

Chapter 5

Shoreline Jurisdiction

Phase 1, Task 1.1

Shoreline Master Program Planning Process

Introduction

The Shoreline Master Program (SMP) update process begins with identifying *shorelines of the state*, the geographic area where the Shoreline Management Act (SMA) applies. The SMA applies to the following shorelines of the state, as established in RCW 90.58.030:

- All marine waters.
- Segments of streams where the mean annual flow is more than 20 cubic feet per second.
- Lakes and reservoirs 20 acres and greater in area.
- Associated wetlands.
- Shorelands adjacent to these water bodies. This is typically the land area within 200 feet of the water body, although there are important exceptions explained below.

Specific larger water bodies are classified as *shorelines of statewide significance* [RCW 90.58.030(2)(e)]. They include the Pacific Coast, Hood Canal and certain Puget Sound shorelines, all waters of Puget Sound and the Strait of Juan de Fuca; lakes or reservoirs with a surface acreage of 1,000 acres or more; larger rivers (1,000 cubic feet per second or greater for rivers in Western Washington, 200 cubic feet per second and greater east of the Cascade crest); and wetlands associated with all the above.

Updating SMA water bodies

A fundamental goal of the comprehensive SMP update is to ensure that all the water bodies meeting the statutory thresholds are included in the SMP. Some water bodies and shoreline areas that meet the thresholds for inclusion under the Act may not be included in older SMP maps, lists and legal descriptions. Changes in shoreline jurisdiction may result from:

- New information on water-body flow and size. If your SMP has not been updated in many years, new sources of information on stream and lake size need to be applied. Ecology has updated stream flow data from the US Geologic Survey that may move SMP jurisdiction upstream (or in a few cases, downstream). Evaluation of GIS-derived information may identify lakes exceeding 20 acres that were missed in the original SMP mapping.

- Naturally occurring and man-made alterations of the shoreline. For example, a river channel may have shifted, creating a change in SMA jurisdiction.
- Annexations. Annexed areas with shorelines may not be reflected in the existing SMP.

Considering local options for shorelands

Local governments are responsible for determining shoreline jurisdiction for three types of areas during the SMP planning process. These three areas are:

- Stream corridors. The minimum and maximum shorelands along stream corridors are defined in the SMA. Local governments must choose the minimum, maximum, or somewhere in between.
- Critical areas buffers. Shoreline jurisdiction may include “land necessary for buffers for critical areas, as defined in Chapter 36.70A RCW, that occur within shorelines of the state” [RCW 90.58.030(2)(d)(ii)].
- Unincorporated UGAs. Ecology encourages cities and towns to plan for and predesignate shoreline environments for their unincorporated urban growth areas. However, your city or town will not have any regulatory authority in these areas until they are annexed [WAC 173-26-150].

The approved SMP will become the official delineation of SMA jurisdiction. When a comprehensive SMP update is approved by Ecology, it becomes the official delineation of shorelines of the state for that town, city or county. The maps and lists of shorelines of the state in the approved SMP will replace the lists of water bodies contained in Chapters 173-18 (rivers and streams), 173-20 (lakes) and 173-22 (shorelands and wetlands). For example, see WAC 173-18-044.

Determining the Ordinary High Water Mark

The Ordinary High Water Mark (OHWM) is an important term for defining SMA jurisdiction. OHWM is used to determine shoreline jurisdiction, implement regulations, and establish shoreline buffers and setbacks. The OHWM is defined in RCW 90.58.030(2)(b), copied at the end of this chapter.

The OHWM is not a fixed elevation; the OHWM and shoreline jurisdiction can move as the shoreline changes over time. The OHWM is determined by visual inspection of the river, lake, wetland, or marine bank. Chapter 173-22 WAC contains Ecology's guidance for making OHWM determinations. In addition, technical guidance on determining the OHWM for SMA compliance is available in Ecology publication 16-06-029, *Determining the Ordinary High Water Mark for Shoreline Management Act Compliance in Washington State*.

The SMA prescribes the location of the OHWM if it cannot otherwise be determined. In that case, the OHWM adjoining salt water is the line of *mean higher high tide*, and OHWM adjoining fresh water is the line of *mean high water*.

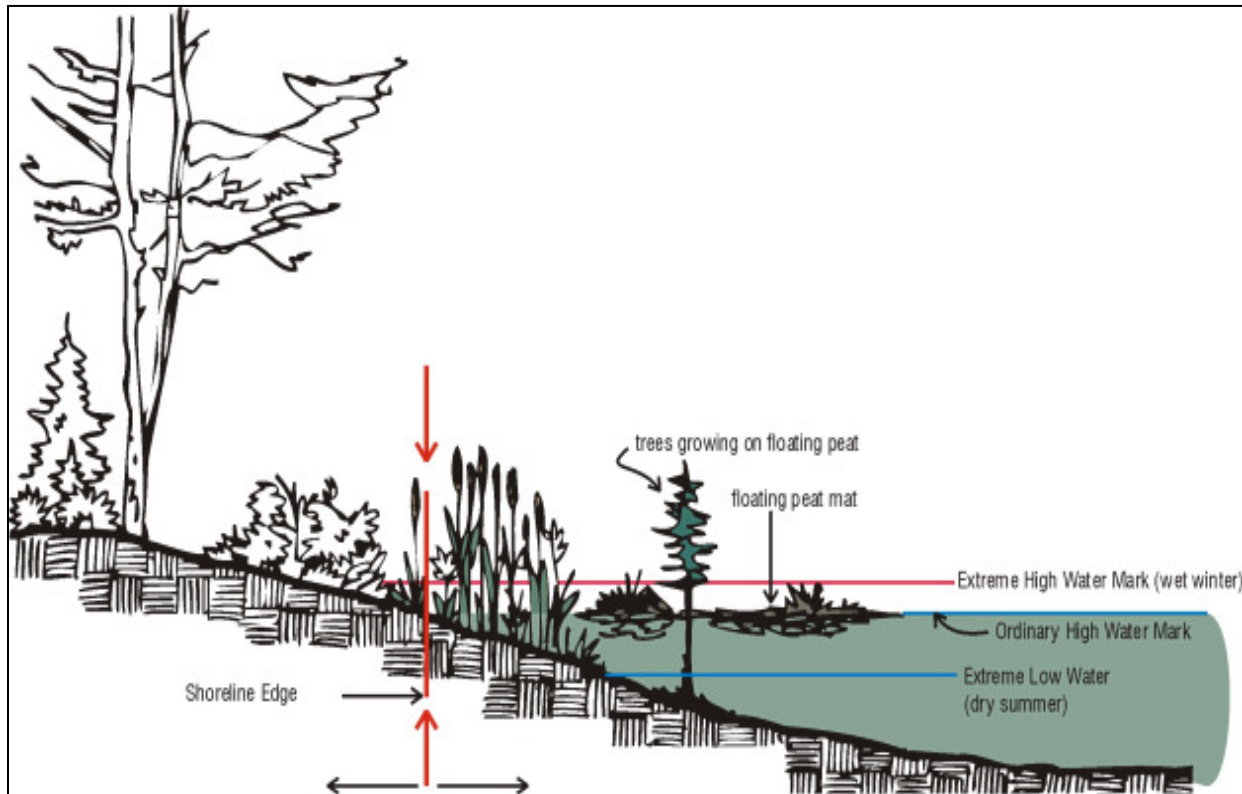


Figure 5-1: The location of the Ordinary High Water Mark (OHWM) in relation to extreme high and extreme low water varies from site to site. At any given site, the OHWM will vary over time depending on wind, waves, fetch, erosion, accretion, soils, substrates, vegetation, land use changes, runoff, groundwater, the presence of peat, the constancy of pool elevations and the activities of beavers and other organisms.

The OHWM definition should be included in the SMP. It is difficult to precisely map the location of the OHWM during the SMP update process, so Ecology does not require the SMP jurisdiction maps to show a precise location. The map should include a disclaimer that the OHWM has not been precisely mapped. You must require an accurate OHWM delineation with a development application.

Shorelines of the state

Shorelines of the state are being updated as comprehensive SMP updates take effect following Ecology approval. The official delineation of SMA jurisdiction in the SMP is mapped on the [Washington State Coastal Atlas](#). You can check out these water bodies by clicking on 1) “Go to coastal map” or “Make a coastal map” and then 2) “Add map data.” Choose “SMA jurisdiction” on the map layers pop-up. Click “Go” and zoom in to your chosen location, or use the “Find” tab. This information is also available from Ecology’s [GIS data](#) page. Look for Shoreline Management Act (SMA) – SMA Jurisdiction Adopted.

