shorelines Master Program.
Worthington v. San Juan County and DOE, SHB No. 92-47.

See: SHB Nos. 223; 240; 244; 78-15; 78-37; 79-54; 80-14; 80-44.

8.7.Shoreline Regulations

Administrative rules enacted pursuant to a specific legislative delegation are presumed to be valid and should be upheld when they are reasonably consistent with the statute being implemented.
Spencer and Pierce County v. Department of Ecology, SHB No. 242.

RCW 43.21H, requiring consideration of economic values in the rule-making process applies only prospectively to the adoption of rules and not to administrative action taken pursuant to such rules.
Id.

The SMA authorizes the regulation of both developments on and uses of property. Thus, pleasure crafts, as opposed to commercial vessels, could be prohibited from using a proposed float.
Tarabochia, et al., v. Town of Gig Harbor, et al., SHB No. 77-7.

When a city's master program is proposed yet not approved by the department for an area annexed from the county, the city should, under state regulations, review a proposed substantial development under the county master program.
Department of Ecology, et al., v. City of Anacortes and Anacortes-Fidalgo Bay Marina, SHB No. 81-23.

8.8.Use Activities

Where the primary use, i.e., retailing, was permitted in the environment designation of the master program, uses ancillary, integral and incidental to such primary use may be acceptable.
Society of St. Vincent de Paul v. City of Seattle, SHB No. 227.

A highway is considered to be a road for the purposes of master program regulations, but other use regulations may be considered that are applicable to the overall substantial development proposed.
Wilcox, et al., v. Yakima County and Department of Highways, SHB No. 77-28.

A bridge repair is a "road" under the master program and logically includes landfills, bridges and similar appurtenances. However, regulations applying to the appurtenances may be considered insofar as they may be appropriate to the overall substantial development proposed.
Braget v. Pierce County, Department of Transportation, and Department of Ecology, SHB No. 79-54.

8.8.1.Agricultural

See: SHB Nos 85; 166; 244; 77-28; 79-54; 80-17.

8.8.2.Aquaculture

Aquaculture is not one of the ordinary types of commercial uses but is more akin to an agricultural use and therefore compatible with adjoining residential uses.
Cruver v. San Juan County and Webb, SHB No. 202.

Aquaculture is a permitted conditional use under the semi-rural environment of the Kitsap County master program when the use will not cause unreasonable adverse effects on the environment or to uses which are allowed outright and will not interfere with public shorelines.
Department of Natural Resources, et al., v. Kitsap County, SHB No. 78-37.

ECPA: The Environmental Coordination Procedures Act, chapter 90.62 RCW, amendments, which affect substantive rights will not be applied retroactively. Although clam harvesting is a preferred use under the SMA, it must protect against adverse effects to the waters and its aquatic life and the public's use of the water. Testing of a clam dredge without adequate test parameters does not do so.
Save Port Susan Committee v. Department of Ecology and Sea Harvest Corporation, SHB No. 82-38.
Sea Harvest Corporation v. Snohomish County, SHB No. 82-39.
Sea Harvest Corporation v. Island County, SHB No. 83-3.

A proposed nori production development in Tramp Harbor, which consisted of installing lines, floats, and anchors on a seasonal basis, was consistent with the master program and the SMA.
Save Our Sound Citizen's Committee v. King County and American Sea Vegetable Company, SHB No. 82-51.

A landfill near a floodplain, which allows the expansion of an existing fish hatchery on the Skokomish River without causing significant damage to the ecology of the shoreline area is a reasonable, preferred, water dependent shoreline use that will provide long term benefits to the people of the state.
Department of Fisheries v. Mason County, SHB No. 82-52.

Aquaculture is of statewide benefit. A blue mussel enterprise using four rafts of reasonable size, located 800 feet offshore has minimal visual impact and minimizes interference to surface navigation.
Penn Cove Seafarms, Inc. and Department of Ecology v. Island County and Hofstrand, SHB No. 84-4.

Ten Atlantic salmon net pens submerged under water 3/4 of a mile from shore are consistent with the applicable master program if conditioned to limit antibiotic use, monitor water quality and certain other requirements. Aquaculture which thus preserves the natural character of the shoreline is a desired and preferred water dependent use.
Holland v. Kitsap County and Yukon Harbor Concerned Citizens, SHB No. 86-22.

A floating net pen facility for the commercial rearing of salmon and trout is consistent with the applicable master program if conditioned to limit antibiotic use, require water quality monitoring and require certain other precautions. But the potential for this sort of thing is distinctly limited in the immediate neighborhood.
Tailfin, Inc. v. Skagit County and Department of Ecology, SHB No. 86-29.

A mussel growing long line system consisting of nine parallel lines each 200 feet long and supported by floats and located near Camano Island is consistent with the master program and SMA if properly conditioned.
Risk v. Island County and Island Sea Farms, Inc., SHB No. 86-49 and 86-50.

A salmon net-pen operation falls within the specific definition of aquaculture under CCSMP which takes preference over a more general commercial section definition.
Jamestown Klallam Tribe, et al., v. Clallam County (Order), SHB No. 88-4 and 88-5.

A properly conditioned salmon net-pen operation of 540,000 pounds annually located in Discovery Bay which was shown would contribute to the state-wide production of food and which would not involve damage to the environment is consistent with the policies of the Shorelines Management Act.
Jamestown Klallam Tribe, et al., v. Clallam County, SHB No. 88-4 and 88-5.

An Atlantic salmon net-pen facility involving 860,000 pounds annual production in Case Inlet in Mason county on a shoreline of state-wide significance was proper because aquaculture is a water dependent use and involves promotion of state-wide interests.
Clean-up South Sound, et al., v. Swecker, et al., SHB No. 88-38.

Under the Kitsap County Shorelines Management Master Program a single float dock up to forty feet for the "suspended culture of mussels" is covered by the specific aquaculture section of the master program and not by the more general commercial development use activity section. Therefore a conditional use permit is not required.
Puget Sound Mussells, Inc. and DNR v. Kitsap County (Summary Judgment Order), SHB No. 90-59.

See: SHB No. 185.

8.8.3.Archaeological Areas and Historic Sites

Those adverse impacts when on a historic farm site and concern for trespass and theft from a proposed 26 lot subdivision were insufficient to require additional mitigative conditions to a permit.
Newlin v. Island County and Costello, SHB No. 79-31.

A substantial development permit for a log export facility which is inconsistent with the SMA and the master program may become consistent therewith if conditions for public access, mitigation of adverse impacts upon wildlife, and preservation of historical areas are provided.
Nisqually Delta Association, et al., v. City of Dupont, Department of Ecology, and Weyerhaeuser Company, SHB No. 81-8.

See: SHB Nos. 74; 166; 202; 209; 237; 244; 78-35; 80-14.

8.8.4.Breakwaters

Department of Ecology Guidelines relating to filling, breakwaters and vehicular parking are not mandatory, but are suggestive and flexible dependent upon local conditions.
Department of Ecology and Attorney General v. City of Tacoma and Port of Tacoma, SHB No. 75.
Department of Ecology and Attorney General v. City of Tacoma, Port of Tacoma and Meaker, SHB No. 76.

A breakwater is a water-dependent development that serves a marina which facilitates public access to the shorelines and a use given priority by the SMA.
Bryant v. San Juan County and Wareham, SHB No. 79-32.

See: SHB Nos. 3; 7; 81-29.

8.8.5.Bulkheads

A proposed bulkhead and fill on second class natural tidelands on Hat Island for the purpose of creating land for homesites is inconsistent with the policy of the Act and Guidelines for bulkheads.
Isaak, et al., v. Snohomish County, Department of Ecology and Attorney General, SHB No. 19.

The construction of a proposed bulkhead and fill on natural shorelines of statewide significance of Hood Canal for the purpose of creating land to meet sanitary drainfield requirements and which is not necessary for the protection of existing facilities, is inconsistent with WAC 173-16-060(11)(e).
Department of Ecology and Attorney General v. Mason County and Krueger, SHB No. 90.

The construction of a proposed bulkhead and fill on natural shorelines of statewide significance of Hood Canal in an intertidal zone, which would destroy oysters and smelt spawning forever, does not preserve the natural character of the shorelines, result in long term over short term benefits, or protect the resources of the shorelines nor minimize damage to fish and shellfish habitats.
Id.

Permit for protective bulkhead and fill 15 feet seaward of existing bulkhead was vacated because of adverse effects to the waters and aquatic life and rights of public navigation.
Department of Ecology and Attorney General v. Kitsap County and Black, SHB No. 93.

A landfill and bulkhead for the purpose of creating land for a parking lot, a low priority non-water dependent use, is inconsistent with the Guidelines for bulkheads and landfills.
Department of Ecology and Attorney General v. Mason County and Frint, SHB No. 128.

Bulkheads and fills constructed primarily for the creation of residential land on natural shorelines of statewide significance of Hood Canal which would damage the natural resources and environment, are inconsistent with the policy of the Act and the Guidelines for bulkheads and landfills.
Department of Ecology and Attorney General v. Mason County and Bloom, et al., SHB No. 153.

The denial of a permit for a proposed residential bulkhead in a rural residential environment was upheld because it was inconsistent with the master program provisions relating to location and purpose for bulkheads.
Fleischmann v. Pierce County, SHB No. 77-16.

Although a riprap bulkhead to protect the uplands of three residential lots was consistent with the master program, landfill in excess of that needed to achieve the purpose of the development must be independently evaluated. Where there was no identifiable water dependent use of landfill as required by the master program, that portion of the development should be deleted from the permit.
Quinn v. Island County and Patton, et al., SHB No. 79-24.

A single family residence is not in violation of the setback provision of the master program where the requisite distance would exist between the residence and the new ordinary high watermark resulting from a lawful shoreline protective structure.
Stephanus v. City of Seattle, SHB No. 83-49.

A bulkhead with up to 10 feet of fill landward of it is a substantial development under RCW 90.58.030(3)(e) because of the expense involved and the volume of fill and is not the normal protective bulkhead common to a single family residence as described in RCW 90.58.030(3)(e)(ii).
Wright and Mason County v. Department of Ecology, SHB No. 83-52.

A cabana waterward of the ordinary high water mark is a prohibited use under the master program and, as such, no variance is allowed.
Allan v. King County and Department of Ecology, SHB No. 84-5.

A concrete bulkhead, 150 cubic yards of fill and dock at a single family residence on Lake Sammamish are not exempt from the requirement for a shoreline substantial development permit and fill may not be located below the ordinary high water mark.
Howe v. King County, SHB No. 86-48.

Separate bulkheads and docks at two single family residences on Lake Stevens are consistent with regulations of the master program which require joint use docks at new subdivisions but do not prohibit single family docks at a later stage when it is apparent that the subdivision developer has not provided moorage.
Department of Ecology v. Snohomish County, Hansen and McLeod, SHB No. 86-55 and 86-56.

The purpose of a bulkhead must be to protect the residence from erosion under the requirements of WAC 173-14-040(1)(c).
Seawall Construction, et al., v. King County, SHB No. 90-51 and 90-52.

Bulkheads and landfills that create land are inconsistent with the policies of the Shorelines Management Act.
Larson v. Mason County, SHB No. 88-15.

A bulkhead five to seven feet from the bank which provides erosion control and which has been approved by Mason County is consistent with the Shorelines Management Act.
Larson v. Mason County, SHB No. 88-15.

See: SHB Nos. 13; 29; 57; 62-A; 65; 81; 106; 151; 77-12; 78-27; 78-44; 78-49; 80-1; 80-18; 80-29; 81-14; 81-29.

8.8.6.Commercial Development

A proposed commercial-residential complex to be constructed along a 75-foot cliff on leased waterfront property which design was modified to be consistent with the SMA, is a permitted use of the shorelines.
Citizens for the Responsible Development of the Port of Friday Harbor, Department of Ecology and Attorney General v. Town of Friday Harbor and Friday Harbor First Corporation, SHB No. 24.

An office building is not a water-dependent use even though some of the building's tenancy will be water-oriented. The issuance of a permit for such use is contrary to the provisions of WAC 173-16-060(4)(a, c) (shoreline dependency and view) and WAC 173-16-040(4)(b)(iv) (emphasizing water dependency and confining developments to already developed areas).
Department of Ecology and Attorney General, et al., v. City of Kirkland and Hadley, SHB No. 54.

Proposed offices and parking area, which are not water-dependent and which do not provide an opportunity for substantial numbers of people to enjoy the shorelines of the state, are inconsistent with WAC 173-16-060(4)(a).
Adams v. City of Seattle, Department of Ecology and Attorney General, SHB No. 156.

The SMA does not prohibit over-the-water structures such as on an environmentally abused portion of the Chehalis River, a shoreline of statewide significance, but such developments must be carefully planned, managed, and coordinated in keeping with the public interest. However, low priority shoreline uses, such as the proposed motel, parking area, and commercial area, should be located on the uplands.
Department of Ecology and Attorney General v. City of Aberdeen and Forest Inv. Corporation, SHB No. 162.

A proposed delicatessen which would provide an opportunity for substantial numbers of people to enjoy the shorelines of the state, would impair no scenic view, and would be located in an intensively developed urban environment, is not inconsistent with WAC 173-16-040(4)(b)(iv) (urban environment) and WAC 173-16-060(4) (commercial development) even though the proposed use is not water-dependent.
Department of Ecology and Attorney General v. City of Poulsbo and Xenos, SHB No. 201.

A restaurant situated over the waters of Lake Union, as an existing nonconforming use, could not enclose a deck without a variance from the provisions of the master program. Because the applicant could not show that without a variance there could not be any reasonable use of the property, the application was denied.
Limantzakis v. City of Seattle, SHB No. 78-10.

A 43 foot high hotel does not violate RCW 90.58.320 relating to height restrictions when the view of only one residence would be affected and the master program does not prohibit a structure of that height.
Mentor v. Kitsap County and Larson, et al., SHB No. 78-27.

An office building in historical conservancy and urban environment designations, which was compatible with the site, surrounding area, and historical character of an area, was a proper development.
Madden, et al., v. Town of LaConner and Gable, SHB No. 78-35.

A proposed change in a partially completed substantial development plan from condominiums and shops to a motel that would substantially reduce public access to the shorelines is inconsistent with RCW 90.58.020 and the master program. Non-water dependent developments on shorelines must "provide an opportunity for substantial numbers of people to enjoy the shorelines of the state".
Gislason v. Town of Friday Harbor, SHB No. 81-22.

A proposed six story glazed office building resembling a shiny oversized cube proposed on the narrow isthmus between downtown and West Olympia would be an aesthetically inappropriate development under the master program in terms of view obstruction and compatibility with surrounding structures. A smaller structure built with natural materials, containing more water-oriented uses and less surface parking would be more desirable.
Sato Corporation v. City of Olympia, SHB No. 81-41.

The expansion of a non-conforming, over-the-water restaurant necessitates a conditional use permit under the master program.
1901 Corporation and Ellis and Department of Ecology v. Town of Friday Harbor and Ziebell, SHB No. 84-10.

An inn that is of a scale which exceeds the scale of the district where it is located and which therefore obliterates the view of a substantial number of people is inconsistent with the San Juan County Master Program.
Swinge v. Town of Friday Harbor, SHB No. 84-31.

A proposal to add an 8-unit motel building on the grounds of a resort currently having 14 lodging units, restaurant, gift shop and related parking approaches the threshold beyond which it could no longer meet the low intensity requirement of the master program.
Stephens and Meilleur v. Yakima County; Department of Ecology and Whistlin' Jack Lodge, Inc., SHB No. 84-35.

A welding and machine shop of some 1100 square feet within 21 previously filled acres is consistent with the applicable master program if separated from the water by a public walkway lined with trees.
Anthony v. City of Hoquiam and Department of Ecology, SHB No. 87-2.

A proposed inn of 26 units is inconsistent with the master program where it is out of scale with an existing two-story business district and is without a final parking plan. The EIS for the proposal is inadequate in not considering any alternative inn of lesser size, and in portraying the view impact inaccurately.
Front Street Inn v. Friday Harbor, SHB No. 87-27.

The term "or" in the Mason County Shorelines Master Program is disjunctive unless the legislative intent is clearly to the contrary.
Department of Fisheries v. Mason County, SHB No. 91-33.