For jurisdictions where the SMP update is not yet completed, the streams and lakes layers on the Coastal Atlas show the shorelines listed in WAC 173-18 and WAC 173-20, respectively.

Marine waters

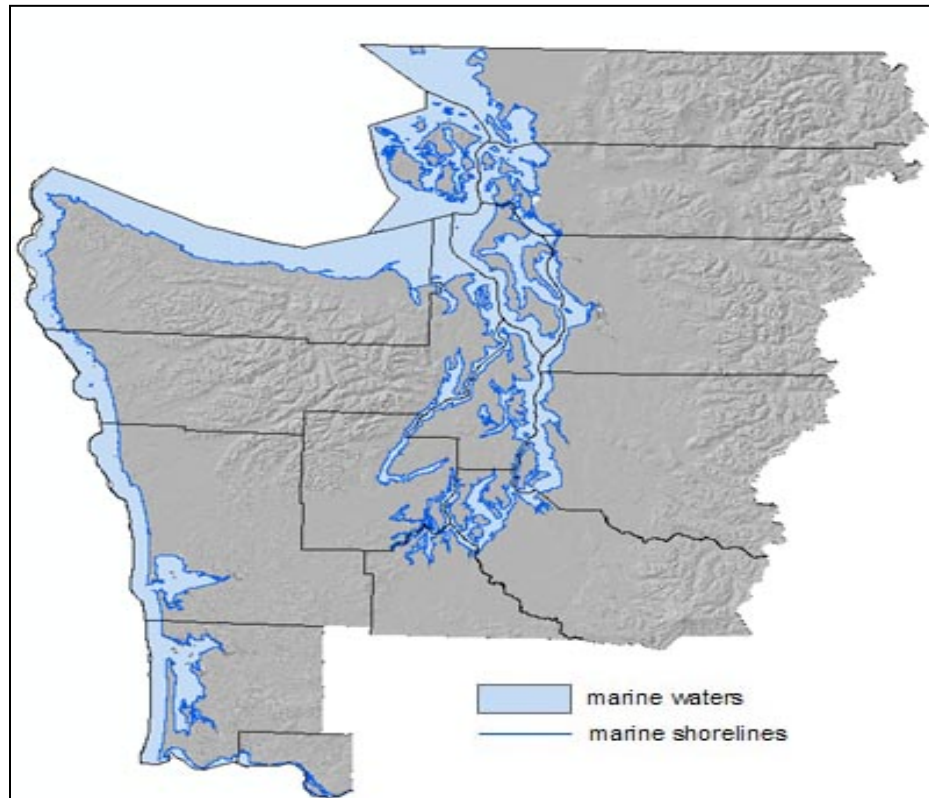


Figure 5-2: Marine waters subject to the SMA.

The SMA generally applies to all marine waters of the state waterward of the OHWM. Marine waters in shoreline jurisdiction are not changing with SMP updates. Marine shorelines for updated and approved SMPs are shown in the **Shoreline Management Act (SMA) – SMA Jurisdiction Adopted** files on the [GIS data](#) page.

Marine waters include the Pacific Ocean, Puget Sound, the Strait of Georgia and the Strait of Juan de Fuca. Shoreline jurisdiction extends to the western state boundary in the Pacific Ocean (the three nautical-mile limit). The SMA also applies to submerged lands underlying all marine waters. Local shoreline jurisdiction applies to the area waterward of the OHWM out to the local government's legal in-water jurisdictional boundary.

Marine shorelines that are shorelines of statewide significance are defined in the SMA and are listed at the [end](#) of this chapter.

Streams

The SMA applies starting at the point on streams with over 20 cubic feet per second (cfs) *mean annual flow*. **Mean annual flow is the average of the annual mean flows over a period of many years.** (“Mean annual flow” is not the same as “annual mean flow,” which is the average daily flow over a one-year period.) The mean annual flow averages at least 10 consecutive years of stream flows. Some stretches of stream with a mean annual flow of 20 cfs have winter floods and high spring snowmelt and are dry during the summer.

Streams or segments of streams that are shorelines of statewide significance are defined in the SMA. See the [SMA definition](#) at the end of this chapter.



Figure 5-3: Streams and rivers within SMA jurisdiction from *Chapter 173-18 WAC* as of January 2, 2007.

It is important to examine updated information from Ecology and other sources related to stream flow. Under contract with Ecology, the U.S. Geological Survey (USGS) updated its original studies identifying the point where data and modeling locate the 20 cfs threshold. In many cases, there are significant changes to the points where streams meet the SMA flow threshold. In particular, many updated points are in national forest lands. (The initial USGS study did not extend to federal lands.) National forest lands should be included in the SMP. Discussion of SMP applicability within other federal and tribal lands is provided below.

Ecology has provided this data to local governments. Stream flow data from counties or other sources may be used to propose an updated SMA jurisdiction point differing from the studies available at Ecology. Please submit data and technical analysis to Ecology for review.

To update stream information for SMP updates, go to the [GIS data](#) page and scroll to the needed files. The suggested shoreline points and shoreline arcs for rivers and streams are based on the three USGS studies mentioned earlier.

- **Shoreline Management Act – SMA Jurisdiction Original**
 - WAC173_18_Arcs (Streams and Rivers).
 - WAC173_18_Points– (Points on streams and river where shoreline jurisdiction begins and where streams and river cross state and county boundaries).
- **Shoreline Management Act – SMA Jurisdiction Suggested**
 - SMA_Pnts_Sugg (estimated jurisdictional flow points).
 - SMA_Arcs_Sugg (streams and rivers estimated to qualify as shorelines of the state).

The [Washington State Coastal Atlas](#) shows streams under SMA jurisdiction. Click on 1) “Go to coastal map” and 2) “Add map data” and choose “SMA jurisdiction” on the map layers pop-up. Click “Go” and zoom in to your chosen location, or use the “Find” tab. As SMP updates go into effect, the Coastal Atlas SMA jurisdiction layer will be updated.

Lakes

The SMA applies to “water areas of the state” including **lakes and reservoirs** 20 acres and greater in area. The area used to make this determination is defined by a continuous OHWM and may include emergent vegetated areas as well as open water areas. Natural and artificial lakes with 1,000 acres or more in area are shorelines of statewide significance.

It is important to include all lakes and reservoirs meeting the definition of shorelines of the state in the SMP. The original list of lakes in WAC 173-20 was drawn from information available several decades ago. There may be lakes or reservoirs not included in the original list that need to be added to the SMP.

To download GIS data for SMA lakes, go to the [GIS data](#) page and scroll down the page to the needed files.

- **Shoreline Management Act (SMA) – SMA Jurisdiction Original**
 - WAC173_20_Polygons (Lakes and Wetlands)
- **Shoreline Management Act (SMA) – SMA Jurisdiction Suggested**
 - SMA_Poly_Sugg (water bodies, lakes, wetlands, etc.)

In-water jurisdictional boundary

Local shoreline jurisdiction applies to the area waterward of the OHWM out to the local government’s legal in-water jurisdictional boundary. Note that [RCW 35.21.160](#) extends jurisdiction to the middle of water bodies such as bays, sounds, lakes and rivers, and [RCW 35A.21.090](#) extends control of streets over tidelands. These sections of the RCW may affect the waterward shoreline jurisdiction boundary for some local governments.

Excluding some artificial water bodies as shorelines

The SMA provides basic dimensional criteria for streams and lakes that are to be regulated as shorelines of the state. Generally, these criteria determine the streams and lakes to include in an SMP.

However, some artificial water bodies – despite meeting the basic dimensional criteria in the SMA – have characteristics that make it appropriate to **exclude** them as shorelines of the state because they do not provide opportunity to advance the policy objectives of the statute. Examples include irrigation canals and wastewater ponds.

The following guidance is provided to assist in identifying such artificial water bodies. In developing this guidance, Ecology considered these types of water bodies in regard to the three fundamental policy objectives of the SMA: Protecting the shoreline environment; providing area for uses that are unique to or dependent on the use of state shorelines; and ensuring public access to the water.

Criteria for excluding artificial water bodies as shorelines of the state

Carefully consider the following criteria when determining whether ditches, canals, mine ponds, waste lagoons and other constructed water bodies are properly excluded as shorelines of the state. If several of the criteria apply, these artificial water bodies may be appropriate to exclude as shorelines of the state:

- Constructed, operated, and maintained to meet a specific commercial need, such as for farm animals or treatment of mine tailings.
- Operates under a National Pollutant Discharge Elimination System (NPDES) permit, Federal Energy Regulatory Commission license, DNR Surface Mine Reclamation Permit, federal Mine Safety and Health Administration jurisdiction, or similar regulations.
- Restricted to people operating the facility. No recreation or other activities are allowed.
- Not intentionally built to support fish or wildlife habitat.
- Ingress and egress to and from another water body is controlled and mechanized.
- Intent to decommission and process to do so is specified in the authorizing permit.
- Constructed of an impervious material.
- Surface continuity with a natural water body is interrupted by a pipe, pump, dike or other structure.

Note: Some water bodies that are not shorelines of the state are within shoreline jurisdiction because they are within the shoreland of another water body. For example, a portion of a sewage treatment pond that is within 200 feet of the OHWM of another water body is within shoreline jurisdiction.

Addressing artificial water bodies in SMPs

The initial shoreline inventory should identify **all** flowing and impounded water bodies that meet the basic dimensional standards of the SMA. Within this initial set of water bodies, there may be artificial water bodies that are appropriately excluded from the SMP.

Local governments should identify water bodies that they propose to exclude from the SMP and provide a rationale for the proposed exclusion. Ecology will review the proposed exclusions to ensure local/state agreement on the water bodies to be included in the SMP.

In some cases, it may be anticipated that an artificial water body will be converted from its original commercial/industrial purpose in the next few years and will then become a shoreline of the state (see next section). In this case, Ecology encourages local government to work with the property owner or operator during the SMP update. Planning for this future shoreline of the state will provide clarity and predictability for all parties regarding the future use of the water body and its shorelands. Identifying environment designations and establishing policies and regulations during the update avoids the need to amend the SMP to include the water body following the conversion from the commercial/ industrial use. The SMP regulations for these new SMA water bodies would take effect when the industrial or commercial use is ended, and the water body is appropriately considered a shoreline of the state.

Conversion of artificial water bodies to shorelines of the state

Occasionally, an artificial water body will no longer be needed for the industrial or commercial use. For example, mineral extraction may conclude at a gravel mine pond and the pond may be reclaimed for other uses.

When the characteristics of a water body no longer qualify it for exclusion as a shoreline of the state, a water body meeting the dimensional criteria of the SMA becomes a shoreline of the state. This water body is then regulated under the local SMP, even if it is not yet listed or mapped in the SMP [WAC 173-20-046]. Key issues for new shorelines of the state created by conversions of industrial and commercial water bodies:

- Until the shoreline environment is specifically designated in the SMP, the water body and adjoining shorelands have a default designation of Rural Conservancy if located in the unincorporated portion of a county, Urban Conservancy if located within a municipality or urban growth area, or comparable environment designation of the applicable master program [WAC 173-26-211(2)(b)].
- When a new shoreline of the state is identified, the SMP must be updated within three years to include this new water body [WAC 173-20-046]. SMP regulations should not limit remaining industrial-type uses that are legally permitted on the site. An example is materials handling activities in the vicinity of a former gravel mine pond. Existing and future uses need to be considered in crafting appropriate SMP regulations for these new shorelines of the state.

Artificial flowing water bodies of 20cfs or greater

This section discusses types of flowing water bodies that may be appropriate to exclude from shorelines of the state, despite meeting the basic flow criteria in the SMA. Department of Ecology staff is available to assist local jurisdictions with these jurisdictional calls.

Irrigation, return flow, and stockwatering channels

Artificially created agriculture channels are explicitly **excluded** from the definition of a “stream” under Ecology’s rules [[WAC 173-22-030](#)]. However, natural streams with flows greater than 20 cfs that are used for agricultural purposes are shorelines.

Power canals

Power canals, or flumes, are constructed diversions from natural streams and rivers; water is diverted into penstocks, powerhouses and tailraces before being discharged back into a receiving water body. Power canals are constructed from a variety of materials – wood, concrete, metal, or dirt, and are typically designed to use gravity to move water through a generator to create power.

The Shorelines Hearings Board and the Pollution Control Hearings Board (SHB 95-1/PCHB 94-148) reviewed an appeal of a hydroelectric facility on Warm Creek, a tributary to the Nooksack River. The Board considered the diversion structure, intake structure, penstock, tailrace, etc., to be part of the project, not a newly constructed shoreline of the state. As these are not “naturally occurring” streams, they are **not** shorelines of the state. However, natural streams with flows greater than 20 cfs that are used for conveyance purposes are shorelines.

Drainage ditches

Drainage ditches have been built to control flooding and to drain lands for agricultural production. The water in the ditches does not flow naturally, via gravity; rather the flow in these managed ditches is typically controlled by mechanical pumps. As these are not “naturally occurring” streams, they would **not** be considered shorelines of the state. However, natural streams with flows greater than 20 cfs that are used for drainage purposes are shorelines. This includes segments of a naturally occurring stream that have been channelized and in many cases shifted from the original channel. These segments of the stream remain in shoreline jurisdiction if the flow threshold is met.

Piped segments of “naturally occurring” streams

Some “naturally occurring” streams include segments that are contained within culverts or viaducts that are underground. These segments are not necessarily excluded as shorelines of the state, but should be evaluated for an appropriate shoreline jurisdictional determination. Where these piped segments are short (for example, less than 400 feet long) they should be retained in shoreline jurisdiction. Any part of these segments would be within 200 feet of the stream. Longer underground segments of naturally-occurring streams may be appropriate to exclude from shoreline jurisdiction. It may not be practical to parse out a stream with multiple divisions of stream segments in and out of jurisdiction.

Examples



Figure 5-4: Goldsborough Creek.

Goldsborough Creek, Mason County

Portions of the creek are contained within a constructed channel, within the historic natural stream bed. This was necessary to implement the Goldsborough Creek Dam removal and restoration project. This is **still a shoreline** of the state for its entire length.



Figure 5-5: Penstock below Snoqualmie Falls.

Snoqualmie River, King County

Penstock below Snoqualmie Falls is **not a shoreline** of the state because it is a constructed component of a permitted facility and contained within a pipe.



Figure 5-6: Ditch system near Woodland.

Woodland Consolidated Diking Improvement District No. 2, Cowlitz County – This ditch system is behind the dike on the Columbia River, near Woodland. The dikes and ditches were built in the early 1900s to control flooding and runoff in the Woodland area. The ditches only “flow” when water is being pumped into the Columbia River. This is not a “naturally occurring” stream and the water is discontinuous from the Columbia River. Therefore, the ditch is **not a shoreline of the state**.



Figure 5-7: Water intake structure with flume (Power Canal) in the background.



Figure 5-8: Centralia Power Canal penstock, 208 feet above Nisqually River.

Nisqually River, Thurston County – The Centralia Power Canal was built in 1929 to supply power to the City of Centralia, 25 miles to the southwest of Yelm, where the diversion is located. The water is diverted from and returned to the Nisqually River through a penstock that is more than 200 feet above the river. The canal is more than 9 miles long and is contained within a variety of constructed, concrete and earthen structures.

The canal is not a “naturally occurring” stream; the water is discontinuous from the Nisqually River. Therefore, the canal is **not a shoreline of the state**.

White River, Pierce County – The Lake Tapps Water Diversion was built in 1911 by the company currently doing business as Puget Sound Energy (PSE) to produce hydroelectricity. In 2004, PSE terminated the power generation operation, and in 2009 the Cascade Water Alliance (Cascade) bought the entire diversion system from PSE. Cascade intends to retrofit the diversion system and utilize it as

a source of municipal drinking water.

Water is conveyed through several types of structures for more than eight miles, which starts at the diversion dam at White River Mile 24.3, to its termination at Lake Tapps. To maintain the flume, regular dredging and vegetation removal is necessary.



Figure 5-9: The Lake Tapps Water Diversion structure, White River, mile 24.3.

The diverted water initially flows through an above grade wooden and cement flume; the water then flows through a constructed, earthen canal at approximately the crossing point of Highway 410; the

open channel then transitions into a series of underground pipes until it daylights just upstream of Lake Tapps. From the discharge point at the northwest end of Lake Tapps, the water flows through a tailrace back into the White River at River Mile 3.6.



Figure 5-10: The Lake Tapps flume, a constructed feature.

This is not a “naturally occurring” stream and the water is discontinuous from the White River. Therefore, the canal is **not a shoreline of the state**.

Artificial water bodies of 20 acres or greater

This section discusses types of surface water bodies that may be appropriate to exclude as shorelines of the state, despite meeting the basic size criteria for lakes and reservoirs in the SMA.

Gravel mine ponds

Excavation of mineral resources into the ground water can create mine ponds 20 acres and larger. The following guidance is offered in addressing these ponds:

During the active mining period, Ecology recommends that gravel mine ponds be treated as industrial water bodies not subject to the SMA. Gravel mine ponds exhibit several of the characteristics of artificial water bodies described above – built for a specific purpose; regulated by the Washington Department of Natural Resources (DNR) Surface Mine Reclamation Permit; limited access to people operating the facility, and not intentionally built to support fish and wildlife habitat. In some cases, the mining pond will be temporary; the intended reclamation is to fill the site.