The decision of whether a project should be approved comes after the initial determination of whether the project falls within a definition included in the master program. A decision concerning approval should not be made as a method of determining whether the project falls within a particular definition of the master program.
Department of Fisheries v. Mason County, SHB No. 91-33.

A non-conforming commercial use is not increased by approving a non-commercial project.
Department of Fisheries v. Mason County, SHB No. 91-33.

See: SHB Nos. 3; 24; 33; 158; 169; 181; 204; 205; 227; 81-13; 82-46.

8.8.7.Dredging; Spoils Disposal

Where proper control of dredging would minimize environmental damage in a partly artificial, periodically-dredged channel, the proposed development was not inconsistent with the Guidelines for dredging.
Citizens Interested in LaConner v. Skagit County and Port of Skagit County, SHB No. 166.

Dredging for navigational purposes, and such necessary water disposal of spoils, facilitates a necessary transportation system and is in the long term statewide public interest.
Department of Natural Resources v. Island County, SHB No. 77-8.

A permit allowing dredge spoil disposal in deep water in Puget Sound for 2 years under a non-degradation criteria developed by EPA would not have more than a moderate effect on the quality of the environment, and thereby justifies a DNS under SEPA. Such a permit is also consistent with the SMA, including the criteria for shorelines of statewide significance.
Bonnie Sadleir-Orne v. City of Seattle; Department of Ecology; DNR; Port of Seattle and Miller, SHB No. 84-41.

A facility accommodating 83 boats and needing 170,000 cubic yards of dredging is not a “small boat ramp and basin” and is inconsistent with the master program.
Friends of the Columbia Gorge v. Skamania County and Jung Trust, SHB No. 84-57.

The actions by a lot owner on Pilchuck Creek to rip-rap a portion of bank constituted unlawful substantial development inconsistent with the master program and justified the $1,000.00 civil penalty imposed.
Mose v. Department of Ecology, SHB No. 87-19.

To accommodate the berthing of 15 Navy ships, 3,305,000 cubic yards of material is proposed for dredging in Everett on Port Gardner Bay. The material is proposed for disposal one and two-thirds miles away in 9,000 feet of water. The material would be "contaminated" due to prior practices in Port Gardner Bay. Therefore it would be capped with "clean" material to isolate it from the marine environment. Such capping can be done effectively (3 members conclude). Additional safeguards are feasible, practical and necessary to ensure compliance with the Shoreline Management Act (3 members conclude).
Friends of the Earth, et al., v. U.S. Navy, City of Everett and Department of Ecology, SHB No. 87-31 and 87-33.

See: SHB Nos. 7; 16; 74; 75; 76; 166; 225; 244; 82-7; 82-17; 83-17.

8.8.8.Forest Management

Until forest practices regulations are promulgated, local government is not prohibited from taking appropriate action to ensure that forest practice activities within its jurisdiction do not violate state water quality standards.
Weyerhaeuser Company v. King County, SHB No. 155.

See: SHB No. 77.

8.8.9.Jetties and Groins

Where neither hazard to navigation or aesthetic damage would result from the placement of groins, the construction of such was permissible.
Linenschmidt v. City of Seattle, SHB No. 177

See: SHB No. 81-29.

8.8.10.Landfill

A proposed fill on an intertidal beach for the purpose of providing parking spaces for a boat launch is highly objectionable under any circumstances. Parking spaces for a boat launch is not a use dependent on the shoreline.
League of Women Voters, et al., v. King County, et al., SHB No. 13.

A proposed bulkhead and fill on second class natural tidelands of Hat Island for the purpose of created land for homesites is inconsistent with the policy of the Act and Guidelines for bulkheads and fills.
Isaak, et al., v. Snohomish County, Department of Ecology and Attorney General, SHB No. 19.

The policy of the SMA requires that any permitted uses be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the environment and the public's use of the water. A large fill (3,250 cu. yds.) on an intertidal area for a private boat ramp and boat storage would be unnecessarily damaging to the intertidal area just to serve such a need.
Steinman v. City of Seattle, SHB No. 29.

A permit for the purpose of creating land by filling is contrary to the policy and WAC 173-16-060(11)(e). However, such a permit can be modified and conditioned so that protection of upland areas against further erosion can be achieved in a practical and economical manner consistent with the SMA.
Department of Ecology and Attorney General v. Grays Harbor County and Welti, SHB No. 62-A.

The proposed disposal of cedar wastes in an ecologically fragile shoreline area of the Hoquiam River, which would degrade the environment and pollute the public waters, is not consistent with the policy of the SMA and the Guidelines for landfills and solid waste disposal, and the issuance of a permit was erroneous.
Department of Ecology and Attorney General v. Grays Harbor County and Dineen Shake and Shingle, Inc., SHB No. 63.

Developments on non-natural shorelines of statewide significance may reduce the rights of the public in navigable waters only if, and to the extent that, the public interest is enhanced. Where the public's rights in an eroding shoreline on Lake Chelan were reduced only a small amount during the summer months, and where the public interest was enhanced by such considerations as an increased tax base, a landscaped shoreline where none was before, preservation of view, and protection of water quality, the competing interests were balanced and a permit for a landfill was properly issued.
Department of Ecology and Attorney General v. Chelan County and Schmitten, SHB No. 65.

A proposed 7-acre fill in an area zoned manufacturing on shorelines of statewide significance, which would have negligible adverse effects but would improve the site and impart an improvement to the water quality, is consistent with the SMA.
Haggard v. City of Everett and Port of Everett, SHB No. 74.

Department of Ecology Guidelines relating to filling, breakwaters and vehicular parking are not mandatory, but are suggestive and flexible dependent upon local conditions.
Department of Ecology and Attorney General v. City of Tacoma and Port of Tacoma, SHB No. 75.
Department of Ecology and Attorney General v. City of Tacoma, Port of Tacoma and Meaker, SHB No. 76.

Landfill for a marina parking lot and other water-related structures in an area zoned heavy industrial is permissible where the proposed development will serve the recreational demands of a substantial portion of the general public.
Department of Ecology and Attorney General v. City of Tacoma, Port of Tacoma and Meaker, SHB No. 76.

Some filling and grading of flood plains property zoned heavy manufacturing, which was necessary to make any use of the property, was permissible with the storage capacity of the flood plains was not diminished significantly and where siltation and erosion was controlled.
Kaeser Company v. King County, SHB No. 79.

A landfill of proper materials in a flood plain of Bear Creek, which fill has insignificant impacts on the flood plain, creek, waters, and natural resources systems, is consistent with the SMA.
State Investors, Inc. v. City of Redmond, SHB No. 83.

The construction of a proposed bulkhead and fill on natural shorelines of statewide significance of Hood Canal for the purpose of creating land to meet sanitary drainfield requirements and which is not necessary for the protection of existing facilities, is inconsistent with WAC 173-16-060(11)(e).
Department of Ecology and Attorney General v. Mason County and Krueger, SHB No. 90.

Permit for protective bulkhead and fill 15 feet seaward of existing bulkhead was vacated because of adverse affects to the waters and aquatic life and rights of public navigation.
Department of Ecology and Attorney General v. Kitsap County and Black, SHB No. 93.

A one-acre landfill on an unimproved excavated dump site next to the Yakima River, a shoreline of statewide significance, which would restore the area to its original condition is consistent with SMA.
Wolfsehr, et al., Department of Ecology and Attorney General v. Kittitas County and Keating, SHB No. 103.

No precedent would be set from allowing further landfill on a portion of a site where filling had lawfully commenced prior to the effective date of the SMA and had continued for two years thereafter where the proper fill was used and the continuation of the project would be in the public interest and consistent with the SMA.
Yount and Department of Ecology and Attorney General v. Snohomish County and Hayes, SHB No. 108.

A landfill and bulkhead for the purpose of creating land for a parking lot, a low priority non-water dependent use, is inconsistent with the Guidelines for bulkheads and landfills.
Department of Ecology and Attorney General v. Mason County and Frint, SHB No. 128.

A 30,000 cubic yard landfill on natural shorelines for a construction site is not a “priority” use, would not preserve the aesthetic qualities of the natural shorelines and would not provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state.
Cleven v. Island County, Department of Ecology and Attorney General, SHB No. 150.

Because of peculiar circumstances, a landfill was permissible where there were no practical or public uses to which the properties could be put.
Department of Ecology and Attorney General v. Chelan County and Smith, et al., SHB No. 151.

A landfill is not an "over water" residential development within the meaning of WAC 173-16-060(8)(d).
Id.

A 3,300 cubic yard landfill for a residence on natural shorelines of statewide significance of Hood Canal would reduce the rights of the public in navigable waters without promoting a corresponding public interest.
Department of Ecology and Attorney General v. Mason County and Bloom, et al., SHB No. 153.

Bulkheads and fills constructed primarily for the creation of residential land on natural shorelines of statewide significance, which would damage the natural resources and environment, are inconsistent with the policy of the Act and the Guidelines for bulkheads and landfills.
Id.

A 200-foot by 300-foot landfill of road spoils on natural shorelines of New Dungeness Bay, which could itself be a source of pollution, and which is sought primarily to create land in order to qualify for a septic system would destroy the physical and aesthetic qualities of the shoreline without a corresponding public benefit and is contrary to the policy of RCW 90.58.020.
Department of Ecology and Attorney General v. Clallam County and Myers, SHB No. 159.

The dumping of debris along a river's edge is not a permissible substantial development in a conservancy designation when such landfill does not consist of clean materials which would maintain water quality or prevent erosion.
Tenley v. Chelan County and Department of Ecology, SHB No. 78-51.

Although allowed in a "rural" environment as a conditional use under the master program, a proposed 50,000 cubic yard wood waste landfill near a stream failed to meet the requirements of WAC 173-14-140(1) because the toxic leachates produced by the waste would contaminate the surface and ground waters. The purpose of the landfill, for access, could be achieved by the use of other materials which would not endanger the water quality.
Brueher and Grays Harbor County v. Department of Ecology, SHB No. 79-18.

Although a riprap bulkhead to protect the uplands of three residential lots was consistent with the master program, landfill in excess of that needed to achieve the purpose of the development must be independently evaluated. Where there was no identifiable water dependent use of landfill as required by the master program, that portion of the development should be deleted from the permit.
Quinn v. Island County and Patton, et al., SHB No. 79-24.

Filling of wetlands or associated wetlands for residential or pasturage use is prohibited by the master program because shoreline landfills are permitted thereunder only for shoreline dependent commercial and navigational uses which demonstrate an economic dependence on a shoreline location.
Massey v. Island County, SHB No. 80-3.

Although landfills are not expressly prohibited in a rural environment as it is in a conservancy environment under the master program, an express provision of the master program prohibits landfills for the sole purpose of providing sufficient land for septic tank drainfields. Therefore, a permit issued to provide sufficient land for the sole purpose of providing for a drainfield for a single-family residence was improper.
Department of Ecology and Attorney General v. Sircovich, SHB No. 80-43.

A landfill near a floodplain, which allows the expansion of an existing fish hatchery on the Skokomish River without causing significant damage to the ecology of the shoreline area, is a reasonable, preferred, water dependent shoreline use that will provide long term benefits to the people of the state.
Department of Fisheries v. Mason County, SHB No. 82-52.

A fill of 150,000 cubic yards on 21 acres of previously filled uplands of Grays Harbor with provision for public access over the fill is consistent with the SMA and master programs provisions designating the site for commercial and/or industrial use.
Anthony and Friends of Bowerman Basin v. Hoquiam, Department of Ecology and Springer, SHB No. 84-52.

Landfill beyond that needed for prospective residences is inconsistent with the master program. Failure to analyze flood hazards prevents the Board from deciding that landfill is consistent with the general policies of the SMA.
Friends of the Columbia Gorge v. Skamania County and Jung Trust, SHB No. 84-57.

A concrete bulkhead, 150 cubic yards of fill and dock at a single family residence on Lake Sammamish are not exempt from the requirement for a shoreline substantial development permit and fill may not be located below the ordinary high water mark.
Howe v. King County, SHB No. 86-48.

Fill for a mobile home and RV park in the 100 year floodplain of the Willapa River which does not cause unreasonable adverse effect to the shoreline environment or cause detriment to the public interest is consistent with the SMA and conditional use requirements.
Erickson v. City of Redmond, SHB No. 86-61.

The actions by a lot owner on Pilchuck Creek to rip-rap a portion of bank constituted unlawful substantial development inconsistent with the master program and justified the $1,000.00 civil penalty imposed.
Mose v. Department of Ecology, SHB No. 87-19.

Proposed fill for a condominium project on Lake Stevens is not allowed within associated wetlands, all filled wetland areas should be restored to their natural condition and an undeveloped buffer must be provided between the wetland boundaries and residential structures.
Gillett v. Snohomish County, SHB No. 87-25.

A bulkhead and fill project, in the north Hood Canal area along a shoreline of state-wide significance, whose main purpose is to create land is inconsistent with the SMA.
Larson v. Mason County, SHB No. 88-15.

Bulkheads and landfills that create land are inconsistent with the policies of the Shorelines Management Act.
Larson v. Mason County, SHB No. 88-15.

The filling of an excavation to a level below the total excavation area still constitutes landfill under the Shorelines Management Act.
Clifford, et al., v. City of Renton and Boeing, SHB No. 92-52.

The addition of earth creating a dry upland area within a floodplain constitutes landfill under the Shorelines Management Act.
Clifford, et al., v. City of Renton and Boeing, SHB No. 92-52 and 92-53.

In the context of landfill within a floodplain, that landfill must not reduce the floodwater storage of the site so as to cause the diversion of floodwaters to other sites.
Clifford, et al., v. City of Renton and Boeing, SHB No. 92-52.

There is no distinction between use of on-site landfill as opposed to that coming from off-site regarding the prohibition against landfill contained in the Shorelines Master Program.
Good v. Pacific County and DOE, SHB No. 93-7.

See: SHB Nos. 57; 85; 155; 224; 225; 229; 244; 77-9; 77-28; 78-15; 78-49; 79-40; 80- 1; 80-18; 80-29; 80-32; 80-33; 81-10; 81-29; 81-46; 82-2; 82-7; 82-12; 82-54.

8.8.11.Manufacturing; Industrial

Manufacturing activity on non-natural shorelines of statewide significance upon an environmentally abused site was consistent with the policy of the SMA.
Haggard v. City of Everett and Schmelzer, SHB No. 67.

A low intensity industrial use, consisting of moorage for shallow draft barges and dredging equipment, and for offices on non-natural shorelines of the Swinomish Channel, could, with additional conditions, become consistent with the SMA.
Department of Ecology and Attorney General v. Skagit County and Marine Construction and Dredging, Inc., SHB No. 244.

An asphalt batch plant which uses heat and asphalt to process naturally occurring material is classified as an "industrial activity" under the master program and is not an allowable conditional use in a conservancy environment. In contrast, a gravel mining plant which processes naturally occurring material without the use of products imported to the site could be classified as a "mining activity" under the master program as a potential conditional use.
Bohannon and Yakima County v. Department of Ecology, SHB No. 79-38.

The adequacy of an EIS prepared under SEPA is judged by the rule of reason. Expansion of a boat works including a new fabrication building is consistent with the master program and SMA provided that the shoreline substantial development and conditional use permit contains conditions governing noise, glare, fire protection, water quality, air quality, groundwater, traffic, parking, landscaping, aesthetics, signs and construction phases.
Holmes Harbor Homeowners Association v. Nichols Brothers Boat Builders, Inc., Island County and Department of Ecology, SHB No. 83-6.

See: SHB Nos. 72; 115; 137; 216; 223; 227; 83-20.

8.8.12.Marinas; Boat Ramps

A marina is a shoreline dependent use, which when designed to minimize adverse effects to the environment and to the public's use of the water, and is otherwise in compliance with Section 2 of the Act, meets the consistency requirements of the Act.
Department of Ecology and Attorney General v. City of Kirkland and Bittman, Sanders, Hasson Corporation, SHB No. 3.

Boat ramps, which would render an entire beach and its natural areas less attractive, should be eliminated from a permit.
League of Women Voters, et al., v. King County, et al., SHB No. 13.

A proposed new boat moorage, whose net environmental impact is small compared with the benefits to the public interest, and the design and construction of which minimizes and resulting damage to the shorelines, is consistent with the SMA.
Department of Ecology and Attorney General v. Island County and Penn Cove Association, SHB No. 16.