Determining when a gravel mine pond should be included as a shoreline of the state is a case-by-case decision. Mineral extraction is driven by demand; there may be extended periods when extraction does not occur but the mine is still an active mine. Mineral resources at a particular site may last for 50 years or more, depending on volume and demand. DNR may terminate a surface mine reclamation permit, then approve a new permit for a new owner or an adjacent site on the same mine pond. Multiple mines with one common gravel mine pond may have varying end dates for mining activities. Mining may end, but uses accessory to mining may continue.



Figure 5-11: This active (photo taken July 2012) Central Pre-Mix gravel mine operation in the City of Spokane Valley is not considered a shoreline of the state. (Photo by Jaime Short.)

It's important to consult mine representatives during the SMP update to learn about operations, plans, current and future uses including accessory uses, and the potential end to mining. Also, keep the suggested criteria for excluding water bodies as shorelines of the state in mind.

The threshold between a gravel mine pond associated with active mining and a post-mining shoreline of the state may be determined by one or more of the actions listed below. Other thresholds are also possible.

- Local government's removal of a Mineral Resource overlay or similar land use designation. Removing these designations indicates a probable conversion to other uses. The SMP and comprehensive plan must be consistent. Therefore, when comprehensive plans are updated to remove Mineral Resource overlays or designations, SMPs may also need to be updated to include former mining ponds 20 acres and greater.
- The DNR termination of the surface mine reclamation permit for the mine, if additional mining will not take place in the pond area. Before surface mining begins, DNR issues a reclamation permit based on a plan for the mining site consistent with the Surface Mining Act, RCW 78.44. The reclamation plan should identify whether a permanent lake will remain after mining is concluded and its intended use, or if the mine pond will be filled for other uses. Mine reclamation concludes when DNR determines that all reclamation requirements have been met. In some cases, the termination of the reclamation permit is an indicator that there will be no further mining associated with the gravel mine pond.
- Permit application for new development of the pond area. Mineral or Mining zones may allow uses such as an electric generation facility, landfill, park, campground, or other use.

If mining and mine-related uses have ended and other uses are proposed for the mine pond, the water body may be suitable as a shoreline of the state and included in the master program, consistent with the guidance in this section.

Information about DNR and mine reclamation is available on the DNR website at <http://www.dnr.wa.gov/programs-and-services/geology/energy-mining-and-minerals/surface-mining-and-reclamation>.

Toxic waste lagoons, sewage treatment facilities and stormwater ponds

Toxic waste lagoons, sewage treatment facilities, industrial wastewater ponds, mill ponds and stormwater ponds or reservoirs are facilities governed by federal, state and local laws that regulate their construction and operation. The design and size of these is dictated by the circumstances of the facility – e.g., pulp mill, sewage treatment plant, number of customers served, volume of wastewater or stormwater treated, etc. Examples follow.



Figure 5-12: Industrial wastewater treatment ponds on Lady Island in the Columbia River are not shorelines of the state, but are partially within shoreline jurisdiction due to proximity to the river.

Lady Island, Columbia River -- Two industrial wastewater treatment ponds on Lady Island in the Columbia River in the City of Camas are both over 20 acres. These facilities treat up to 76 million gallons per day of wastewater from the Georgia Pacific pulp and paper mill. (See photo.)

Ecology has determined that the ponds are not shorelines of the state because they meet the following criteria: Operates under an NPDES permit, provides treatment of wastewater, and prohibits human use for recreation and gathering potable water. However, portions of the ponds are within 200 feet of the Ordinary High Water Mark of the Columbia River, so those portions are within shoreline jurisdiction.



Figure 5-13: Lake Tye is a shoreline of the state in the city of Monroe. Recreation facilities include a swimming beach.

Lake Tye, City of Monroe – Lake Tye provides stormwater treatment, flood storage capacity and recreation. The lake was built to serve a new residential, commercial and industrial development. The 42-acre lake is within a city park and provides recreation including a swimming beach, lakeside trail, fishing and boat launch.

The lake is shoreline of the state. The City's SMP designates the lake as Aquatic shoreline environment and the shorelands of the lake as Stormwater Facility shoreline environment.

Shorelands

Shorelands are land areas, wetlands, river deltas and floodplain bordering SMA water bodies. Shoreland areas for marine waters and lakes are set by statute; local governments have some discretion regarding shoreland extent along rivers. The SMA also provides local discretion to include buffers to protect critical areas within shoreline jurisdiction. Each of these shoreland areas is described in more detail below.

Shorelands on marine waters and lakes

For tidal waters and lakes, shorelands are “those lands which extend landward two hundred feet as measured on a horizontal plane from the ordinary high water mark.” Wetlands “which are in proximity to and either influence or are influenced by the tidal water” and “which are in proximity to and either influence or are influenced by the lake” are also shorelands. (See [WAC 173-22-040](#).)

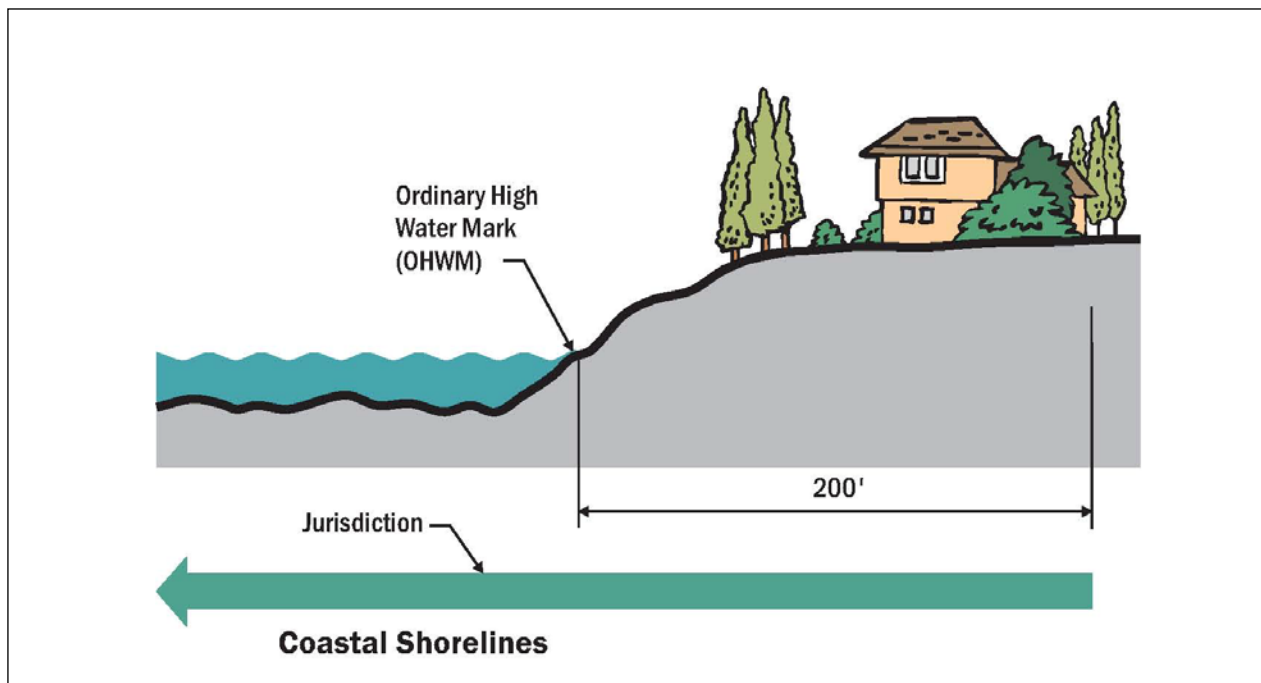


Figure 5-14: Shoreline jurisdiction for shorelands bordering marine waters and lakes extends 200 feet landward from the OHWM.

Shorelands along streams

Local governments must identify SMA jurisdiction for the shorelands along their stream corridors, **within minimum and maximum areas** defined in statute [RCW 90.58.030(2)(d)]. The minimum shoreline jurisdiction for shorelands is the greater of the following:

- Lands extending landward 200 feet in all directions from the OHWM, including 200 feet in all directions from the OHWM at the 20 cfs point. (Shoreline jurisdiction would extend above the 20 cfs point.)

- The floodway plus the contiguous floodplain 200 feet landward of the floodway.
- Associated wetlands and river deltas.

Over time, the OHWM, location of the floodway, and wetland boundaries may change due to development, restoration or channel migration. Guidance for conducting channel migration assessments is available in the following Ecology publications:

- [The Channel Migration Toolbox: ArcGIS® Tools for Measuring Stream Channel Migration](#)
- [A Methodology for Delineating Planning-Level Channel Migration Zones](#)
- [Channel Migration Processes and Patterns in Western Washington](#)

Shoreline jurisdiction is appropriately determined at the time of project review so that it is based on the most recent information.

Options

Options shown below allow local governments to include all or part of the floodplain, in addition to the minimum shoreline jurisdiction noted above, when determining shoreline jurisdiction along streams and rivers. When making this decision, consider:

- How shoreline jurisdiction will fit with the local Flood Hazard plan and “frequently flooded” critical areas provisions.
- Protection of habitat and other natural resources along the river corridor.
- Existing and projected land uses in the river corridor.
- Road corridors or other features that may provide a suitable boundary for SMP jurisdiction.
- The nature of the river system. Some reaches of a river may have highly braided channels and frequent change in channel location. If a minimum definition of SMA jurisdiction is applied to these areas, there may be frequent changes in the area covered by the SMP. On the other hand, if the 100-year floodplain extends a significant distance from the river, including the entire floodplain in SMA jurisdiction may result in shoreline regulation of activities occurring several miles from the river.

The basic shoreland definition of 200 feet from OHWM is a “fallback” minimum area, which will apply if any of the other approaches to determining shorelands do not extend 200 feet from OHWM.

RCW 90.58.030(2)((f):
“Shorelands or shoreland areas’ means

- those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark;
- floodways and contiguous floodplain areas landward two hundred feet from such floodways; and
- all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter...

(i) Any county or city may determine that portion of a one-hundred-year-flood plain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward two hundred feet therefrom.”

Option 1: Minimum jurisdiction. Minimum jurisdiction is the **greater** of lands extending 200 feet landward in all directions from the OHWM, or the floodway plus contiguous floodplain extending 200 feet landward from the floodway, plus associated wetlands and river deltas. The floodway is that area established by FEMA, or one that is mapped to meet the requirements of the SMA (identified by “soil, vegetation, topography or other indicators” as the area where flood waters are carried.) Lands protected by publicly-maintained dikes are not included in the floodway.

Note: The statutory minimum distance from the floodway is measured entirely within the floodplain. If the floodplain boundary is less than 200 feet from the floodway, the floodplain boundary becomes the SMA jurisdiction boundary. **In all cases, the minimum shorelands area is the land within 200 feet of OHWM.** This ensures that the minimum shoreland area is included where a river has a very narrow floodplain, or where the river has meandered away from the mapped floodway.

Option 2: Customized area. These areas identified by local government are bigger than the minimum shoreline jurisdiction area. They may include portions of the floodplain or land outside the floodplain necessary for buffers for critical areas within shorelines. The local government has the option of selecting road or railroad corridors, or other features or distances within the floodplain, that provide a suitable upland boundary for the shorelands associated with the river.

Option 3: Maximum jurisdiction. Maximum jurisdiction for shorelands along rivers is the entire 100-year floodplain plus any land necessary for buffers for critical areas within shorelines. In some cases, such as a confined canyon with a narrow floodplain, the minimum boundary – the greater of either 200 feet from OHWM or the contiguous floodplain landward 200 feet from the floodway–will be equal to or greater than the floodplain. If the floodplain is less than 200 feet from OHWM, the minimum jurisdiction will extend beyond the floodplain boundary.

The SMP should include clear maps and descriptions of shoreline jurisdiction along all rivers and streams.

Mapping shorelands

SMPs must include maps showing shoreline jurisdiction, which is expected to be an approximate location for planning purposes only. Shorelands maps for streams may be based on one or more of the following:

- The floodway as mapped by FEMA on the Flood Insurance Rate Map (FIRM) or floodway map.
- The floodway described according to criteria set in the SMA. (See description under “Using SMA floodway.”)
- The approximate location of the OHWM.

Using FEMA floodway maps

The Federal Emergency Management Agency (FEMA) develops flood insurance rate maps showing the floodplain and sometimes the floodway for the federal flood insurance program. The SMA includes

these maps in part (i) of the definition of *floodway* [RCW 90.58.030(2)(b)(i)]. FEMA has been updating FIRMs using recent technical information and converting to higher resolution base maps. FEMA develops draft or preliminary maps before adopting “effective” maps. At a property owner’s request, FEMA may amend the effective map through a Letter of Map Amendment (LOMA) if technical data supports the revision.

Effective FIRM: If an effective FIRM is in place, local governments may use the floodway map to identify approximate shoreline jurisdiction. The shoreline jurisdiction map should state that the effective FIRM defines the floodway for shoreline jurisdiction mapping purposes only. Reference to a specific dated version of the FIRM is not required.

Preliminary FIRM: In some cases at time of local SMP adoption, FEMA has proposed a “preliminary” FIRM, and a new “effective” (adopted) FIRM is still in the future. The preliminary map would be based on FEMA’s most recent technical data, so this map can be used to identify the floodway and approximate shoreline jurisdiction for shoreline jurisdiction mapping purposes.

In this case, the SMP should state the date of the preliminary map so it’s clear that the preliminary map is the source of the floodway information. (Otherwise, the older “effective” map would continue to apply.) Include a statement such as, “The floodway is identified on the Federal Emergency Management Agency Preliminary Flood Insurance Rate Map (FIRM) for (location) dated xx/xx/xxxx, as later amended by FEMA or a later effective FIRM.” When FEMA finishes the map work, the effective map would be the map that identifies the floodway.

Definition: Ecology recommends the SMP include the following definition if FEMA maps are used to define the floodway.

“Floodway” means the area that has been established in effective federal emergency management agency flood insurance rate maps or floodway maps. The floodway does not include lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

The word “established” in this suggested definition is consistent with the SMA definition and “effective” indicates that the map is FEMA’s approved FIRM – not a preliminary or draft map – and also takes into account potential future changes to the maps.

If the SMP relies exclusively on the FEMA map to identify the floodway, do not use part (ii) of the SMA definition in your SMP floodway definition. This will help to avoid confusion.

Using SMA floodway

The SMP may use the “SMA floodway” -- that is, the floodway described in the SMA at RCW 90.58.030(2)(b)(ii):

...consists of those portions of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with

reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually.

With this option, the SMP shoreline jurisdiction map should generally identify the SMA floodway.

Definition: If the SMA floodway is used, the definition in the SMP should be consistent with RCW 90.58.030(2)(b)(ii).

Using the OHWM

The third choice is to use the OHWM to define shoreline jurisdiction. FEMA does not provide floodplain or floodway maps for all streams that are shorelines of the state. The FIRM does not always show the location of the floodway. If the floodway is not identified on FEMA maps or identified as described in part (ii) of the SMA definition, the approximate location of the OHWM should be used to show shoreline jurisdiction.

Definition: The SMP should include the definition of the OHWM per RCW 90.58.030(2)(c), regardless of whether the OHWM or floodway is the basis for shoreline jurisdiction maps. Shoreline jurisdiction will be determined at time of project review based on the most recent site specific information and must be a minimum of 200 feet from the OHWM or edge of the floodway, whichever is greater.

Using a combination

Local governments may choose to use a combination of FEMA floodway, SMA floodway and OHWM for mapping shoreline jurisdiction. For some municipalities, FEMA maps identify the floodways for some streams, or parts of streams, and not others. In this case, local governments may identify the floodway using the available effective FEMA maps and use the SMA definition part (ii) or the OHWM to identify the floodway for some streams where FEMA maps are not provided.

The shoreline jurisdiction map should clearly show where the floodway is based on the FEMA map, the SMA floodway definition or the OHWM.

Keeping a record

The SMP or a supporting document should explain why the choice of floodway or OHWM was made, in order to provide a record of the decision. For example, the SMP might state:

Shoreline jurisdiction includes the (Name) River, the river floodway as mapped by FEMA, shorelands within 200 feet of the edge of the floodway, and associated wetlands.