A closely monitored expansion of an existing marina rather than construction of a new facility would result in less total adverse impact on the environment. Such development, which meets the needs of the people and is in the public interest, is consistent with the SMA.
Eickhoff v. Thurston County and Zittel's Marina, Inc., SHB No. 104.

In identifying high use locations as provided in WAC 173-16-060(5), local as well as regional "need" data should be considered.
Id.

A boat ramp on natural shorelines of statewide significance of Hood Canal, which would require a major change in the existing environmental conditions, is not consistent with the policy of the Act requiring preservation of the natural shorelines to the greatest extent feasible. Construction of a boat ramp is not foreclosed in appropriate areas identified in master programs, however.
McCann, et al., Department of Ecology and Attorney General v. Jefferson County and Pleasant Tides Properties, SHB No. 144.

A well-planned marina on the Swinomish Channel, which greatly enhances the public's right to navigation and facilitates public access to the shoreline through its fishing floats, camping facility and moorages, and which will be constructed in a manner that minimizes the adverse effect on the environment, is consistent with RCW 90.58.020.
Citizens Interested in LaConner v. Skagit County and Port of Skagit County, SHB No. 166.

A plan for a 94 slip marina that proposes low intensity and low height dock lights to prevent the impairment of private views, devices to prevent pollution by sewage and oil spills, is a development which is compatible with both the master program and SMA.
Sisley, et al., v. San Juan County and Carpenter, SHB No. 79-5.

A proposed boat ramp and commercial dry storage boat yard in a conservancy area is an inappropriate conditional use. The introduction of toxic substance or other debilitating material would degrade the water quality and deplete the shellfish resource rather than conserve, protect or enhance the resources as required in a conservancy designation.
Murray v. Jefferson County and Jefferson County Conservancy, SHB No. 81-14.

Expansion of an existing marina facility is appropriate in an urban designation which specifically encourages and provides for marinas and will generally have less adverse impact on nature than the creation of a totally new marina.
Save Flounder Bay, et al., v. City of Anacortes and Mousel, SHB No. 81-15.

To be consistent with the master program and SMA, a permit for a proposed 444 slip marina for wet moorage in Sequim Bay can be conditioned to allow for a public boat ramp and picnic area to provide for adequate public access on a shoreline of statewide significance.
Protect the Peninsula's Future v. Clallam County and Port of Port Angeles, SHB No. 82-7.

A public boat launch proposed for an urban environment is a use that is permitted by the master program and a use that is dependent upon a shoreline location. With mitigative conditions, such a boat launch provides the public with an opportunity to enjoy the physical and aesthetic qualities of the natural shorelines in a manner that does not degrade them.
Port of Allyn v. Mason County, SHB No. 82-32.

A development consisting of a restaurant, retail shops, offices, parking garage and a 42 slip marina on Lake Union, that provides public access to the shoreline, is a permitted multiple use under the master program.
Seattle Shorelines Coalition, et al., v. City of Seattle and H.C. Henry Pier Company, et al., SHB No. 82-46.

A proposal to expand a marina in Mason County is a permitted use in the urban environment, apparently meets DSHS sewage guidelines and can be conditioned to meet any necessary state approval of the water supply before construction. Although the Mason County SMP does not incorporate by reference the Mason County parking standards, these will be used to interpret the public safety provision of the master program and a marina with unsafe parking is inconsistent with the master program.
Holbrook v. Mason County and Jones, SHB No. 83-12.

Repairs to a non-conforming use which had not been damaged in an amount greater than fifty percent of its fair market value are consistent with the master program and SMA.
Wyrot v. King County and Williams, SHB No. 83-53.

A marina which includes 24 slips, a fishing dock and a 28 foot by 20 foot utility building which is 10 feet high does not conflict with the policy of the SMA promoting water dependent development in natural areas. The site is not a natural area when substantially affected by human activity. Further, the facility was not shown to be located improperly in relation to population centers or in terms of demand for the services to be provided.
Stump v. Kitsap County and Posten, SHB No. 84-53.

A facility accommodating 83 boats and needing 170,000 cubic yards of dredging is not a "small boat ramp and basin" and is inconsistent with the master program.
Friends of the Columbia Gorge v. Skamania County and Jung Trust, SHB No. 84-57.

A marina with 340 slips in a dredged basin of 14.6 acres surrounded by 4.8 acres of breakwaters accommodates the favored marina use with the favored fishing use. The proposal of a marina followed designation of the site as "urban" where marinas are expressly permitted and therefore results from the planning process set in motion by the SMA. The marina on Possession Sound will improve boating access to public waters and provide the means for the public at large to enjoy a waterfront site which is now all but inaccessible.
Franzen and Tulalip Tribes v. Snohomish County, BCE Development, Inc., and Department of Ecology, SHB No. 87-5 and 87-6.

Covered moorages for 86 boats in Day Island waterway in Pierce County are consistent with a flexible master program guideline calling for one moorage per acre where that guideline was exceeded before enactment of the SMA and it is not shown that exceedance of the guideline formula would have a significant adverse impact.
Day Island Community Club v. Pierce County, SHB No. 87-12.

The slight expansion of an open boat moorage is a preferred use under SSMP and a water dependent activity involving use and enjoyment of the water and a promotion of multi-use water activities.
Westlake Houseboat Owners v. Seattle, et al., SHB No. 88-44.

A properly conditioned permit renders adverse water quality impacts unlikely in an open wet moorage expansion.
Westlake Houseboat Owners v. Seattle, et al., SHB No. 88-44.

A marine railway system providing boat access to a lake is more in the nature of a launch rather than a dock or pier.
Moses v. Skagit County and Renner, SHB No. 90-7.

See: SHB Nos. 7; 13; 29; 30; 54; 72; 75; 76; 107; 123; 129; 162; 181; 225; 239; 77-7; 79-32; 79-45; 80-18; 80-40; 80-48; 81-26; 82-17; 82-31; 82-50.

8.8.13.Mining

A proposed pier, conveyor, and barge loading facility for a gravel mining operation located more than 200 feet from the shoreline, which facility would mar the natural characteristics and beauty of Hood Canal, a shoreline of statewide significance, and add noise and air pollution, would be allowed only when there is a clearly defined and present necessity for such intrusion.
Department of Ecology and Attorney General v. Mason County and Hama Hama Company, SHB No. 115.

A 5-acre gravel pit which was 1,000 feet distant from the Yakima River, a shoreline of statewide significance, was consistent with Act when and if appropriately conditioned.
Brulotte, et al., v. Yakima County and Morris, SHB No. 137.

Surface mining can be a conditional use in a rural environment under the master program as long as noise restrictions are met, such as: 1) limitations on the times of operations; 2) limitations on the number of days a year of operation; and 3) rubber padding on the crusher.
Valley Ready Mix Concrete Company and Yakima County v. Department of Ecology and Carlson, et al., SHB No. 80-37.

The policy of the SMA is to prevent navigation from unnecessarily injuring the right of fishing, and conversely, to prevent fishing from obstructing navigation unreasonably. A proposal for mining black sand from the ocean floor which is unlikely to harm the physical shoreline, aquatic life, or public shoreline enjoyment is consistent with the criteria.
Beach Mining, Inc. v. Pacific County and Department of Fisheries, SHB No. 81-50.

The removal of 6,500 cubic yards of sand and gravel from a river bar is a minimal man-made intrusion which is consistent with the master program's requirement for preservation of the natural shorelines.
Persson v. Grays Harbor County and Department of Ecology, SHB No. 86-12.

A gravel pit excavation from an artificially dewatered area is considered "mining" and not "dredging".
Groenig, et al., v. City of Yakima, et al., SHB No. 92-30 and 92-31.

See: SHB Nos. 223; 79-38.

8.8.14.Outdoor Advertising, Signs and Billboards

Where the master program limits free-standing signs within the shoreline area to those 6 feet in height, a variance was properly denied for a 35 foot high billboard which was incompatible in terms of height, bulk and lighting with other permitted and existing structures and was not a "reasonable use" under WAC 173-14-150(2).
Ackerley Communications, Inc. v. King County, SHB No. 81-21.

8.8.15.Piers, Docks, Floats

A 360-foot pier, conveyor, and barge loading facility for a gravel mining operation, which construction would mar the natural characteristics and beauty of Hood Canal, a shoreline of statewide significance, should be allowed only when there is a clearly defined and present necessity for such intrusion.
Department of Ecology and Attorney General v. Mason County and Hama Hama Company, SHB No. 115.

On scenic and natural shorelines of statewide significance of Hood Canal, the construction of a 430-foot private pier-type dock would destroy an unobstructed view of the waters without promoting and enhancing the public interest and is therefore inconsistent with the policy of the Act, the Guidelines for piers and the draft master program. However, a 200-foot pier with a 230-foot float would preserve the view and is consistent with the SMA.
Brachvogel, et al., Department of Ecology and Attorney General v. Mason County and Twanoh Falls Beach Club, Inc., SHB No. 140.

A relatively large 200-foot floating dock for dinghy moorage to be placed in a small 200-foot by 400-foot cove on scenic and natural shorelines of statewide significance of San Juan Island was aesthetically incompatible with the area and thereby inconsistent with the SMA; a smaller floating dock or boat winch installation would, on the other hand, be more appropriate.
Mineral Heights Association, Inc. v. San Juan County and Mineral Point Community Club, SHB No. 77-25.

A 30-foot long dock rather than a 62 foot long dock was preferable under WAC 173-16-060(19) when a 30-foot dock would allow reasonable moorage and uniformity with neighboring docks, while a 62 foot dock would interfere with rights of navigation, fishing and recreation.
Robson v. Mason County, SHB No. 79-3.

Moorage dolphins may be constructed in a conservancy management environment under the master program as a special use, when the purpose of the dolphins is to provide safer moorage and not additional work area for a boat building company.
Marine Power and Equipment Company, Inc. v. City of Seattle, SHB No. 80-40.

A log export facility is a "preferred use" on the shorelines because it is a facility that is dependent upon a shoreline location. It is a "priority" use because it is a use specifically contemplated by the SMA and planned for in the master program.
Nisqually Delta Association, et al., v. City of Dupont, Department of Ecology, and Weyerhaeuser Company, SHB No. 81-8.

A proposed dock in a conservancy environment which would serve four lots and is designed to minimize aesthetic impacts, is a proper development under the master program and the SMA. Such a permit should not be denied because the county commissioners earlier granted a permit to a neighbor of the applicant for a joint use dock, an action in which the instant applicant did not take part.
Conner v. San Juan County, SHB No. 82-15.

A 40-foot extension of an existing 80 foot long pier to provide moorage space for condominium owners is an appropriate development in an urban environment when the use is permitted by the master program and the proposed moorage was not shown to pose a significant threat to the birds and mammals.
East Lake Washington Audubon Society v. King County and Bayview on the Lake Condominium Association, SHB No. 82-31.

A joint use dock is improper where the master program requires a showing that existing facilities are not adequate and a community dock provides adequate moorage.
Hart v. San Juan County, SHB No. 83-7.

A joint use dock is improper where the master program requires a showing that alternative moorage is not adequate or feasible and mooring buoys are feasible. A dock 180 feet long and 17.5 feet above water is unreasonably long and unreasonably high at its intended location (Obstruction Park) and inconsistent with visual impact provisions of the master program.
Merlino v. San Juan County, SHB No. 83-28.

A 200 foot long dock which has not more adverse effect upon view, navigation and public recreation than a 150 foot dock where 150 feet is not long enough to reach deep water is consistent with the master program.
Northey v. Pierce County and Marshall, SHB No. 84-6.

A variance to construct a dock protruding 110 feet into Lake Washington is appropriate, but only if old piling now in existence is removed to avoid an obstruction to navigation. The Board is not empowered to quiet title to real property. Neither the SMA nor the rules of the department require an interest in the property before a permit to develop can be granted.
Plimpton v. King County and Department of Ecology, SHB No. 84-23.

After adoption of an applicable master program and its approval by the department, the Board does not review a proposed development for consistency with the Department of Ecology Guidelines, chapter 173-16 WAC. The stated purpose of a variance would be thwarted by applying it to Pierce County's unspecific guideline rather than a specific standard. The dock was properly approved without a variance.
Department of Ecology v. Pierce County and Martel, SHB No. 84-26.
Department of Ecology v. Pierce County; Murphy and Nelson, SHB No. 84-28.
Department of Ecology v. Pierce County and Wilson, SHB No. 84-54.

The stated purpose of a variance would be thwarted by applying it to Pierce County's unspecific guideline rather than a specific standard. The dock was properly approved without a variance.
Department of Ecology v. Pierce County and Franklin, SHB No. 84-29.
Department of Ecology v. Pierce County and Darrah, SHB No. 84-44.

Joint use docks are intended to concentrate development and thus save open water for navigation. This aim is not advanced where no substantial navigational advantage will be achieved by expanding an existing dock.
Knapp v. Kitsap County and Hammer, SHB No. 85-17.

The master program requirement that good cause be shown for building docks longer than 30 feet has been met by the applicant in that such a dock would be unusable during all but the highest tidal conditions.
Pappetti v. Whatcom County and Department of Ecology, SHB No. 86-7.

Separate bulkheads and docks at two single family residences on Lake Stevens are consistent with regulations of the master program which require joint use docks at new subdivisions but do not prohibit single family docks at a later stage when it is apparent that the subdivision developer has not provided moorage.
Department of Ecology v. Snohomish County, Hansen and McLeod, SHB No. 86-55 and 86-56.

A pier on pilings extending from the bulkhead 135 feet into the water with an "L" at the waterward end of 20 feet and emanating from an unbuilt "recreation lot" on Mercer Island does not require a screening barrier.
Montgomery v. Mercer Island, SHB No. 87-17.

Docks are among the developments given priority by the Shorelines Management Act in allowing alterations of natural conditions.
DeMuth v. San Juan County, et al., SHB No. 89-63.

A request to extend a float dock because of tide problems on Friday Island already served by an additional "common access" dock is inconsistent with the long-term policy of avoiding "porcupine" docks and a denial of the request is proper.
Kettering v. San Juan County, SHB No. 89-10.

A properly conditioned 175 foot pier and boat-hoist with a 10 foot by 30 foot float attached where no environmental or visual impact will occur and no interference with navigational activities is shown in a rural community surrounding Driftwood Cove in Kitsap county and where KCSMMP allows piers and docks in the conservancy area, is a proper development under the master program and the Shorelines Management Act.
Mack, et al., v. Kitsap County and Deffenbaugh, SHB No. 87-35.

A fixed dock at the south end of Blakely Harbor in Kitsap County for recreational purposes is consistent with KSMP when properly conditioned.
Brennan v. Winningham and Kitsap County, SHB No. 89-40.

A marine railway system providing boat access to a lake is more in the nature of a launch rather than a dock or pier.
Moses v. Skagit County and Renner, SHB No. 90-7.

A small private moorage area on Port Ludlow Bay providing transient moorage for members and which is properly conditioned to prevent ecological damage is consistent with the statewide interest in providing increased navigation.
Seattle Yacht Club v. Jefferson County, et al., SHB No. 89-45.

See: SHB Nos. 13; 45; 81; 104; 129; 194; 202; 218; 242; 77-7; 79-16; 80-2; 81-25; 82-17; 82-46; 82-54.

8.8.16.Ports and Water-related Industry

A proposed marine terminal and appurtenant structures, whose purpose is to meet the increasing waterborne commerce, is a water-dependent use.
Department of Ecology and Attorney General v. City of Tacoma and Port of Tacoma, SHB No. 72.

An integrated floating water-based aircraft facility, located within an urban stable Lake Union designation, was a reasonable water-dependent use of the shoreline even though some parts of the facility could have been placed on land.
Seattle Shorelines Coalition, et al., v. City of Seattle and Airwest Airlines, Ltd., SHB No. 78-2.

A log export dock facility is a “preferred use” on the shorelines because it is a facility that is dependent upon a shoreline location. It is a “priority” use because it is a use specifically contemplated by the SMA and planned for in the master program.
Nisqually Delta Association, et al., v. City of Dupont, Department of Ecology, and Weyerhaeuser Company, SHB No. 81-8.