The explanation of why the FEMA floodway is being used might state:

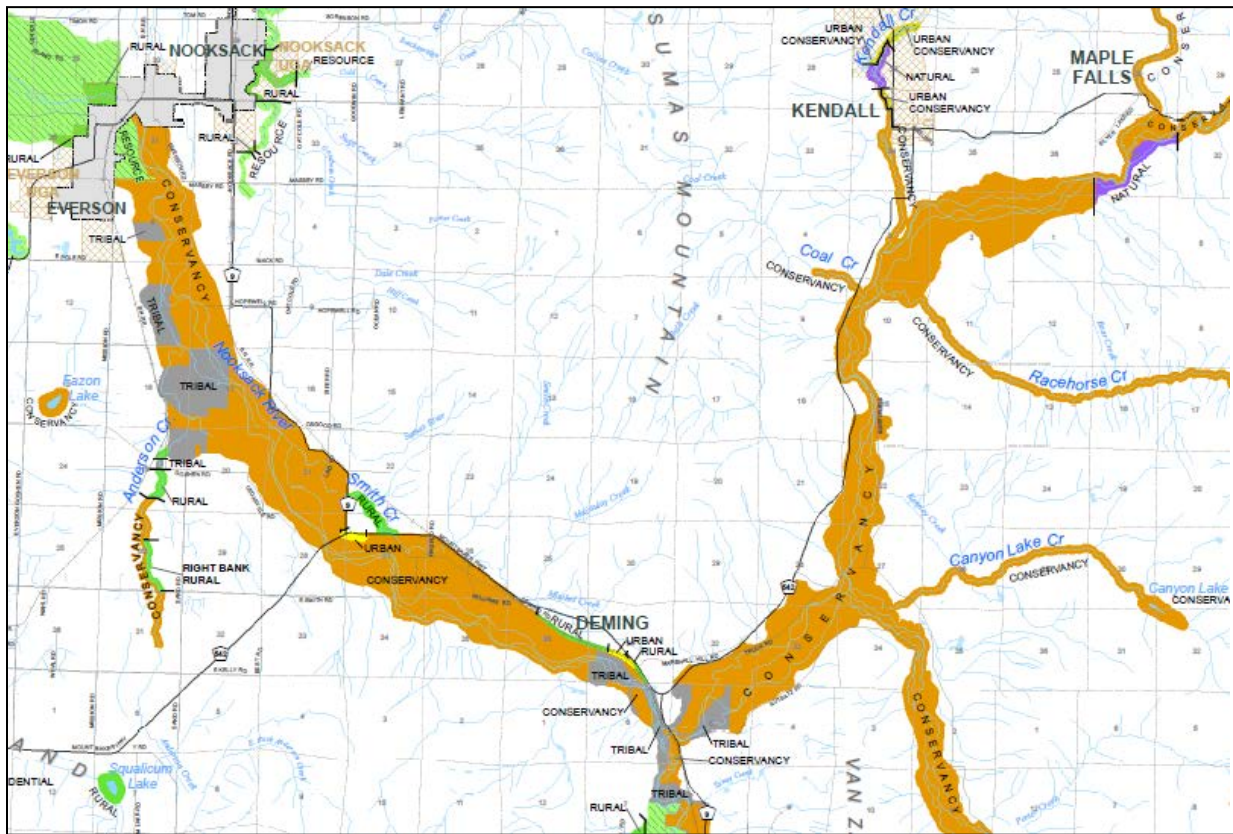


Figure 5-15: This portion of the Whatcom County shoreline area designations map shows sections of the mainstem, north and south forks of the Nooksack River and tributaries. The County used the geomorphic floodway, minus areas bounded by major roads and railroads, to determine the extent of shorelands.

FEMA has recently mapped the floodway for the (Name) River using the latest flood data. This data is the “most current, accurate, and complete scientific and technical information available” regarding the floodway, as WAC 173-26-201 requires. (Local government) has chosen to rely on the FEMA floodway to map shoreline jurisdiction because it is the most current information available.

Examples

Local governments have used one or more of the three options in SMP updates for determining shoreline jurisdiction along streams. Examples include:

- **City of Arlington:** For its shorelines of the state – the Stillaguamish River, South Fork of the Stillaguamish and Portage Creek – the City determined shorelands as 200 feet from the floodway and within the floodplain, as mapped by FEMA.
- **City of Kennewick:** Most of the Kennewick shoreland includes the area starting at the OHWM of the Columbia River and extending landward 200 feet in all directions from the OHWM.

- Whatcom County: For shorelands along the Nooksack and Sumas Rivers, the County relies on the geomorphic floodway plus 200 feet within the geomorphic floodplain. The geomorphic floodway represents the historic migration zones of the rivers, minus some areas bounded by major roads and railroads. The County identified the geomorphic floodway and floodplain by modifying the FEMA floodway and floodplain using LIDAR data and other mapping work. For other streams, shorelands are 200 feet from the approximate location of the OHWM.

Critical areas in shoreline jurisdiction

Local governments may extend shoreline jurisdiction to **include lands necessary for buffers for critical areas**. There are two options:

OPTION 1

Where a critical area or its buffer lies partly within the SMA jurisdictional limit, the local government may extend its shoreline jurisdiction to include the entire critical area and all lands necessary for buffers (see RCW 90.58.030 (2)(d)(ii)). If the local government extends jurisdiction in this manner, the SMP alone will provide protections for these critical areas. The Critical Areas Ordinance (CAO) will not apply within shoreline jurisdiction. Extending shoreline jurisdiction to all critical areas that lay partly in and partly out of shoreline jurisdiction can simplify the permitting process.

For example, marine bluffs may be designated as Geological Hazard Areas under the local CAO. Bluffs and their buffers may extend beyond the usual 200 foot shoreline jurisdiction. Local governments have the option to extend shoreline jurisdiction to include the entire bluff and its buffer area – allowing the entire shoreline vicinity to be regulated under the SMP (rather than having both the CAO and SMP apply to portions of the bluff.)

OPTION 2

If the local government chooses not to extend its shoreline jurisdiction under RCW 90.58.030(2)(d)(ii), the CAO will protect the entire critical area and its buffers (see RCW 36.70A.480(6)). The CAO will continue to apply to the entire critical area and its buffers, even after SMP approval. **However, the SMP will also apply to the portion(s) of the critical area and its buffers that lie within shoreline jurisdiction.** This means the subject critical area and some or all of its buffers will have “dual coverage” with regulation by both the SMP and the CAO.

RCW 36.70A.480(3)(b): “Except as otherwise provided in (c) of this subsection, development regulations adopted under this chapter to protect critical areas within shorelines of the state apply within shorelines of the state until the department of ecology approves one of the following: A comprehensive master program update, as defined in RCW 90.58.030; a segment of a master program relating to critical areas, as provided in RCW 90.58.090; or a new or amended master program approved by the department of ecology on or after March 1, 2002, as provided in RCW 90.58.080. The adoption or update of development regulations to protect critical areas under this chapter prior to department of ecology approval of a master program update as provided in this subsection is not a comprehensive or segment update to the master program...

(d) Upon department of ecology approval of a shoreline master program or critical area segment of a shoreline master program, critical areas within shorelines of the state are protected under chapter 90.58 RCW and are not subject to the procedural and substantive requirements of this chapter, except as provided in subsection (6) of this section...

(6) If a local jurisdiction's master program does not include land necessary for buffers for critical areas that occur within shorelines of the state, as authorized by RCW 90.58.030(2)(f)*, then the local jurisdiction shall continue to regulate those critical areas and their required buffers pursuant to RCW 36.70A.060(2). [*Now(d)(ii)].

RCW 90.58.030(2)(d)(ii) Any city or county may also include in its master program land necessary for buffers for critical areas, as defined in chapter 36.70A RCW, that occur within shorelines of the state, provided that forest practices regulated under chapter 76.09 RCW, except conversions to nonforest land use, on lands subject to the provisions of this subsection (2)(f)(ii) are not subject to additional regulations under this chapter;