To accommodate the berthing of 15 Navy ships, 3,305,000 cubic yards of material is proposed for dredging in Everett on Port Gardner Bay. The material is proposed for disposal one and two-thirds miles away in 9,000 feet of water. The material would be "contaminated" due to prior practices in Port Gardner Bay. Therefore it would be capped with "clean" material to isolate it from the marine environment. Such capping can be done effectively (3 members conclude). Additional safeguards are feasible, practical and necessary to ensure compliance with the Shoreline Management Act (3 members conclude).
Friends of the Earth, et al., v. U.S. Navy, City of Everett and Department of Ecology, SHB No. 87-31 and 87-33.

The Alaska ferry terminal is a water dependent use and the associated restaurant is consistent with the Bellingham Master Program.
Concerned Southside Citizens v. City of Bellingham and Port of Bellingham, SHB No. 89-73.

A small scale restaurant and video arcade are necessary accessory uses to the Alaska ferry terminal.
Concerned Southside Citizens v. City of Bellingham and Port of Bellingham, SHB No. 89-73.

See: SHB Nos. 108; 115; 158; 216; 225.

8.8.17.Recreation

A well-planned marina, which greatly enhances the public’s right of navigation and facilitates public access to the shoreline through its fishing floats, camping facility and moorages, and which will be constructed in a manner that minimizes the adverse effect on the environment, is consistent with RCW 90.58.020.
Citizens Interested in LaConner v. Skagit County and Port of Skagit County, SHB No. 166.

A privately-owned campground on natural shorelines of statewide significance of the Skykomish River, which though not a water-dependent use is a priority recreational use, must promote a corresponding public interest. Where the permit was conditioned to ensure public access to the shoreline, the proposed development could become consistent with the SMA and master program.
Henderson v. Snohomish County and Barber, SHB No. 230.

The expansion of an existing campground was a permissible use of the shoreline where density would remain relatively low and where intensity of use and associated adverse impacts would be controlled through design and by permit conditions.
Pacific Rim Group, Inc.; Cottrell, et al., v. Skagit County, SHB No. 77-30.

A boating destination site consisting of two mooring buoys and rustic camping and picnic areas in "rural" and "aquatic" environment designations is consistent with master program provisions to provide for public access to shorelines on publicly owned lands and on shorelines of statewide significance.
Department of Natural Resources v. San Juan County, SHB No. 78-18.

A proposed 112 acre park near the Straits of Juan de Fuca, which includes a boardwalk over a marsh, interpretive signs, day use and campground facilities, is within the permitted uses set forth in the master program for a conservancy area. Such a development, which is conditioned to be designed and conducted in a manner to minimize any resultant damage to the environment of the shoreline area and provides for controlled public access to the shorelines would be consistent with the SMA.
Parks and Recreation Commission v. Island County and Wylde, SHB No. 79-23.

Proposed duck ponds for a private hunting club are appropriate developments in a conservancy environment under the master program as long as public access is allowed along the shoreline during the off-season.
Dungeness Farms Duck Club v. Clallam County, SHB No. 81-44.

A proposed link between two bicycle trails which would require the use of some fill to support paving and rip-rap near bridges is allowed as both a conditional use and variance in a conservancy environment under the master program and the SMA because the link will develop and improve public access to the shorelines.
Trudeau, et al., v. City of Bothell and King County, SHB No. 82-12.

A restroom and drainfield which are accessory to a private park providing shoreline recreation are consistent with the applicable master program.
Hansen v. Snohomish County and Thorp, SHB No. 86-26.

A pier on pilings extending from the bulkhead 135 feet into the water with an "L" at the waterward end of 20 feet and emanating from an unbuilt "recreation lot" on Mercer Island does not require a screening barrier.
Montgomery v. Mercer Island, SHB No. 87-17.

Five proposed trailer sites less than 50 feet from the ordinary high water mark of Liberty Lake are not entitled to a variance where 29 trailer were approved as being consistent with the 50 foot setback.
Dolphin v. Spokane County, SHB No. 87-37.

See: SHB Nos. 7; 13; 22; 30; 45; 97; 116; 123; 140; 181; 214; 225; 228; 240; 77-25.

8.8.18.Residential Development

A proposed single-family dwelling, to be constructed over a city water supply, could be practically located on the upland thereby eliminating a threat to the public water supply and damage to the shoreline environment.
Counter v. Whatcom County, SHB No. 8.

A proposed bulkhead and fill on second class natural tidelands of Hat Island for the purpose of creating land for homesites was inconsistent with the policy of the Act and Guidelines for bulkheads and fills.
Isaak, et al., v. Snohomish County, Department of Ecology and Attorney General, SHB No. 19.

A proposed commercial-residential complex to be constructed along a 75-foot cliff on leased waterfront property in Friday Harbor, whose design was modified to be consistent with the SMA, was a permitted use on the shorelines.
Citizens for the Responsible Development of the Port of Friday Harbor, Department of Ecology and Attorney General v. Town of Friday Harbor and Friday Harbor First Corporation, SHB No. 24.

Before a proposed condominium can be constructed on shorelines of statewide significance, it must be shown that overriding considerations of public interest will be served.
Department of Ecology and Attorney General v. City of Spokane and Pedco, SHB No. 33.

A proposed condominium development, which provides public access to the shorelines where none was available before, would increase the public's opportunity to enjoy the shorelines of the state and would thereby serve a public interest.
Davis, et al., v. City of Winslow and Amco Investments, Inc., Department of Ecology and Attorney General, SHB No. 114.

A landfill for construction sites is not an "over water" residential development within the meaning of WAC 173-16-060(8)(d).
Department of Ecology and Attorney General v. Chelan County and Smith, et al., SHB No. 151.

WAC 173-16-060(8)(e), which specifically addresses floating homes, does not prohibit floating homes in Portage Bay.
Portage Bay-Roanoke Park Community Council, et al., and Hurlbut v. City of Seattle, SHB No. 194.

The context for decision in a residential metropolitan area is different from that of a pristine area.
U.S. Coast Guard v. City of Seattle and Greengo, SHB No. 209.

A substantial development, which would allow up to 94 families to live on 35 acres on Lake Washington waterfront without adversely affecting view and aesthetics, nor would lead to pollution, and which would preserve and allow the passive enjoyment of an important marsh habitat, is a reasonable and appropriate use of the particular property which would protect and preserve the public's opportunity to enjoy the physical and aesthetic qualities of the shorelines.
Chumbley v. King County and Barron, SHB No. 224.

The proposed residential density for any shoreline site must be carefully evaluated in terms of the particular characteristics of the site and its environs. An excessive concentration of population and over-coverage of that portion of the land devoted to development would be detrimental to the shoreline environment.
Robinson v. City of Bremerton and Wowaras, et al., SHB No. 77-2.

A 144-unit residential complex, arranged in nine two-story buildings on 4.5 acres of land is an intensive residential development subject to WAC 173-16-060(8), the intent of such provision being to control intensive shoreline residential developments.
Id.

Public access provided by an apartment complex was not inadequate where access was allowed along the accessible portion of the shoreline and public access over the remaining area would be provided in the future.
Eastwood, Department of Ecology and Attorney General v. City of Bremerton and McConkey, SHB No. 77-31.

A small residential subdivision on fourteen acres which, with conditions, was consistent with master program provisions, and which would not pose a significant adverse effect to visiting eagles was entitled to a permit.
Department of Natural Resources and Lake Lawrence, Inc. v. Thurston County, SHB No. 77-37.

A proposed four story, 48 unit condominium on Lake Washington does not depend on the shoreline for its location. Such a development could be allowed under RCW 90.58.020 if some corresponding public benefit is provided. A pedestrian walkway, picnic areas and limited boat launching on the shoreline provides such public benefit.
Juanita Condominium Homeowner's Association and City of Kirkland v. King County and Salant, SHB No. 78-20.

A substantial development permit allowing the construction of a stairway over a steep slope and thereby providing shoreline access for a residential lot was not inconsistent with master program provisions which limited residential development on hazardous areas.
Clutter v. King County and Hicks, SHB No. 78-25.

A private single-family residence built completely on pilings over the tidelands was a substantial development not consistent with the urban residential environment of the master program because it would impair an unobstructed view and restrict the public right of navigation over the tidelands.
Kargianis v. Mason County and Department of Ecology, SHB No. 78-44.

Removal of vegetation within a shoreline setback area for a condominium is only allowable under a master program provision when the vegetation is replaced in a manner that results in improving the existing shoreline appearance and stability.
Protection for River and Inland Environment for Bothell v. City of Bothell and Bothell Station Development Corporation, SHB No. 79-10.

Although a master program setback requirement may interfere with an accessory use of residential property, such hardship resulted from the applicant's own action of constructing a pool in the 25 foot setback requirement.
Salant v. City of Normandy Park, SHB No. 79-22.

A 45 unit condominium development in an urban environment which is not dependent upon a shoreline location may be located thereon if a corresponding public benefit such as public access along the shoreline is provided.
Silver Lake Community Council v. City of Everett and Gabbert Association, SHB No. 80-4.

A provision in the master program referring to the "maritime" character of Salmon Beach houses related more to the over-the-water piling construction and water access than to the age, size, architecture and state of repair of the houses. The requirement that developments preserve and enhance the maritime character was met by a proposed three-story replacement residence whose design was not out of keeping with the existing houses and whose sewer system was required to eliminate discharges into the water.
Hanson, et al., v. Department of Ecology, SHB No. 80-14.

A variance from the master program's 20 foot shoreline setback requirement may be granted for a replacement residence under WAC 173-14-150(2) and the master program when topographic conditions cause strict application of the setback requirement to substantially interfere with a reasonable use of the lane, little view impairment would occur, and the residence would still be setback farther than the existing residence and several neighboring residences.
Castle v. King County, Department of Ecology and Knutzen, SHB No. 80-24.

A fence will not be allowed waterward of the ordinary high water mark because it is a non-water related intrusion which is useful only to prevent trespass and is not necessary to provide a reasonable use of the residential property. The cumulative effect of allowing many fences past the ordinary high water mark would be detrimental to the shoreline.
Madden v. Pierce County and Grenley, SHB No. 80-30.

Under the master program, the common line of neighboring structures with respect to residences does not include a picnic shelter. A permit for a residence proposed to be located forward of the common line of residences which would substantially reduce the view of neighboring structures should not have been granted.
Pavolka, et al., v. Mason County and Lincoln, SHB No. 81-46.

A structure designed for human habitation of a permanent nature is prohibited by the State Flood Control Zones Act, chapter 86.16 RCW, and is inconsistent with applicable provisions of the master program for that reason.
Millie and Pierce County v. Department of Ecology, SHB No. 86-9.

A landfill of 1600-2000 cubic yards at a cost of $10,000.00 is a shoreline substantial development. Landfill in a marsh is inconsistent with the Island County Shoreline Master Program. However, as to landfill outside of marshes, the master program limitation to water dependent use is inconsistent with the Shoreline Management Act since single family homes are entitled to such non-marsh fill also.
Hastings v. Island County and Department of Ecology, SHB No. 86-27.

Residential use is recognized in both the program and the SMA as an appropriate shoreline use, in many cases notwithstanding that it cannot, strictly speaking, be termed a water related use.
Posten v. Kitsap County and Stump, SHB No. 86-46.

A sundeck on the Puget Sound side of Day Island in Pierce County is not a "dock" or a "pier" and is prohibited because it's waterward of extreme high water mark. It may not be approved as a variance.
Picton v. Pierce County and Department of Ecology, SHB No. 86-58.

A residential deck, 18' x 24' (430 square feet) approximately 16 feet back from the ordinary high water mark of Budd Inlet in Thurston County is not entitled to a shoreline setback variance where the appellant is not precluded from a reasonable use of the property.
Slater v. Department of Ecology and Sceva, SHB No. 87-15.

A swimming pool, tennis court, fencing and light standards on Lake Washington must be set back 50 feet from the ordinary high water mark to minimize view impairment. The master program incorporates the zoning ordinance, in the Town of Yarrow Point.
Yule v. Yarrow Point, SHB No. 87-22.

Proposed fill for a condominium project on Lake Stevens is not allowed within associated wetlands, all filled wetland areas should be restored to their natural condition and an undeveloped buffer must be provided between the wetland boundaries and residential structures.
Gillett v. Snohomish County, SHB No. 87-25.

Water coverage and lot coverage requirements of Lake Union are met by houseboats and related improvements having a 50% lot coverage.
Seattle Shoreline Coalition v. Seattle, SHB No. 87-30.

A concrete bulkhead and 240 cubic yards of fill waterward of the ordinary high water mark (vegetation line) is inconsistent with the Island County Shoreline Master Program prohibition of fill on tidelands.
Reed and Newlin and Island County v. Department of Ecology, SHB No. 87-34.

A double-wide manufactured home set back less than 50 feet from the ordinary high water mark of the Little Spokane River is not entitled to a variance where its sanitary disposal system would adversely affect water quality.
Bell v. Spokane County, SHB No. 87-38.

An 88 unit apartment complex with off street parking which is separated from the Lewis River by a highway and seawall is a permitted use in the urban environment.
Cherry Blossom Lane v. City of Woodland, SHB No. 88-7.

A proposal to move a house to a point 36 feet from the ordinary high water mark is not entitled to a variance where the 50 foot setback significantly interferes with a reasonable use of the property due to unique topography.
Ysabel Jordan v. Skagit County and Dr. Harry Worley, SHB No. 88-18.

A shoreline substantial development permit is required for a separate studio building because the building is not specifically exempt under the San Juan County Shorelines Master Program.
Sacks and San Juan County v. DOE, SHB No. 89-38.

See: SHB Nos. 19; 41; 65; 90; 230; 250; 253; 259; 275; 228; 229; 231; 232; 237; 238; 77-10; 77-13; 77-18; 78-26; 79-13; 79-24; 79-35; 79-41; 79-44; 79-52; 80-26; 80-43; 81-37; 82-2; 82-6; 82-11; 82-17; 82-27; 82-41.

8.8.19.Road and Railroad Design and Construction

The proposed construction of a new railroad bridge and fill to replace an older bridge on shorelines facilitated a necessary transportation system and was in the long term public interest. Any minor detrimental environmental impacts were outweighed by the public benefit conferred.
Burlington Northern, Inc. v. Town of Steilacoom, SHB No. 40.

The proposed construction of a road alongside the Little Klickitat River, without any demonstrated effort to minimize adverse effects through alternatives or construction techniques, is inconsistent with the policy of the Act.
Department of Ecology and Attorney General v. Klickitat County and Morgan Ranch Investment Partnership, SHB No. 116.

A proposed logging road and bridge, to be constructed partly within and outside the shorelines of Calligan Lake, is subject, in its entirety, to the permit requirements of the SMA.
Weyerhaeuser Company v. King County, SHB No. 155.

Under the master program, a highway is a permitted use in a rural and conservancy environment when social, economic, environmental and engineering studies indicate a shoreline location to be the most feasible and when the requirements of a conditional use permit are met.
Wilcox, et al., v. Yakima County and Department of Highways, SHB No. 77-28.

A bridge repair is a "road" under the master program and logically includes landfills, bridges and similar appurtenances. However, regulations applying to the appurtenances may be considered insofar as they may be appropriate to the overall substantial development proposed.
Braget v. Pierce County, Department of Transportation, and Department of Ecology, SHB No. 79-54.

Under the master program, a minor intrusion of an access road onto a beach over an existing foot trail is permissible where "lesser streets" and "public access and devices" are permitted uses in a conservancy environment.
Miller v. Grays Harbor County, SHB No. 80-11.

A permit for residential road construction alongside a river is consistent with public access requirements if land between the river and the road is devoted to bank fishing which is the historical use of the area.
Currin v. King County, SHB No. 84-47.

Reconstruction of a one-half mile section of a county road, which carries 2,400 vehicles per day, with conditions to prevent bank erosion is consistent with the master program requirement of protection against erosion, excessive excavation and fills.
Brueher v. Grays Harbor County and Department of Ecology, SHB No. 85-7.

A road, some 15 feet wide, surfaced with gravel and serving a narrow strip of private land along a lake is consistent with the SMA and applicable master program.
Propst v. King County and Norquist, SHB No. 86-18.

Non-shoreline alternatives to a proposed shoreline highway were "feasible" and "desirable" and the proposed shoreline highway was therefore inconsistent with the Douglas County master program.
Washington Environmental Council v. Department of Transportation, SHB No. 86-34.