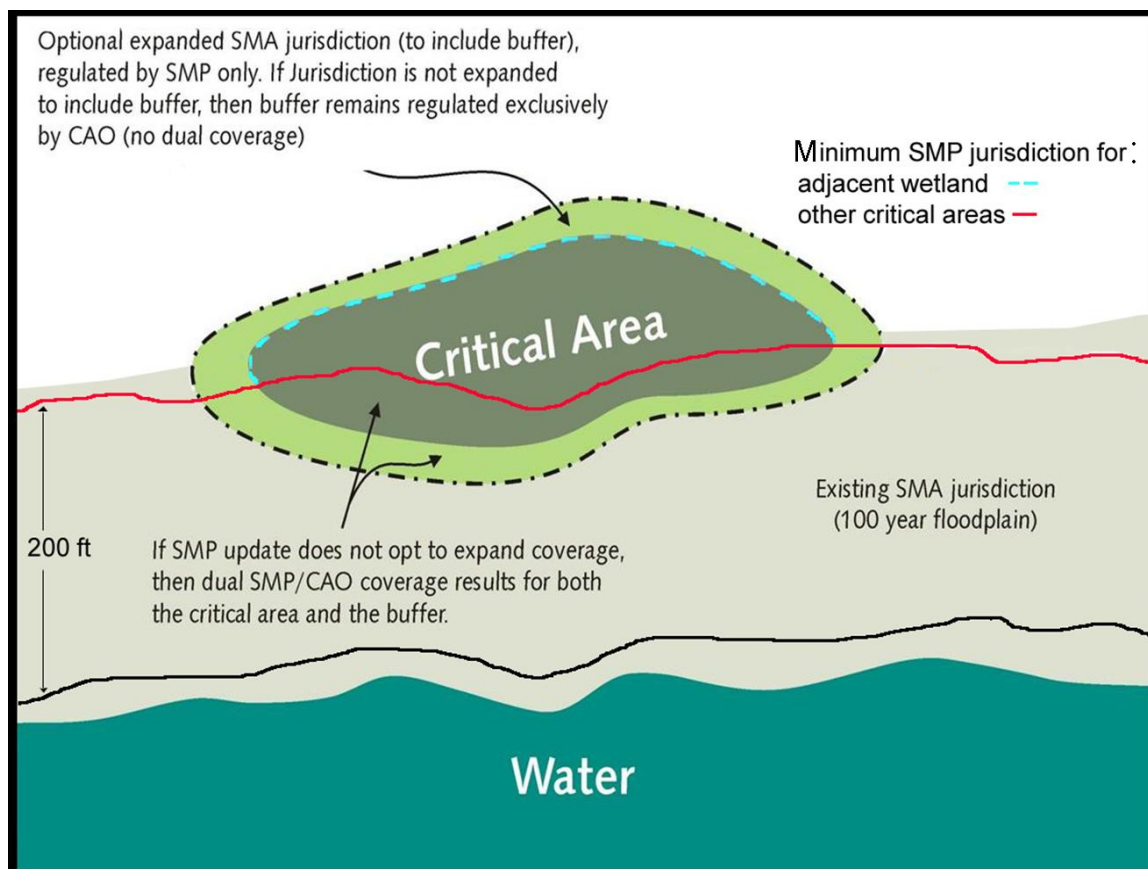


Figure 5-16: Local governments have the option to expand SMA jurisdiction to include lands necessary for buffers for critical areas.

To minimize confusion about what regulations apply to shoreline critical areas, Ecology recommends that local governments resolve the issue early during their SMP update process. Extending jurisdiction as described in Option 1 would eliminate overlapping regulations and streamline the shoreline permitting process. Local governments can extend SMA jurisdiction per critical area. In this manner, you can extend jurisdiction to specific critical areas where dual regulatory coverage would be confusing.

Associated wetlands and river deltas

“Associated wetlands” are those wetlands that are in proximity to and either influence or are influenced by tidal waters or a lake or stream subject to the SMA. River deltas associated with shorelines of the state are also subject to the SMA, except for those lands protected from floodwaters by authorized flood control devices. Deltas are created at the mouth of a river where it enters a larger water body.

RCW 90.58.030(2)(d):
“‘Shorelands’ or ‘shoreland areas’ (includes)... all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter;”

The **entire** wetland or natural river delta is “associated” **if any part** of it lies within the area 200 feet from the ordinary high water mark or within the floodplain landward 200 feet

of the floodway, including wetlands that extend above, or upstream of, the 20cfs point. From an ecological standpoint, it makes sense to manage a wetland as a single system.

Factors used to determine whether wetlands meet the "proximity and influence" test include but are not limited to one or more of the following:

- Periodic inundation.
- Hydraulic continuity.
- On marine waters, formation by tidally influenced geohydraulic processes, or a surface connection through a culvert or tide gate.

On streams, the entire wetland is associated if any part is located within the 100-year floodplain of a shoreline or within 200 feet of the OHWM or floodway.

Consider all factors together when determining "association." A wetland's hydrology does not have to be in a defined channel to be considered "associated." Hydraulic continuity clues include undrained hydric soils contiguous with the water body, and sheet flow from the site during or following precipitation events.

In some cases, wetlands *outside* the 100-year floodplain *may* be "associated" if they are hydraulically connected with shoreline waters through surface or subsurface flows.

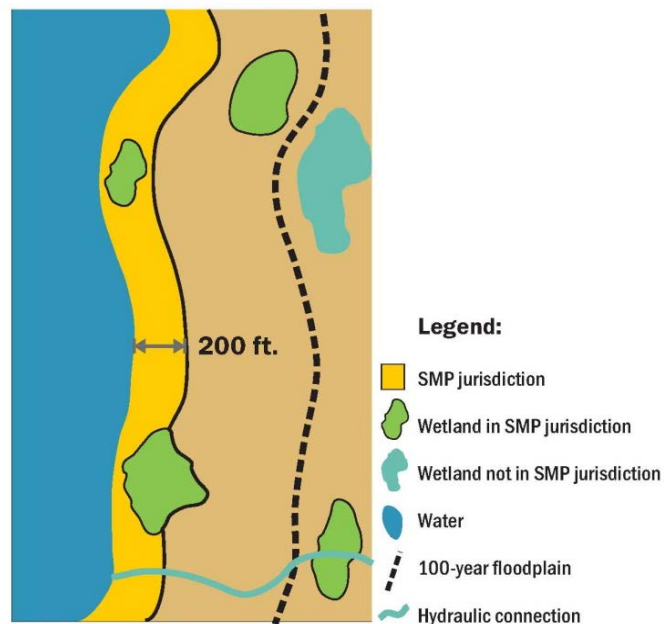


Figure 5-17: Wetlands in shoreline jurisdiction are either fully or partially within 200 feet of the OHWM, within the floodplain, or associated through hydraulic continuity.

In coastal systems, all wetlands behind the primary dune are "associated" with the larger water body (e.g., ocean, bay). Wetlands behind the second dune must have direct hydrologic (surface) connection or be part of a continuum of associated wetlands to be associated.

A road, dike or other barrier between the shoreline and the wetland does not necessarily preclude hydraulic continuity. If there is an *obvious topographic break* from the elevation of the water body (excluding natural or man-made berms), the wetland is probably *not* "associated."

Ecology's Wetland Rating System and other technical reports provide additional guidance on determining appropriate hydrologic boundaries on wetlands. See [Wetlands tools and resources](#).

Non SMA streams flowing into SMA water bodies

In many municipalities, non SMA streams with a mean annual flow under 20 cfs flow into water bodies such as rivers, lakes and marine waters that are regulated under the SMA. The portion of streams within a shoreland as defined by the SMP will be subject to SMP regulations.

Shoreline jurisdiction for these streams will vary, depending on the immediate circumstances.

- The portion of the stream within 200 feet of the OHWM of the SMA water body will be in shoreline jurisdiction, and the SMP will apply.
- Portions of non-SMA streams that flow through floodplains within shoreline jurisdiction would be regulated by the SMP.
- If the non-SMA stream flows into the delta of a river under the SMA, the non-SMA stream within the river delta shoreland would be regulated by the SMP.
- For non-SMA streams that flow into marine waters. For these streams, the extension of the marine tidal waters upstream will affect shoreline jurisdiction. *“Where a stream enters the tidal water, the tidal water is bounded by the extension of the elevation of the marine ordinary high water mark within the stream”* [WAC 173-22-030(16)]. The extension of the elevation of the marine OHWM might extend a short distance to a mile or more upstream. In such cases, shoreline jurisdiction would include the area within 200 feet of the OHWM of the section of the stream with tidal water as defined above.

Outside of shoreline jurisdiction, buffers established by the critical areas ordinance would apply.

SMA and federal lands

Generally, an SMP should include federal lands within shoreline jurisdiction. Non-federal activities that take place on federal land are usually subject to the SMA. For examples, a lake resort operating with a federal lease, or a private cabin on an in-holding along a stream within a national forest, are under the SMA.

In some cases, federal and state statutes establish exclusive federal jurisdiction. For example, state/federal agreements indicate that Olympic and Mount Rainier national parks are under federal jurisdiction only, so the SMA will not apply to those parks. Areas under exclusive federal jurisdiction may be excluded from the SMP.

Ecology will assume the SMA applies on federal land unless a local government provides documentation of exclusive federal jurisdiction. Contacting the public affairs offices of the federal agency with lands within your county or city may be a useful starting point if you want to pursue documentation of sole federal jurisdiction.

Relevant non-SMA statutes may include:

- [RCW 36.34.210](#) Forest lands may be conveyed to United States.
- [RCW 36.34.220](#) Lease or conveyance to United States for flood control, navigation, and allied purposes.
- [RCW 36.34.230](#) Lease or conveyance to United States for flood control, navigation, and allied purposes -- State consents to conveyance.
- [RCW 36.34.240](#) Lease or conveyance to United States for flood control, navigation, and allied purposes -- Cession of jurisdiction.
- [RCW 36.34.250](#) Lease or conveyance to the state or to United States for military, housing, and other purposes.
- [RCW 36.34.260](#) Lease or conveyance to the state or to United States for military, housing, and other purposes -- Procedure.
- [RCW 36.34.270](#) Lease or conveyance to the state or to United States for military, housing, and other purposes -- Execution of instrument of transfer.
- [RCW 37.04](#) General cession of jurisdiction.
- [RCW 37.08.180](#) Jurisdiction ceded. Jurisdiction ceded when acquisition of land for permanent military installations, see [RCW 37.16.180](#).
- [RCW 37.08.200](#) Rainier National Park. Exclusive jurisdiction ceded to the United States.
- [RCW 37.08.210](#) Olympic National Park. Exclusive jurisdiction ceded.