See: SHB Nos. 97; 142; 150; 166; 203; 225; 77-13; 80-17; 80-33.
See also index under "Bridges"

8.8.20.Shoreline Flood Protection

A flood control structure to be located and operated in an aquatic environment of Big Lake, which would create a significant risk to natural resources to a small corresponding benefit, was inconsistent with the conditional use provisions of the master program.
Skagit County v. Department of Ecology and Attorney General, SHB No. 78-1.

See: SHB Nos. 79; 83; 97; 103; 108; 159; 173; 228; 238; 82-52.

8.8.21.Solid Waste Disposal

The proposed disposal of cedar wastes in an ecologically fragile shoreline area of the Hoquiam River, which would degrade the environment and pollute the public waters, is not consistent with the policy of the SMA and the Guidelines for landfills and solid waste disposal.
Department of Ecology and Attorney General v. Grays Harbor County and Dineen Shake and Shingle, Inc., SHB No. 63.

Where the risks to the environment are too great, a non-water dependent use, such as a waste disposal site, will not be permitted adjacent to waterways.
Id.

The Guidelines prohibit the disposal of solid wastes within the shoreline area. However, a landfill placed on the shorelines in accordance with the Guidelines, and which would otherwise be consistent with the public interest and the policy of the Act, is permissible.
Yount and Department of Ecology and Attorney General v. Snohomish County and Hayes, SHB No. 108.

Absent a contrary definition in a state-approved master program, solid waste includes wood waste under the requirement of liberal construction of the provisions of the SMA. RCW 90.58.900. The prohibition of a solid waste disposal site by the master program in a rural or conservancy environment precluded the proposal to fill five to ten acres of wetland with wood waste.
Department of Ecology and Attorney General v. Pacific County and Canaduck, Ltd., SHB No. 79-40.

A conditional use permit will not be issued for a wood waste fill located on a shoreline of statewide significance because unconfined leachates from the wood adversely affect the water quality, marsh and aquatic life. These pollutants cause the proposed wood waste fills to be inconsistent with the policies of RCW 90.58.020, the master program and the public interest under WAC 173-14-140(1).
Daniels Cedar Products v. Department of Ecology, SHB No. 80-32.

Under the master program, wood waste may only be used for fill in an urban environment as a conditional use when the fill will not cause unreasonable adverse effects to the shoreline designation of its location and will not cause detrimental effects to the public interest. The leachate resulting from wood waste fill degrades water quality, harms aquatic and fish life and thus fails to meet the requirements of the SMA, WAC 173-14-140(1) or the master program.
Roderick Timber Company v. Department of Ecology, SHB No. 80-39.

See: SHB Nos. 78-28; 78-51; 79-18.

8.8.22.Subdivisions

Recreational subdivision of 5-acre tracts on the Cowlitz River is consistent with the SMA where the project is designed to retain the natural condition of the shoreline, and road construction is minimal, even though property is in a flood plain.
Baty v. Lewis County, SHB No. 97.

A subdivision of 79 acres of land of the Little Klickitat River into 31 lots whose access road causes an adverse effect to the land and its vegetation and without any effort to minimize the adverse effects is inconsistent with the Act.
Department of Ecology and Attorney General v. Klickitat County and Morgan Ranch Investment Partnership, SHB No. 116.

See: SHB Nos. 150; 194; 228; 230; 238; 77-25; 77-37; 79-31.

8.8.23.Utilities

Electrical overhead transmission lines may be placed within the shoreline area where there is demonstrated need for the service, where the cost of other alternatives is much higher than crossing through the shoreline area, and where there would be minimal damage to the aesthetic qualities of the shoreline area, such as scenic view.
Jaggard v. City of Vancouver and PUD #1 of Clark County, SHB No. 168.

An underground storm drainage pipe over a steep bank which would discharge onto crushed rock fill and over a shoreline covered with rip-rap into the Tacoma Narrows is a permitted shoreline development in a conservancy environment under the master program as long as the pipe will not cause a landslide or have a detrimental impact on water quality.
Echert v. City of Tacoma and Washington Services, Inc., SHB No. 80-19.

Under the provision of the master program, public access to the shorelines is desirable to the extent that such access is compatible with adjacent land use. When the solitude and privacy of an adjacent convent would be seriously intruded upon by the use of a public access trail over a public sewer outfall, such a trail should not be required.
Sisters of the Visitation, et al., v. King County, SHB No. 80-44.

See: SHB Nos. 170; 173; 183; 81-6; 82-37.

8.9.Penalties

The actions by a lot owner on Pilchuck Creek to rip-rap a portion of bank constituted unlawful substantial development inconsistent with the master program and justified the $1,000.00 civil penalty imposed.
Mose v. Department of Ecology, SHB No. 87-19.

The imposition of a civil penalty is upheld where a 6-foot opaque fence was built between the ordinary high water mark and a bluff, without a permit.
Reed and Newlin v. Island County and DOE, SHB No. 91-71.

The Shorelines Hearings Board has authority to review and mitigate penalties imposed by a county and DOE jointly for violation of the Shorelines Management Act and the County's Shorelines Master Program.
Dorsey v. Island County and DOE, SHB No. 89-72 and 90-12.

The Board's jurisdiction to review civil penalties only extends to penalties issued by DOE.
Worthington v. San Juan County and DOE, SHB No. 92-47.

Where the Shorelines Hearings Board reviews cases involving penalties for failure to comply with abatement orders the review is limited to determination by the Board if the orders were "necessary corrective actions" and were "appropriate cases" for corrective orders.
Mason County, et al., v. State of Washington and DOE, SHB No. 88-25, 88-31 and 88-36.

111

TABLE OF FINAL DECISIONS - *By Name*

	SHB No.
1901 Corporation and Ellis and Department of Ecology v. Town of Friday Harbor and Ziebell	84-10
4101 Beach Drive Homeowners Association v. City of Seattle and Department of Ecology	84-49
4101 Beach Drive Northeast Association v. King County and DOT	88-47
Ackerley Communications, Inc. v. King County	81-21
Adams v. City of Seattle, Department of Ecology and Attorney General	156
Alesse and Hansen v. Whatcom County and Mace	83-15
Alexander v. Clallam County and West	170
Allan v. King County and Department of Ecology	84-5
Allison Fairview Neighborhood Association v. City of Seattle and Jessup	205
Anthony and Friends of Bowerman Basin v. Hoquiam, Department of Ecology and Springer	84-52
Anthony v. City of Hoquiam and Department of Ecology	87-2
Association of Lake Roesiger Property Owners v. Snohomish County and Snohomish County PUD No. 1	91-78
Attorney General v. Grays Harbor County, Lindgren, and Department of Ecology	232
Attorney General v. Grays Harbor County, Slenes, and Department of Ecology	231
Babbitt, et al., v. Grant County, et al.	93-5
Babbitt, et al., v. Grant County, et al.	93-6
Babbitt, et al., v. Grant County, et al.	93-23
Ball v. City of Port Angeles and the Port of Port Angeles	107
Ballard Elks Lodge No. 827 v. City of Seattle, Department of Ecology and Attorney General	22
Barer and Morgan v. City of Seattle and DOE	91-58
Batchelder v. City of Seattle and Ainsle	92-10
Baty v. Lewis County	97
Beach Mining, Inc. v. Pacific County and Department of Fisheries	81-50
Bell v. Spokane County	87-38
Benton v. City of Seattle	175
BICC v. DOE, City of Winslow, and King	87-53
Bohannon and Yakima County v. Department of Ecology	79-38
Bonnie Sadleir-Orne v. City of Seattle; Department of Ecology; DNR; Port of Seattle and Miller	84-41
Brachvogel, et al., Department of Ecology and Attorney General v. Mason County and Twanoh Falls Beach Club, Inc.	140
Brachvogel, et al., v. Mason County and Twanoh Falls Beach Club, Inc.	45
Brachvogel, et al., v. Mason County and Twanoh Falls Beach Club, Inc.	189
Braget v. Pierce County, Department of Transportation, and Department of Ecology	79-54
Brennan v. Winningham and Kitsap County	89-40
Brocard v. San Juan County and Doe Bay Association, et al.	181
Brooks v. City of Issaquah and Pickering Park Associates	89-1
Brown v. Chelan County	80-18
Browne v. Pierce County, et al.	90-31
Brueher and Grays Harbor County v. Department of Ecology	79-18
Brueher v. Grays Harbor County and Department of Ecology	85-7
Brulotte, et al., v. Yakima County and Morris	137
Bryant v. San Juan County and Wareham	79-32
Bullitt, Ramamurti, et al., v. City of Seattle	81-29

TABLE OF FINAL DECISIONS - *By Name*

	SHB No.
Burlington Northern, Inc. v. Town of Steilacoom	40
Carlson, et al., v. Valley Ready Mix Concrete Company and Yakima County	223
Carr v. King County and Department of Ecology	82-11
Casey v. City of Tacoma	79-19
Castle v. King County, Department of Ecology and Knutzen	80-24
CFOG v. Skagit County and Department of Ecology	84-17
Champion v. Mason County and DOE	89-67
Cherry Blossom Lane v. City of Woodland	88-7
Chumbley v. King County and Barron	224
Citizens Committee, et al., v. Skagit County (Order)	93-14
Citizens for Responsible Courthouse Siting and Planning, et al., v. Thurston County Commissioners	212
Citizens for Sensible Residential Zoning, Inc. v. City of Bremerton and Weeks	79-35
Citizens for the Responsible Development of the Port of Friday Harbor, Department of Ecology and Attorney General v. Town of Friday Harbor and Friday Harbor First Corporation	24
Citizens Interested in LaConner v. Skagit County and Port of Skagit County	166
City of Marysville v. Department of Ecology	78-28
City of Seattle v. Department of Ecology	78-21
Clean-up South Sound, et al., v. Swecker, et al.	88-38
Clement v. Whatcom County and Water District No. 10	81-6
Cleven v. Island County, Department of Ecology and Attorney General	150
Clifford, et al., v. City of Renton and Boeing	92-52
Clifford, et al., v. City of Renton and Boeing	92-53
Clutter v. King County and Hicks	78-25
Committee of Concerned Citizens v. City of Seattle and Clark	89-69
Community Services Corporation v. Kitsap County, City of Winslow, et al.	82-17
Concerned Citizens of South Whidbey, et al., v. Island County and Milby	77-11
Concerned Southside Citizens v. City of Bellingham and Port of Bellingham	89-73
Concerned Women v. Arlington	92-3
Condominium Builders, Inc. v. City of Seattle and Lockhaven Marina, Inc.	85-19
Conner v. San Juan County	82-15
Conner v. San Juan County	83-48
Corder, et al., v. Department of Ecology	78-47
Corey, et al., v. Pierce County and Lake Tapps Island Estates, Inc.	42
Corning Land and Cattle Company v. Department of Ecology	80-1
Coughlin v. City of Seattle and Condominium Builders, Inc.	77-18
Counter v. Whatcom County	8
Crane v. King County and Department of Ecology	86-38
Cruver v. San Juan County and Webb	202
Currin v. King County	84-47
Dabroe v. King County, Department of Ecology, and Attorney General	106
Daniels Cedar Products v. Department of Ecology	80-32
Davis and Culbertson v. Hoover, et al.	89-59
Davis, et al., v. City of Winslow and Amco Investments, Inc., Department of Ecology and Attorney General	114
Day Island Community Club v. Pierce County	87-12
Dean, et al., and City of Bellevue v. Department of Ecology	79-16
Dean v. Jefferson County and DOE	92-4

TABLE OF FINAL DECISIONS - *By Name*

	SHB No.
DeMuth v. San Juan County, et al.	89-63
Department of Fisheries v. Mason County	82-52
Department of Fisheries v. Mason County	91-33
Department of Game v. Skagit County	240
Department of Natural Resources and Lake Lawrence, Inc. v. Thurston County	77-37
Department of Natural Resources, et al., v. Kitsap County	78-37
Department of Natural Resources v. Island County	77-8
Department of Natural Resources v. Mason County	83-17
Department of Natural Resources v. San Juan County	78-18
Divelbiss v. City of Seattle	79-44
DNR and Department of Fisheries v. Kitsap County, et al.	91-51
DOE v. City of Bellingham, et al.	89-2
DOE v. City of Issaquah and Samamish Development Company	89-35
Department of Ecology, et al., v. City of Anacortes and Anacortes-Fidalgo Bay Marina	81-23
Department of Ecology v. City of Tacoma and Barden	84-27
Department of Ecology v. Pierce County and Darrah	84-44
Department of Ecology v. Pierce County and Franklin	84-29
Department of Ecology v. Pierce County and Martel	84-26
Department of Ecology v. Pierce County and Wilson	84-54
Department of Ecology v. Pierce County; Murphy and Nelson	84-28
Department of Ecology v. Snohomish County, Hansen and McLeod	86-55
Department of Ecology v. Snohomish County, Hansen and McLeod	86-56
Department of Ecology and Attorney General, et al., v. City of Kirkland and Hadley	54
Department of Ecology and Attorney General v. Chelan County and Schmitten	65
Department of Ecology and Attorney General v. Chelan County and Smith, et al.	151
Department of Ecology and Attorney General v. City of Aberdeen and Forest Inv. Corporation	162
Department of Ecology and Attorney General v. City of Bellevue and Bellefield Development Company	77-13
Department of Ecology and Attorney General v. City of Kirkland and Bittman, Sanders, Hasson Corporation	3
Department of Ecology and Attorney General v. City of Poulsbo and Xenos	201
Department of Ecology and Attorney General v. City of Spokane and Pedco	33
Department of Ecology and Attorney General v. City of Tacoma and Port of Tacoma	72
Department of Ecology and Attorney General v. City of Tacoma and Port of Tacoma	75
Department of Ecology and Attorney General v. City of Tacoma, Port of Tacoma and Meaker	76
Department of Ecology and Attorney General v. Clallam County and Myers	159
Department of Ecology and Attorney General v. County of Snohomish and Rhodes	38
Department of Ecology and Attorney General v. Grays Harbor County and Dineen Shake and Shingle, Inc.	63
Department of Ecology and Attorney General v. Grays Harbor County and Ferguson	77
Department of Ecology and Attorney General v. Grays Harbor County and Welti	62-A
Department of Ecology and Attorney General v. Island County and Nichols Brothers Boat Builders, Inc.	216
Department of Ecology and Attorney General v. Island County and Penn Cove Association	16
Department of Ecology and Attorney General v. Kitsap County and Black	93
Department of Ecology and Attorney General v. Klickitat County and Morgan Ranch	116

TABLE OF FINAL DECISIONS - *By Name*

	SHB No.
Investment Partnership	
Department of Ecology and Attorney General v. Mason County and Bloom, et al.	153
Department of Ecology and Attorney General v. Mason County and Frint	128
Department of Ecology and Attorney General v. Mason County and Hama Hama Company	115
Department of Ecology and Attorney General v. Mason County and Krueger	90
Department of Ecology and Attorney General v. Mason County and Vincenzi	57
Department of Ecology and Attorney General v. Pacific County and Canaduck, Ltd.	79-40
Department of Ecology and Attorney General v. Sircovich	80-43
Department of Ecology and Attorney General v. Skagit County and Marine Construction and Dredging, Inc.	244
Department of Ecology and Attorney General v. Skagit County and Powers	238
Dolphin v. Spokane County	87-37
Donovan v. City of Tacoma and DOE	92-17
Doran v. Okanogan County	169
Dorsey v. Island County and DOE	89-72
Dorsey v. Island County and DOE	90-12
Drake v. Mason County and Department of Ecology	83-4
Dungeness Farms Duck Club v. Clallam County	81-44
East Lake Washington Audubon Society v. King County and Bayview on the Lake Condominium Association	82-31
Eastlake Community Council, et al., v. City of Seattle, et al.	90-8
Eastlake Community Council, et al., v. City of Seattle, et al.	90-9
Eastwood, Department of Ecology and Attorney General v. City of Bremerton and McConkey	77-31
Echert v. City of Tacoma and Washington Services, Inc.	80-19
Eickhoff v. Thurston County and Zittel's Marina, Inc.	104
Eldridge, et al., v. City of Stanwood	91-62
Eldridge, et al., v. City of Stanwood	91-70
Elliott v. King County and Jeffress	85-35
Engberg v. Skagit County and DOE	90-38
English Bay Enterprises, Ltd. v. Island County and Save Susan Bay Commission, et al.	185
Erickson v. City of Redmond	86-61
Evergreen Islands v. City of Anacortes, et al. (Order)	91-39
Evergreen Rock Products v. Grays Harbor County and Department of Ecology	85-29
Farrell v. City of Seattle, Department of Ecology and Henney	88-34
Fisher Company v. King County and, Moines Sewer District, Department of Ecology, and Attorney General	183
Fleischmann v. Pierce County	77-16
Flynn, et al., v. City of Kirkland, Department of Ecology, and Columbia Custom Homes, Inc.	78-30
Foulks v. King County and Department of Transportation	80-17
Franzen and Tulalip Tribes v. Snohomish County, BCE Development, Inc., and Department of Ecology	87-6
Friends of the Columbia Gorge v. Skamania County and Jung Trust	84-57
Friends of the Columbia Gorge v. Skamania County and Jung Trust	84-60
Friends of the Earth, et al., v. U.S. Navy, City of Everett and Department of Ecology	87-31
Friends of the Earth v. City of Westport, Port of Grays Harbor and Department of Ecology	84-63

TABLE OF FINAL DECISIONS - *By Name*

	SHB No.
Front Street Inn v. Friday Harbor	87-27
Gambriell v. Mason County and DOE	91-26
Gillett v. Snohomish County	87-25
Gislason v. Town of Friday Harbor	81-22
Good v. Pacific County and DOE (Order)	93-7
Goodman v. City of Spokane, City of Spokane Parks and Recreation Department, Department of Ecology and Attorney General	214
Graham v. Snohomish County	85
Greater Duwamish Neighborhood Council v. City of Seattle, et al.	89-25
Green v. City of Bremerton	79-29
Green v. City of Bremerton and Department of Ecology	81-37
Griggs and Thurston County v. Department of Ecology	83-31
Groeneveld v. Snohomish County	86-17
Groenig, et al., v. City of Yakima, et al.	92-30
Groenig, et al., v. City of Yakima, et al.	92-31
Haggard v. City of Everett and Port of Everett	74
Haggard v. City of Everett and Schmelzer	67
Hansen v. Snohomish County and Thorp	86-26
Hanson, et al., v. Department of Ecology	80-14
Hart v. San Juan County	83-7
Hastings v. Island County and Department of Ecology	86-27
Hell v. King County	79-13
Henderson v. Snohomish County and Barber	230
Hildahl v. City of Steilacoom and Burlington Northern Railroad	80-33
Hill v. Department of Ecology	77-38
Holbrook v. Mason County and Jones	83-12
Holland v. Kitsap County and Yukon Harbor Concerned Citizens	86-22
Holmes Harbor Homeowners Association v. Nichols Brothers Boat Builders, Inc., Island County and Department of Ecology	83-6
Hoschek v. City of Mercer Island and DOE	91-42
Houghtelling v. Mason County, et al.	90-50
Houghton v. Mason County, Nilsson and Department of Ecology	84-56
Howe v. King County	86-48
Howell, et al., v. City of Kelso	77-23
Howell v. City of Kelso and Strader	229
Hubman v. King County and DOE	91-40
Hurlen v. Chelan County, et al.	90-22
Hutchins v. City of Seattle and Lee	91-69
Isaak, et al., v. Snohomish County, Department of Ecology and Attorney General	19
Jaggard v. City of Vancouver and PUD #1 of Clark County	168
Jamestown Klallam Tribe, et al., v. Clallam County	88-4
Jamestown Klallam Tribe, et al., v. Clallam County (Order)	88-5
Johnson and Mason County v. Department of Ecology	79-52
Juanita Condominium Homeowner's Association and City of Kirkland v. King County and Salant	78-20
Kaeser Company v. King County	79
Kargianis v. Mason County and Department of Ecology	78-44
Keating and Fujii v. City of Seattle and DOE	91-10
Kettering v. San Juan County	89-10

TABLE OF FINAL DECISIONS - *By Name*

	SHB No.
King County Chapter, Washington Environmental Council, et al., v. City of Seattle; Department of Highways	11
Kitsap Audubon Society, et al., v. Kitsap County, et al.	92-19
Kitsap County v. Department of Ecology and Willing	83-18
Knapp v. Kitsap County and Hammer	85-17
Kooley and Pierce County v. Department of Ecology	218
Kurd and Johnsrud v. City of Seattle and DOE	89-26
Kuzmick v. City of Redmond, et al.	173
Labusohr v. King County and Department of Ecology	84-62
Lane v. Town of Gig Harbor	129
Larkin and Names v. Department of Ecology	84-21
Larrance v. Jefferson County and DOE	92-49
Larson v. Mason County	88-15
Lassiter v. Kitsap County	86-23
LaValley and City of Seattle v. Department of Ecology	78-7
League of Women Voters, et al., v. King County, et al.	13
Limantzakis v. City of Seattle	78-10
Linenschmidt v. City of Seattle	177
Lundstad, et al., v. City of Westport and Bowe	82-2
Lundstad v. City of Westport and Bowe	83-51
MacDonald v. Island County	80-29
Mack, et al., v. Kitsap County and Deffenbaugh	87-35
Madden, et al., v. Town of LaConner and Gable	78-35
Madden v. Pierce County and Grenley	80-30
Maloney, et al., and Seattle-First National Bank v. City of Seattle	190
Manasco v. City of Kelso and Department of Transportation	78-31
Manette Peninsula Neighborhood Association v. City of Bremerton and Person	237
Marine Power and Equipment Company, Inc. v. City of Seattle	80-40
Mason County, et al., v. State of Washington and DOE	88-25
Mason County, et al., v. State of Washington and DOE	88-31
Mason County, et al., v. State of Washington and DOE	88-36
Massey v. Island County	80-3
McCann, et al., Department of Ecology and Attorney General v. Jefferson County and Pleasant Tides Properties	144
McKee v. Chelan County	86-28
McMillan, et al., v. Kitsap County and Port of Kingston	152
Mentor v. Kitsap County and Larson	77-39
Mentor v. Kitsap County and Larson, et al.	78-27
Merlino v. San Juan County	83-28
Miller v. Grays Harbor County	80-11
Millie and Pierce County v. Department of Ecology	86-9
Mineral Heights Association, Inc. v. San Juan County and Mineral Point Community Club	77-25
Moe and Grays Harbor County v. Department of Ecology	78-15
Mohr v. King County and Lohse	82-27
Monsanto Industrial Chemicals Company v. King County and Johnson	80-48
Montgomery v. Mercer Island	87-17
Moore v. City of Seattle and Kingen	204
Morris, et al., v. Town of Gig Harbor	81

TABLE OF FINAL DECISIONS - *By Name*

	SHB No.
Morris v. Yakima County and Brulette	142
Morrison v. City of Seattle and Low	120
Mose v. Department of Ecology	87-19
Moses v. Skagit County and Renner	90-7
Murray v. Jefferson County and Jefferson County Conservancy	81-14
Neilson v. City of Seattle Condominium Builders and Lockhaven Marina	85-3
Nelson v. Department of Ecology and Fuller	79-11
Newlin v. Island County and Costello	79-31
Nichols, et al., v. Department of Ecology and Knight	81-5
Nisqually Delta Association, et al., v. City of Dupont, Department of Ecology, and Weyerhaeuser Company	81-8
Northey v. Pierce County and Marshall	84-6
Northlake Marine Works v. City of Seattle and Lake Washington Rowing Club	92-16
Northrop v. Klickitat County and DOE	92-40
Northwest Seafarms v. Whatcom County and DOE	89-76
Oliver v. King County	80-26
Orme v. Metro and City of Seattle (Order)	91-8
Osborne v. Mason County	88-37
Owens v. City of Mercer Island	91-81
Pacific Northern Oil v. City of Port Angeles, Department of Ecology and Crown Zellerbach Corporation, et al.	83-20
Pacific Rim Group, Inc., Cottrell, et al., v. Skagit County	77-30
Pappetti v. Whatcom County and Department of Ecology	86-7
Parker and Mason County v. Department of Ecology	82-41
Parks and Recreation Commission v. Island County and Wylde	79-23
Pavolka, et al., v. Mason County and Lincoln	81-46
Penn Cove Seafarms, Inc. and Department of Ecology v. Island County and Hofstrand	84-4
Perry v. Kitsap County	92-2
Persson v. Grays Harbor County and Department of Ecology	86-12
Picton v. Pierce County and Department of Ecology	86-58
Pier 67, Inc., v. City of Seattle	81-13
Plimpton v. King County and Department of Ecology	84-23
Port of Allyn v. Mason County	82-32
Port of Friday Harbor and Mercer v. The Town of Friday Harbor and Friday House Partnership	90-20
Port of Friday Harbor and Mercer v. The Town of Friday Harbor and Friday House Partnership	90-21
Port of Kingston v. Kitsap County	91-43
Portage Bay-Roanoke Park Community Council, et al., and Hurlbut v. City of Seattle	194
Posten v. Kitsap County and Stump	86-46
Propst v. King County and Norquist	86-18
Protect the Peninsula's Future v. Clallam County and Port of Port Angeles	82-7
Protect the Peninsula's Future v. Clallam County and City of Sequim	89-58
Protection for River and Inland Environment for Bothell v. City of Bothell and Bothell Station Development Corporation	79-10
PROW, et al., v. City of Olympia, Port of Olympia, et al.	225
Puget Sound Mussells, Inc. and DNR v. Kitsap County	90-59
Quinn v. Island County and Patton, et al.	79-24
Reed and Newlin and Island County v. Department of Ecology	87-34

TABLE OF FINAL DECISIONS - *By Name*

	SHB No.
Reed and Newlin v. Island County and DOE	91-71
Reed and Newlin v. Island County and DOE	93-41
Reierson, et al., v. Chelan County and McClosky's Cove Marina	82-50
Renkel v. Mason County and Department of Ecology	85-6
Riley and Thurston County v. Department of Ecology	78-45
Risk v. Island County and Island Sea Farms, Inc.	86-49
Risk v. Island County and Island Sea Farms, Inc.	86-50
Robinson v. City of Bremerton and Wowaras, et al.	77-2
Robson v. Mason County	79-3
Roderick Timber Company v. Department of Ecology	80-39
Roeben v. Ferry County and DOE	90-23
Rosario Property Owners v. Carlton and San Juan County	90-66
Sacks and San Juan County v. DOE	89-38
Salant v. City of Normandy Park	79-22
Sato Corporation v. City of Olympia	81-41
Save Flounder Bay, et al., v. City of Anacortes and Mousel	81-15
Save Flounder Bay, et al., v. City of Anacortes and Skyline Marina, Inc.	81-26
Save Our Sound Citizen's Committee v. King County and American Sea Vegetable Company	82-51
Save Port Susan Committee v. Department of Ecology and Sea Harvest Corporation	82-38
SAVE v. City of Bothell and Department of Ecology	85-39
SAVE v. City of Bothell; The Koll Company and Department of Ecology	82-29
SAVE v. Koll Company	81-27
Schall and Mason County v. Department of Ecology	78-26
Schrick, et al., v. Chelan County, et al.	91-4
Schumsky v. Mason County and Department of Ecology	83-11
Scott Paper Company v. Whatcom County	88-20
Sea Harvest Corporation v. Island County	83-3
Sea Harvest Corporation v. Snohomish County	82-39
Seattle Audubon Society, et al., v. King County	59
Seattle Shoreline Coalition v. Seattle	87-30
Seattle Shorelines Coalition, et al., v. City of Seattle and Airwest Airlines, Ltd.	78-2
Seattle Shorelines Coalition, et al., v. City of Seattle and H.C. Henry Pier Company, et al.	82-46
Seattle Shorelines Coalition v. City of Seattle, Department of Ecology and Dennis	79-41
Seattle Yacht Club v. Jefferson County, et al.	89-45
Seawall Construction, et al., v. King County	90-51
Seawall Construction, et al., v. King County	90-52
Severns v. City of Seattle and DOE	91-30
Severns v. Department of Ecology	80-2
Silver Lake Action Committee v. City of Everett, et al.	88-59
Silver Lake Community Council v. City of Everett and Gabbert Association	80-4
Simchuck and Pierce County v. Department of Ecology and Stottenberg	84-64
Sisley, et al., v. San Juan County and Carpenter	79-5
Sisters of the Visitation, et al., v. King County	80-44
Skagit County v. Department of Ecology and Attorney General	78-1
Skagit River League, et al., v. Skagit County and Valleys West	228
Skagit System Cooperative v. Skagit County and DOE	88-14
Slater v. Department of Ecology and Sceva	87-15
Smith, Department of Ecology and Attorney General v. City of Seattle and New England	158

TABLE OF FINAL DECISIONS - *By Name*

	SHB No.
Fish Company	
Smith v. Department of Ecology	79-15
Society of St. Vincent de Paul v. City of Seattle	227
South Point Coalition v. Jefferson County	86-47
Spencer and Pierce County v. Department of Ecology	242
Sperry Ocean Dock and DNR v. City of Tacoma, et al.	89-4
Sperry Ocean Dock and DNR v. City of Tacoma, et al.	89-7
Spoerl v. City of Seattle	79-43
State Investors, Inc. v. City of Redmond	83
Steinman v. City of Seattle	29
Stephanus v. City of Seattle	83-49
Stephens and Meilleur v. Yakima County; Department of Ecology and Whistlin' Jack Lodge, Inc.	84-35
Strand v. Snohomish County and Department of Ecology	85-4
Stump v. Kitsap County and Posten	84-53
Swinge v. Town of Friday Harbor	84-31
Tailfin, Inc. v. Skagit County and Department of Ecology	86-29
Tarabochia, et al., v. Town of Gig Harbor, et al.	77-7
Taylor v. City of Langley and Schell	93-39
Tenley v. Chelan County and Department of Ecology	78-51
The Board Yard v. City of Seattle and Department of Ecology	86-10
The Other Side of the Tracks v. Sumner	84-9
Thomas v. Mason County, Department of Ecology and Debban	81-3
Toandos v. Jefferson County, et al., (Summary Judgment Order)	94-45
Toandos v. Jefferson County, et al., (Summary Judgment Order)	94-51
Trask v. City of Winslow	248
Trudeau, et al., v. City of Bothell and King County	82-12
Truly v. King County	88-3
Tulalip Tribes of Washington v. City of Everett and Department of Ecology	87-33
Tulalip Tribes v. Snohomish County	87-5
Tunny v. Hopkins, et al.	93-3
Twin Rivers, Inc. v. Clallam County	77-41
U.S. Coast Guard v. City of Seattle and Greengo	209
Valley Ready Mix Concrete Company and Yakima County v. Department of Ecology and Carlson, et al.	80-37
Van Handel v. City of Mercer Island and Dorsey	141
Wallingford Community Council, Inc., et al., v. City of Seattle, et al.	203
Warner, et al., v. Department of Ecology	78-49
Washington Department of Transportation v. Lake Forest Park	87-50
Washington Environmental Council v. Department of Transportation	86-34
Washington State Parks and Recreation Commission v. City of Mukilteo	7
Washington State Parks and Recreation Commission v. San Juan County	123
Weinberg v. Whatcom County and DOE	93-2
Welchko, et al., v. City of Anacortes and Skyline Marina, Inc.	79-45
Wells, et al., v. DOE, et al.	90-10
Wesson v. Whatcom County	239
West Sound Marina v. San Juan County	84-2
Westlake Houseboat Owners v. Seattle, et al.	88-44
Weyerhaeuser Company v. King County	155

TABLE OF FINAL DECISIONS - *By Name*

	SHB No.
Whatcom County Water District #10 and Sun Valley Community Association v. Whatcom County, et al.	92-41
Whittle v. City of Westport and Bowe	81-10
Wilcox, et al., v. Yakima County and Department of Highways	77-28
Williams and Chelan County v. Department of Ecology	78-33
Wilson v. Mason County and Department of Ecology	85-8
Wiswall v. Clark County and DOE	90-37
Wolfsehr, et al., Department of Ecology and Attorney General v. Kittitas County and Keating	103
Worthington v. San Juan County and DOE	92-47
Wright and Mason County v. Department of Ecology	83-52
Wyrot v. King County and Williams	83-53
Yount and Department of Ecology and Attorney General v. Snohomish County and Hayes	108
Ysabel Jordan v. Skagit County and Dr. Harry Worley	88-18
Yule v. Yarrow Point	87-22

122

TABLE OF FINAL DECISIONS - *By Case Number*

SHB No.	
3	Department of Ecology and Attorney General v. City of Kirkland and Bittman, Sanders, Hasson Corporation
7	Washington State Parks and Recreation Commission v. City of Mukilteo
8	Counter v. Whatcom County
11	King County Chapter, Washington Environmental Council, et al., v. City of Seattle; Department of Highways
13	League of Women Voters, et al., v. King County, et al.
16	Department of Ecology and Attorney General v. Island County and Penn Cove Association
19	Isaak, et al., v. Snohomish County, Department of Ecology and Attorney General
22	Ballard Elks Lodge No. 827 v. City of Seattle, Department of Ecology and Attorney General
24	Citizens for the Responsible Development of the Port of Friday Harbor, Department of Ecology and Attorney General v. Town of Friday Harbor and Friday Harbor First Corporation
29	Steinman v. City of Seattle
33	Department of Ecology and Attorney General v. City of Spokane and Pedco
38	Department of Ecology and Attorney General v. County of Snohomish and Rhodes
40	Burlington Northern, Inc. v. Town of Steilacoom
42	Corey, et al., v. Pierce County and Lake Tapps Island Estates, Inc.
45	Brachvogel, et al., v. Mason County and Twanoh Falls Beach Club, Inc.
54	Department of Ecology and Attorney General, et al., v. City of Kirkland and Hadley
57	Department of Ecology and Attorney General v. Mason County and Vincenzi
59	Seattle Audubon Society, et al., v. King County
62-A	Department of Ecology and Attorney General v. Grays Harbor County and Welti
63	Department of Ecology and Attorney General v. Grays Harbor County and Dineen Shake and Shingle, Inc.
65	Department of Ecology and Attorney General v. Chelan County and Schmitten
67	Haggard v. City of Everett and Schmelzer
72	Department of Ecology and Attorney General v. City of Tacoma and Port of Tacoma
74	Haggard v. City of Everett and Port of Everett
75	Department of Ecology and Attorney General v. City of Tacoma and Port of Tacoma
76	Department of Ecology and Attorney General v. City of Tacoma, Port of Tacoma and Meaker
77	Department of Ecology and Attorney General v. Grays Harbor County and Ferguson
79	Kaeser Company v. King County
81	Morris, et al., v. Town of Gig Harbor
83	State Investors, Inc. v. City of Redmond
85	Graham v. Snohomish County
90	Department of Ecology and Attorney General v. Mason County and Krueger
93	Department of Ecology and Attorney General v. Kitsap County and Black
97	Baty v. Lewis County
103	Wolfsehr, et al., Department of Ecology and Attorney General v. Kittitas County and Keating
104	Eickhoff v. Thurston County and Zittel's Marina, Inc.
106	Dabroe v. King County, Department of Ecology, and Attorney General
107	Ball v. City of Port Angeles and the Port of Port Angeles
108	Yount and Department of Ecology and Attorney General v. Snohomish County and Hayes

SHB No.	
114	Davis, et al., v. City of Winslow and Amco Investments, Inc., Department of Ecology and Attorney General
115	Department of Ecology and Attorney General v. Mason County and Hama Hama Company
116	Department of Ecology and Attorney General v. Klickitat County and Morgan Ranch Investment Partnership
120	Morrison v. City of Seattle and Low
123	Washington State Parks and Recreation Commission v. San Juan County
128	Department of Ecology and Attorney General v. Mason County and Frint
129	Lane v. Town of Gig Harbor
137	Brulotte, et al., v. Yakima County and Morris
140	Brachvogel, et al., Department of Ecology and Attorney General v. Mason County and Twanoh Falls Beach Club, Inc.
141	Van Handel v. City of Mercer Island and Dorsey
142	Morris v. Yakima County and Brulette
144	McCann, et al., Department of Ecology and Attorney General v. Jefferson County and Pleasant Tides Properties
150	Cleven v. Island County, Department of Ecology and Attorney General
151	Department of Ecology and Attorney General v. Chelan County and Smith, et al.
152	McMillan, et al., v. Kitsap County and Port of Kingston
153	Department of Ecology and Attorney General v. Mason County and Bloom, et al.
155	Weyerhaeuser Company v. King County
156	Adams v. City of Seattle, Department of Ecology and Attorney General
158	Smith, Department of Ecology and Attorney General v. City of Seattle and New England Fish Company
159	Department of Ecology and Attorney General v. Clallam County and Myers
162	Department of Ecology and Attorney General v. City of Aberdeen and Forest Inv. Corporation
166	Citizens Interested in LaConner v. Skagit County and Port of Skagit County
168	Jaggard v. City of Vancouver and PUD #1 of Clark County
169	Doran v. Okanogan County
170	Alexander v. Clallam County and West
173	Kuzmick v. City of Redmond, et al.
175	Benton v. City of Seattle
177	Linenschmidt v. City of Seattle
181	Brocard v. San Juan County and Doe Bay Association, et al.
183	Fisher Company v. King County and, Moines Sewer District, Department of Ecology, and Attorney General
185	English Bay Enterprises, Ltd. v. Island County and Save Susan Bay Commission, et al.
189	Brachvogel, et al., v. Mason County and Twanoh Falls Beach Club, Inc.
190	Maloney, et al., and Seattle-First National Bank v. City of Seattle
194	Portage Bay-Roanoke Park Community Council, et al., and Hurlbut v. City of Seattle
201	Department of Ecology and Attorney General v. City of Poulsbo and Xenos
202	Cruver v. San Juan County and Webb
203	Wallingford Community Council, Inc., et al., v. City of Seattle, et al.
204	Moore v. City of Seattle and Kingen
205	Allison Fairview Neighborhood Association v. City of Seattle and Jessup
209	U.S. Coast Guard v. City of Seattle and Greengo
212	Citizens for Responsible Courthouse Siting and Planning, et al., v. Thurston County

SHB No.	
	Commissioners
214	Goodman v. City of Spokane, City of Spokane Parks and Recreation Department, Department of Ecology and Attorney General
216	Department of Ecology and Attorney General v. Island County and Nichols Brothers Boat Builders, Inc.
218	Kooley and Pierce County v. Department of Ecology
223	Carlson, et al., v. Valley Ready Mix Concrete Company and Yakima County
224	Chumbley v. King County and Barron
225	PROW, et al., v. City of Olympia, Port of Olympia, et al.
227	Society of St. Vincent de Paul v. City of Seattle
228	Skagit River League, et al., v. Skagit County and Valleys West
229	Howell v. City of Kelso and Strader
230	Henderson v. Snohomish County and Barber
231	Attorney General v. Grays Harbor County, Slenes, and Department of Ecology
232	Attorney General v. Grays Harbor County, Lindgren, and Department of Ecology
237	Manette Peninsula Neighborhood Association v. City of Bremerton and Person
238	Department of Ecology and Attorney General v. Skagit County and Powers
239	Wesson v. Whatcom County
240	Department of Game v. Skagit County
242	Spencer and Pierce County v. Department of Ecology
244	Department of Ecology and Attorney General v. Skagit County and Marine Construction and Dredging, Inc.
248	Trask v. City of Winslow
77-2	Robinson v. City of Bremerton and Wowaras, et al.
77-7	Tarabochia, et al., v. Town of Gig Harbor, et al.
77-8	Department of Natural Resources v. Island County
77-11	Concerned Citizens of South Whidbey, et al., v. Island County and Milby
77-13	Department of Ecology and Attorney General v. City of Bellevue and Bellefield Development Company
77-16	Fleischmann v. Pierce County
77-18	Coughlin v. City of Seattle and Condominium Builders, Inc.
77-23	Howell, et al., v. City of Kelso
77-25	Mineral Heights Association, Inc. v. San Juan County and Mineral Point Community Club
77-28	Wilcox, et al., v. Yakima County and Department of Highways
77-30	Pacific Rim Group, Inc., Cottrell, et al., v. Skagit County
77-31	Eastwood, Department of Ecology and Attorney General v. City of Bremerton and McConkey
77-37	Department of Natural Resources and Lake Lawrence, Inc. v. Thurston County
77-38	Hill v. Department of Ecology
77-39	Mentor v. Kitsap County and Larson
77-41	Twin Rivers, Inc. v. Clallam County
78-1	Skagit County v. Department of Ecology and Attorney General
78-2	Seattle Shorelines Coalition, et al., v. City of Seattle and Airwest Airlines, Ltd.
78-7	LaValley and City of Seattle v. Department of Ecology
78-10	Limantzakis v. City of Seattle
78-15	Moe and Grays Harbor County v. Department of Ecology
78-18	Department of Natural Resources v. San Juan County
78-20	Juanita Condominium Homeowner's Association and City of Kirkland v. King County

SHB No.	
	and Salant
78-21	City of Seattle v. Department of Ecology
78-25	Clutter v. King County and Hicks
78-26	Schall and Mason County v. Department of Ecology
78-27	Mentor v. Kitsap County and Larson, et al.
78-28	City of Marysville v. Department of Ecology
78-30	Flynn, et al., v. City of Kirkland, Department of Ecology, and Columbia Custom Homes, Inc.
78-31	Manasco v. City of Kelso and Department of Transportation
78-33	Williams and Chelan County v. Department of Ecology
78-35	Madden, et al., v. Town of LaConner and Gable
78-37	Department of Natural Resources, et al., v. Kitsap County
78-44	Kargianis v. Mason County and Department of Ecology
78-45	Riley and Thurston County v. Department of Ecology
78-47	Corder, et al., v. Department of Ecology
78-49	Warner, et al., v. Department of Ecology
78-51	Tenley v. Chelan County and Department of Ecology
79-3	Robson v. Mason County
79-5	Sisley, et al., v. San Juan County and Carpenter
79-10	Protection for River and Inland Environment for Bothell v. City of Bothell and Bothell Station Development Corporation
79-11	Nelson v. Department of Ecology and Fuller
79-13	Hell v. King County
79-15	Smith v. Department of Ecology
79-16	Dean, et al., and City of Bellevue v. Department of Ecology
79-18	Brueher and Grays Harbor County v. Department of Ecology
79-19	Casey v. City of Tacoma
79-22	Salant v. City of Normandy Park
79-23	Parks and Recreation Commission v. Island County and Wylde
79-24	Quinn v. Island County and Patton, et al.
79-29	Green v. City of Bremerton
79-31	Newlin v. Island County and Costello
79-32	Bryant v. San Juan County and Wareham
79-35	Citizens for Sensible Residential Zoning, Inc. v. City of Bremerton and Weeks
79-38	Bohannon and Yakima County v. Department of Ecology
79-40	Department of Ecology and Attorney General v. Pacific County and Canaduck, Ltd.
79-41	Seattle Shorelines Coalition v. City of Seattle, Department of Ecology and Dennis
79-43	Spoerl v. City of Seattle
79-44	Divelbiss v. City of Seattle
79-45	Welchko, et al., v. City of Anacortes and Skyline Marina, Inc.
79-52	Johnson and Mason County v. Department of Ecology
79-54	Braget v. Pierce County, Department of Transportation, and Department of Ecology
80-1	Corning Land and Cattle Company v. Department of Ecology
80-2	Severns v. Department of Ecology
80-3	Massey v. Island County
80-4	Silver Lake Community Council v. City of Everett and Gabbert Association
80-11	Miller v. Grays Harbor County
80-14	Hanson, et al., v. Department of Ecology
80-17	Foulks v. King County and Department of Transportation

TABLE OF FINAL DECISIONS - *By Case Number*

SHB No.	
80-18	Brown v. Chelan County
80-19	Echert v. City of Tacoma and Washington Services, Inc.
80-24	Castle v. King County, Department of Ecology and Knutzen
80-26	Oliver v. King County
80-29	MacDonald v. Island County
80-30	Madden v. Pierce County and Grenley
80-32	Daniels Cedar Products v. Department of Ecology
80-33	Hildahl v. City of Steilacoom and Burlington Northern Railroad
80-37	Valley Ready Mix Concrete Company and Yakima County v. Department of Ecology and Carlson, et al.
80-39	Roderick Timber Company v. Department of Ecology
80-40	Marine Power and Equipment Company, Inc. v. City of Seattle
80-43	Department of Ecology and Attorney General v. Sircovich
80-44	Sisters of the Visitation, et al., v. King County
80-48	Monsanto Industrial Chemicals Company v. King County and Johnson
81-3	Thomas v. Mason County, Department of Ecology and Debban
81-5	Nichols, et al., v. Department of Ecology and Knight
81-6	Clement v. Whatcom County and Water District No. 10.
81-8	Nisqually Delta Association, et al., v. City of Dupont, Department of Ecology, and Weyerhaeuser Company
81-10	Whittle v. City of Westport and Bowe
81-13	Pier 67, Inc., v. City of Seattle
81-14	Murray v. Jefferson County and Jefferson County Conservancy
81-15	Save Flounder Bay, et al., v. City of Anacortes and Mousel
81-21	Ackerley Communications, Inc. v. King County
81-22	Gislason v. Town of Friday Harbor
81-23	Department of Ecology, et al., v. City of Anacortes and Anacortes-Fidalgo Bay Marina
81-26	Save Flounder Bay, et al., v. City of Anacortes and Skyline Marina, Inc.
81-27	SAVE v. Koll Company
81-29	Bullitt, Ramamurti, et al., v. City of Seattle
81-37	Green v. City of Bremerton and Department of Ecology
81-41	Sato Corporation v. City of Olympia
81-44	Dungeness Farms Duck Club v. Clallam County
81-46	Pavolka, et al., v. Mason County and Lincoln
81-50	Beach Mining, Inc. v. Pacific County and Department of Fisheries
82-2	Lundstad, et al., v. City of Westport and Bowe
82-7	Protect the Peninsula's Future v. Clallam County and Port of Port Angeles
82-11	Carr v. King County and Department of Ecology
82-12	Trudeau, et al., v. City of Bothell and King County
82-15	Conner v. San Juan County
82-17	Community Services Corporation v. Kitsap County, City of Winslow, et al.
82-27	Mohr v. King County and Lohse
82-29	SAVE v. City of Bothell; The Koll Company and Department of Ecology
82-31	East Lake Washington Audubon Society v. King County and Bayview on the Lake Condominium Association
82-32	Port of Allyn v. Mason County
82-38	Save Port Susan Committee v. Department of Ecology and Sea Harvest Corporation
82-39	Sea Harvest Corporation v. Snohomish County
82-41	Parker and Mason County v. Department of Ecology

SHB No.	
82-46	Seattle Shorelines Coalition, et al., v. City of Seattle and H.C. Henry Pier Company, et al.
82-50	Reierson, et al., v. Chelan County and McClosky's Cove Marina
82-51	Save Our Sound Citizen's Committee v. King County and American Sea Vegetable Company
82-52	Department of Fisheries v. Mason County
83-3	Sea Harvest Corporation v. Island County
83-4	Drake v. Mason County and Department of Ecology
83-6	Holmes Harbor Homeowners Association v. Nichols Brothers Boat Builders, Inc., Island County and Department of Ecology
83-7	Hart v. San Juan County
83-11	Schumsky v. Mason County and Department of Ecology
83-12	Holbrook v. Mason County and Jones
83-15	Alesse and Hansen v. Whatcom County and Mace
83-17	Department of Natural Resources v. Mason County
83-18	Kitsap County v. Department of Ecology and Willing
83-20	Pacific Northern Oil v. City of Port Angeles, Department of Ecology and Crown Zellerbach Corporation, et al.
83-28	Merlino v. San Juan County
83-31	Griggs and Thurston County v. Department of Ecology
83-48	Conner v. San Juan County
83-49	Stephanus v. City of Seattle
83-51	Lundstad v. City of Westport and Bowe
83-52	Wright and Mason County v. Department of Ecology
83-53	Wyrot v. King County and Williams
84-2	West Sound Marina v. San Juan County
84-4	Penn Cove Seafarms, Inc. and Department of Ecology v. Island County and Hofstrand
84-5	Allan v. King County and Department of Ecology
84-6	Northey v. Pierce County and Marshall
84-9	The Other Side of the Tracks v. Sumner
84-10	1901 Corporation and Ellis and Department of Ecology v. Town of Friday Harbor and Ziebell
84-17	CFOG v. Skagit County and Department of Ecology
84-21	Larkin and Names v. Department of Ecology
84-23	Plimpton v. King County and Department of Ecology
84-26	Department of Ecology v. Pierce County and Martel
84-27	Department of Ecology v. City of Tacoma and Barden
84-28	Department of Ecology v. Pierce County; Murphy and Nelson
84-29	Department of Ecology v. Pierce County and Franklin
84-31	Swinge v. Town of Friday Harbor
84-35	Stephens and Meilleur v. Yakima County; Department of Ecology and Whistlin' Jack Lodge, Inc.
84-41	Bonnie Sadleir-Orne v. City of Seattle; Department of Ecology; DNR; Port of Seattle and Miller
84-44	Department of Ecology v. Pierce County and Darrah
84-47	Currin v. King County
84-49	4101 Beach Drive Homeowners Association v. City of Seattle and Department of Ecology
84-52	Anthony and Friends of Bowerman Basin v. Hoquiam, Department of Ecology and

SHB No.	
	Springer
84-53	Stump v. Kitsap County and Posten
84-54	Department of Ecology v. Pierce County and Wilson
84-56	Houghton v. Mason County, Nilsson and Department of Ecology
84-57	Friends of the Columbia Gorge v. Skamania County and Jung Trust
84-60	Friends of the Columbia Gorge v. Skamania County and Jung Trust
84-62	Labusohr v. King County and Department of Ecology
84-63	Friends of the Earth v. City of Westport, Port of Grays Harbor and Department of Ecology
84-64	Simchuck and Pierce County v. Department of Ecology and Stottenberg
85-3	Neilson v. City of Seattle Condominium Builders and Lockhaven Marina
85-4	Strand v. Snohomish County and Department of Ecology
85-6	Renkel v. Mason County and Department of Ecology
85-7	Brueher v. Grays Harbor County and Department of Ecology
85-8	Wilson v. Mason County and Department of Ecology
85-17	Knapp v. Kitsap County and Hammer
85-19	Condominium Builders, Inc. v. City of Seattle and Lockhaven Marina, Inc.
85-29	Evergreen Rock Products v. Grays Harbor County and Department of Ecology
85-35	Elliott v. King County and Jeffress
85-39	SAVE v. City of Bothell and Department of Ecology
86-7	Pappetti v. Whatcom County and Department of Ecology
86-9	Millie and Pierce County v. Department of Ecology
86-10	The Board Yard v. City of Seattle and Department of Ecology
86-12	Persson v. Grays Harbor County and Department of Ecology
86-17	Groeneveld v. Snohomish County
86-18	Propst v. King County and Norquist
86-22	Holland v. Kitsap County and Yukon Harbor Concerned Citizens
86-23	Lassiter v. Kitsap County
86-26	Hansen v. Snohomish County and Thorp
86-27	Hastings v. Island County and Department of Ecology
86-28	McKee v. Chelan County
86-29	Tailfin, Inc. v. Skagit County and Department of Ecology
86-34	Washington Environmental Council v. Department of Transportation
86-38	Crane v. King County and Department of Ecology
86-46	Posten v. Kitsap County and Stump
86-47	South Point Coalition v. Jefferson County
86-48	Howe v. King County
86-49	Risk v. Island County and Island Sea Farms, Inc.
86-50	Risk v. Island County and Island Sea Farms, Inc.
86-55	Department of Ecology v. Snohomish County, Hansen and McLeod
86-56	Department of Ecology v. Snohomish County, Hansen and McLeod
86-58	Picton v. Pierce County and Department of Ecology
86-61	Erickson v. City of Redmond
87-2	Anthony v. City of Hoquiam and Department of Ecology
87-5	Tulalip Tribes v. Snohomish County
87-6	Franzen and Tulalip Tribes v. Snohomish County, BCE Development, Inc., and Department of Ecology
87-12	Day Island Community Club v. Pierce County
87-15	Slater v. Department of Ecology and Sceva

TABLE OF FINAL DECISIONS - *By Case Number*

SHB No.	
87-17	Montgomery v. Mercer Island
87-19	Mose v. Department of Ecology
87-22	Yule v. Yarrow Point
87-25	Gillett v. Snohomish County
87-27	Front Street Inn v. Friday Harbor
87-30	Seattle Shoreline Coalition v. Seattle
87-31	Friends of the Earth, et al., v. U.S. Navy, City of Everett and Department of Ecology
87-33	Tulalip Tribes of Washington v. City of Everett and Department of Ecology
87-34	Reed and Newlin and Island County v. Department of Ecology
87-35	Mack, et al., v. Kitsap County and Deffenbaugh
87-37	Dolphin v. Spokane County
87-38	Bell v. Spokane County
87-50	Washington Department of Transportation v. Lake Forest Park
87-53	BICC v. DOE, City of Winslow, and King
88-3	Truly v. King County
88-4	Jamestown Klallam Tribe, et al., v. Clallam County
88-5	Jamestown Klallam Tribe, et al., v. Clallam County (Order)
88-7	Cherry Blossom Lane v. City of Woodland
88-14	Skagit System Cooperative v. Skagit County and DOE
88-15	Larson v. Mason County
88-18	Ysabel Jordan v. Skagit County and Dr. Harry Worley
88-20	Scott Paper Company v. Whatcom County
88-25	Mason County, et al., v. State of Washington and DOE
88-31	Mason County, et al., v. State of Washington and DOE
88-34	Farrell v. City of Seattle, Department of Ecology and Henney
88-36	Mason County, et al., v. State of Washington and DOE
88-37	Osborne v. Mason County
88-38	Clean-up South Sound, et al., v. Swecker, et al.
88-44	Westlake Houseboat Owners v. Seattle, et al.
88-47	4101 Beach Drive Northeast Association v. King County and DOT
88-59	Silver Lake Action Committee v. City of Everett, et al.
89-1	Brooks v. City of Issaquah and Pickering Park Associates
89-2	DOE v. City of Bellingham, et al.
89-4	Sperry Ocean Dock and DNR v. City of Tacoma, et al.
89-7	Sperry Ocean Dock and DNR v. City of Tacoma, et al.
89-10	Kettering v. San Juan County
89-25	Greater Duwamish Neighborhood Council v. City of Seattle, et al.
89-26	Kurd and Johnsrud v. City of Seattle and DOE
89-35	DOE v. City of Issaquah and Samamish Development Company
89-38	Sacks and San Juan County v. DOE
89-40	Brennan v. Winningham and Kitsap County
89-45	Seattle Yacht Club v. Jefferson County, et al.
89-58	Protect the Peninsula's Future v. Clallam County and City of Sequim
89-59	Davis and Culbertson v. Hoover, et al.
89-63	DeMuth v. San Juan County, et al.
89-67	Champion v. Mason County and DOE
89-69	Committee of Concerned Citizens v. City of Seattle and Clark
89-72	Dorsey v. Island County and DOE
89-73	Concerned Southside Citizens v. City of Bellingham and Port of Bellingham

TABLE OF FINAL DECISIONS - *By Case Number*

SHB No.	
89-76	Northwest Seafarms v. Whatcom County and DOE
90-7	Moses v. Skagit County and Renner
90-8	Eastlake Community Council, et al., v. City of Seattle, et al.
90-9	Eastlake Community Council, et al., v. City of Seattle, et al.
90-10	Wells, et al., v. DOE, et al.
90-12	Dorsey v. Island County and DOE
90-20	Port of Friday Harbor and Mercer v. The Town of Friday Harbor and Friday House Partnership
90-21	Port of Friday Harbor and Mercer v. The Town of Friday Harbor and Friday House Partnership
90-22	Hurlen v. Chelan County, et al.
90-23	Roeben v. Ferry County and DOE
90-31	Browne v. Pierce County, et al.
90-37	Wiswall v. Clark County and DOE
90-38	Engberg v. Skagit County and DOE
90-50	Houghtelling v. Mason County, et al.
90-51	Seawall Construction, et al., v. King County
90-52	Seawall Construction, et al., v. King County
90-59	Puget Sound Mussells, Inc. and DNR v. Kitsap County
90-66	Rosario Property Owners v. Carlton and San Juan County
91-4	Schrick, et al., v. Chelan County, et al.
91-8	Orme v. Metro and City of Seattle (Order)
91-10	Keating and Fujii v. City of Seattle and DOE
91-26	Gambriell v. Mason County and DOE
91-30	Severns v. City of Seattle and DOE
91-33	Department of Fisheries v. Mason County
91-39	Evergreen Islands v. City of Anacortes, et al. (Order)
91-40	Hubman v. King County and DOE
91-42	Hoschek v. City of Mercer Island and DOE
91-43	Port of Kingston v. Kitsap County
91-51	DNR and Department of Fisheries v. Kitsap County, et al.
91-58	Barer and Morgan v. City of Seattle and DOE
91-62	Eldridge, et al., v. City of Stanwood
91-69	Hutchins v. City of Seattle and Lee
91-70	Eldridge, et al., v. City of Stanwood
91-71	Reed and Newlin v. Island County and DOE
91-78	Association of Lake Roesiger Property Owners v. Snohomish County and Snohomish County PUD No. 1
91-81	Owens v. City of Mercer Island
92-2	Perry v. Kitsap County
92-3	Concerned Women v. Arlington
92-4	Dean v. Jefferson County and DOE
92-10	Batchelder v. City of Seattle and Ainsle
92-16	Northlake Marine Works v. City of Seattle and Lake Washington Rowing Club
92-17	Donovan v. City of Tacoma and DOE
92-19	Kitsap Audubon Society, et al., v. Kitsap County, et al.
92-30	Groenig, et al., v. City of Yakima, et al.
92-31	Groenig, et al., v. City of Yakima, et al.
92-40	Northrop v. Klickitat County and DOE

TABLE OF FINAL DECISIONS - *By Case Number*

SHB No.	
92-41	Whatcom County Water District #10 and Sun Valley Community Association v. Whatcom County, et al.
92-47	Worthington v. San Juan County and DOE
92-49	Larrance v. Jefferson County and DOE
92-52	Clifford, et al., v. City of Renton and Boeing
92-53	Clifford, et al., v. City of Renton and Boeing
93-2	Weinberg v. Whatcom County and DOE
93-3	Tunny v. Hopkins, et al.
93-5	Babbitt, et al., v. Grant County, et al.
93-6	Babbitt, et al., v. Grant County, et al.
93-7	Good v. Pacific County and DOE (Order)
93-14	Citizens Committee, et al., v. Skagit County (Order)
93-23	Babbitt, et al., v. Grant County, et al.
93-39	Taylor v. City of Langley and Schell
93-41	Reed and Newlin v. Island County and DOE
94-45	Toandos v. Jefferson County, et al., (Summary Judgment Order)
94-51	Toandos v. Jefferson County, et al., (Summary Judgment Order)

133

TABLE OF FINAL DECISIONS
Page Reference Table

TABLE OF FINAL DECISIONS
Page Reference Table

TABLE OF FINAL DECISIONS
Page Reference Table

SHB No.Page Number

SHB No.

Page Number

TABLE OF FINAL DECISIONS
Page Reference Table

TABLE OF FINAL DECISIONS

Page Reference Table

SHB No.Page Number

SHB No.

Page Number

TABLE OF PERTINENT COURT CASES

1.Wilbour v. Gallagher, 77 Wn.2d 306 (1969)

2.Harris v. Hylebos Industries, Inc., 81 Wn.2d 770 (1973)

3.Merkel v. Port of Brownsville, 8 Wn.App. 844 (1973)

4.Department of Highways v. Washington Environmental Council, 82 Wn.2d 280 (1973)

5.Juanita Bay Valley Community Association v. Kirkland, 9 Wn.App. 59 (1973)

6.Eastlake Community Council v. Roanoke Associates, Inc., 82 Wn.2d 475 (1973)

7.Renton v. Scott Pacific Terminal, Inc., 9 Wn.App. 364 (1973)

8.Talbot v. Gray, 11 Wn.App. 807 (1974)

9.Department of Ecology v. Kirkland, 84 Wn.2d 25 (1974)

10.Leschi Improvement Council v. State Highway Commission, 84 Wn.2d 271 (1974)

11.Narrowsview Preservation Association v. Tacoma, 84 Wn.2d 416 (1974)

12.Department of Ecology v. Ballard Elks, 84 Wn.2d 551 (1974)

13.Putnam v. Carroll, 13 Wn.App. 201 (1975)

14.Hama Hama Company v. Shorelines Hearings Board, 85 Wn.2d 441 (1975)

15.Hayes v. Yount, 87 Wn.2d 280 (1976)

16.Swift v.Island County, 87 Wn.2d 348 (1976)

17.Bayley v. Kane, 16 Wn.App. 877 (1977)

18.Washington State Liquor Control Board v. Washington State Personnel Board, 88 Wn.2d 368 (1977)

19.Eickhoff v. Thurston County, 17 Wn.App. 774 (1977)

20.Pacific County v. Sherwood Pacific, Inc., 17 Wn.App. 790 (1977)

21.English Bay Enterprises, Ltd. v. Island County, 89 Wn.2d 16 (1977)

22.Sisley v. San Juan County, 89 Wn.2d 78 (1977)

23.Department of Ecology v. Pacesetter Construction Co., Inc., 89 Wn.2d 203 (1977)

24.Lassila v. Wenatchee, 89 Wn.2d 804 (1978)

25.Harvey v. Board of County Commissioners of San Juan County, 90 Wn.2d 473 (1978)

26.Mentor v. Kitsap County, 22 Wn.App. 285 (1978)

27.South Hill Sewer District v. Pierce County, 22 Wn.App. 738 (1979)

28.Weyerhaeuser v. King County, 91 Wn.2d 721 (1979)

29.Portage Bay-Roanoke Park Community Council v. Shorelines Hearings Board, 92 Wn.2d 1 (1979)

30.Ritchie v. Markley, 23 Wn.App 569 (1979)

31.Department of Natural Resources v. Thurston County, 92 Wn.2d 656 (1979)

32.Skagit County v. Department of Ecology, 93 Wn.2d 742 (1980)

33.Tarabochia v. Gig Harbor, 28 Wn.App. 119 (1981)

34.San Juan County v. Department of Natural Resources, 28 Wn.App. 796 (1981)

35.Norco Construction, Inc. v. King County, 29 Wn.App. 179 (1981)

36.Nisqually Delta Association v. Dupont, 95 Wn.2d 563 (1981)

37.Hunt v. Anderson, 30 Wn.App. 437 (1981)

38.Save Lake Washington v. Frank, 641 F.2d 1330 (C.A.9, 1981)

39.Toandos Peninsula Association v. Jefferson County, 32 Wn.App. 473 (1982)

40.Kitsap County v. Department of Natural Resources, 99 Wn.2d 386 (1983)

41.F.L.O.O.D. v. Department of Ecology, 38 Wn.App. 84 (1984)

42.Nisqually Delta Association v. Dupont, 103 Wn.2d 720 (1985)

43.Kates v. Seattle, 44 Wn.App. 754 (1986)

44.Caminiti v. Boyle, 107 Wn. 2d 662 (1987)

45.Kitsap County v. Department of Natural Resources, 107 Wn.2d 801 (1987)

46.Clam Shacks of America, Inc., v. Skagit County, 109 Wn.2d 91 (1987)

47.Orion Corporation v. State, 103 Wn.2d 441, appeal after remand, 109 Wn.2d 621 (1987)

48.Friends of the Earth v. U.S. Navy, 841 F.2d 927 (C.A. 9, 1988)

49.Eastlake Community Council v. City of Seattle, 64 Wash. App. 273, 823 P.2d 1132 (1992).

50.Canyon Conservancy v. Bosley, 118 Wash. 2d 801, 828 P.2d 549 (1992).

51.Bosley v. American Motorists, Inc. Co., 66 Wash. App. 698, 832 P.2d 1348 (1992).

52.Hedlund v. White, 67 Wn. App. 409, 836 P.2d 250 (1992).

53.Jefferson County v. Seattle Yacht Club, 73 Wn. App. 576 (1994).

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