SMA and tribal lands

The application of the Washington State Shoreline Management Act to land within Indian reservations is a complex legal issue. To date, there is no law or court decision that directly addresses this issue. The SMA does not include any reference to tribal lands or Indian reservations. RCW 37.12.060 addresses regulation of the use of property belonging to any Indian or Indian tribe.

Nothing in this chapter shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights and tidelands, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or **shall authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute** or with any regulation made pursuant thereto...(emphasis added)

Indian tribes are sovereign governments that exercise governmental authority within their reservations. Generally, tribes exercise authority over their members and lands held by the federal government in trust for the tribe or its members (trust land). The courts have generally held that the tribes do not have jurisdiction over non-tribal members holding land in fee regarding land use regulation. There may be some instances where the tribe would have jurisdiction in these situations, however, and these are decided based on the facts of the case.

Therefore, the SMP generally applies to any land within reservation boundaries owned in fee by a non-tribal member. Local governments should work with tribal governments to define the extent of shoreline jurisdiction and resolve the application of shoreline regulations.

Documenting and mapping shoreline jurisdiction

Maps prepared to illustrate preliminary shoreline jurisdiction can serve as base inventory maps. The preliminary maps should include a vicinity map and identify shoreline jurisdiction for marine shorelines, rivers, lakes and shorelands, including wetlands.

The maps should be electronically generated to create a working map portfolio, reproducible at various scales and able to display data layers. State agencies' Internet mapping sites and current as well as historic aerial photograph series provide excellent baseline information for preliminary shoreline jurisdiction maps. You can obtain this information from the introductory sections of existing assessment reports and studies on Ecology's Shoreline Management website.

If maps do not clearly show shoreline jurisdiction, then jurisdiction must be described in a narrative. Ecology does not expect the OHWM to be precisely mapped for the SMP update.

Disclaimers

Shoreline jurisdiction maps in SMPs should include disclaimers that explain:

- Shoreline jurisdiction as shown is approximate and for planning purposes only.

- Shoreline jurisdiction will be determined at the time of project review.

Here's an example disclaimer: "Shoreline jurisdiction boundaries depicted on this map are approximate. They have not been formally delineated or surveyed and are intended for planning purposes only. Additional site-specific evaluation may be needed to confirm or modify the information shown on this map. Shoreline jurisdiction will be determined at time of project review using the best available site-specific information."

Map components

City maps should show city and urban growth area boundaries, topography, and SMA shorelines. Consider using a 10-meter DEM (digital elevation model) as a background image. Include an inset map that shows the location of the city in the state, within the county and relative to nearby cities.

County vicinity maps should show WRIA boundaries, topography, city borders and SMA shorelines. Consider using a 30-meter DEM as a background image. Include an inset map showing the location of the county in the state.

The next images illustrate use of existing core data layers to establish preliminary SMA jurisdiction boundaries. Working maps can be refined with accurate local data and in some cases, field checking.

Examples of shoreline jurisdiction mapping

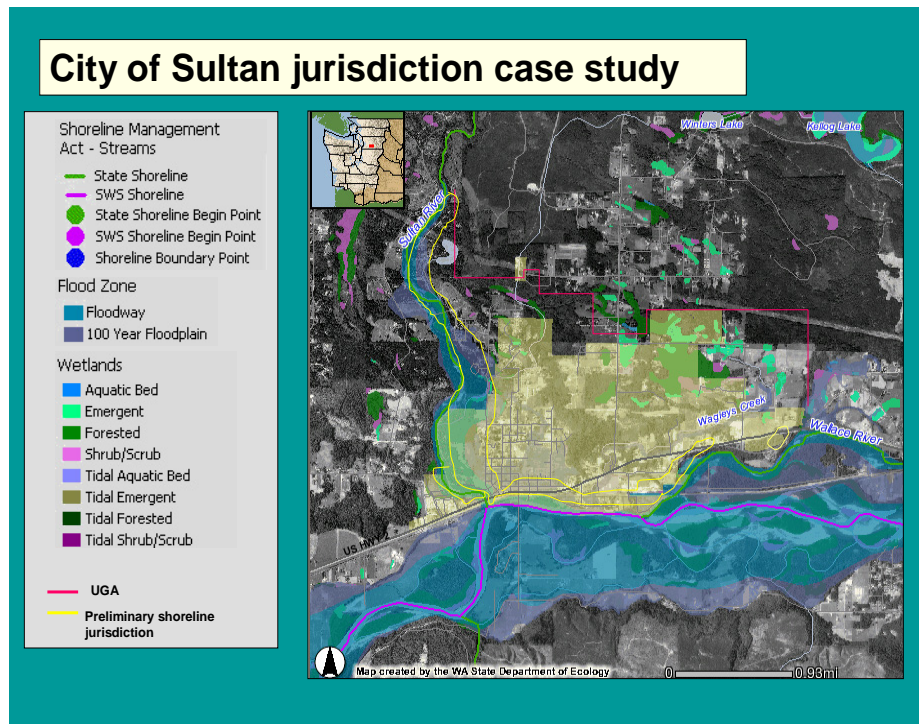


Figure 5-18: Using data layers to establish preliminary shoreline jurisdiction.

Sultan preliminary wetland mapping:

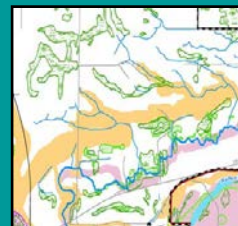
- Three sets of maps ranging from NWI to locally surveyed wetland delineations.
- Cross-comparison of wetland maps, hydric soils map and orthophoto to assess data layer accuracy.
- Document data sources and analysis methods for characterization report.



NWI WETLAND



ORTHO PHOTO



LOCALLY SURVEYED WETLANDS

Figure 5-19: Examples of layered data.

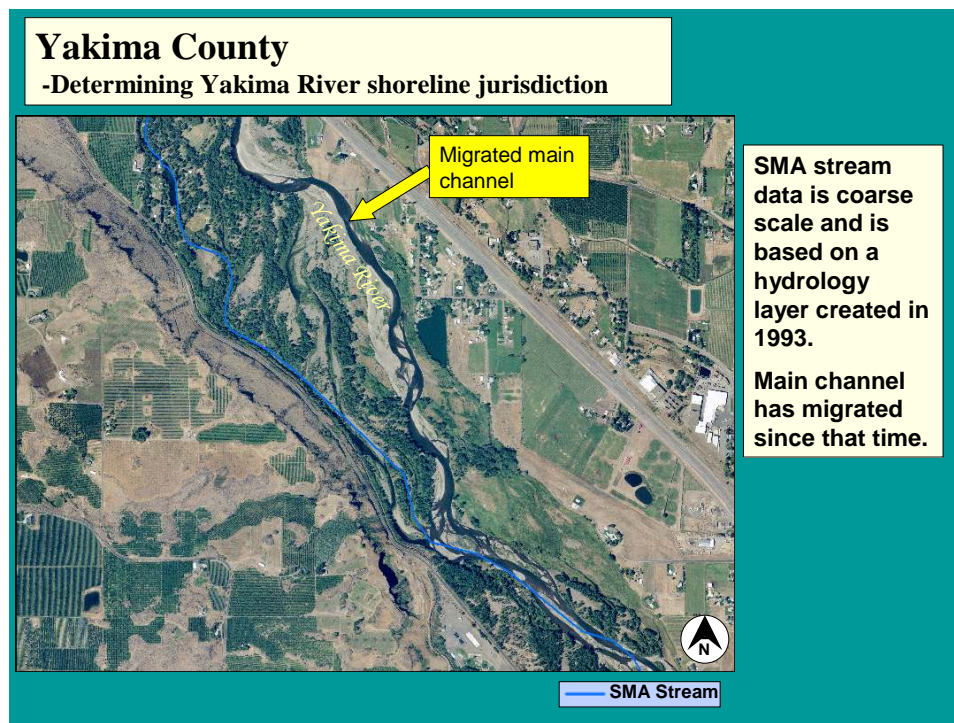


Figure 5-20: Using mapping to illustrate shoreline jurisdiction.

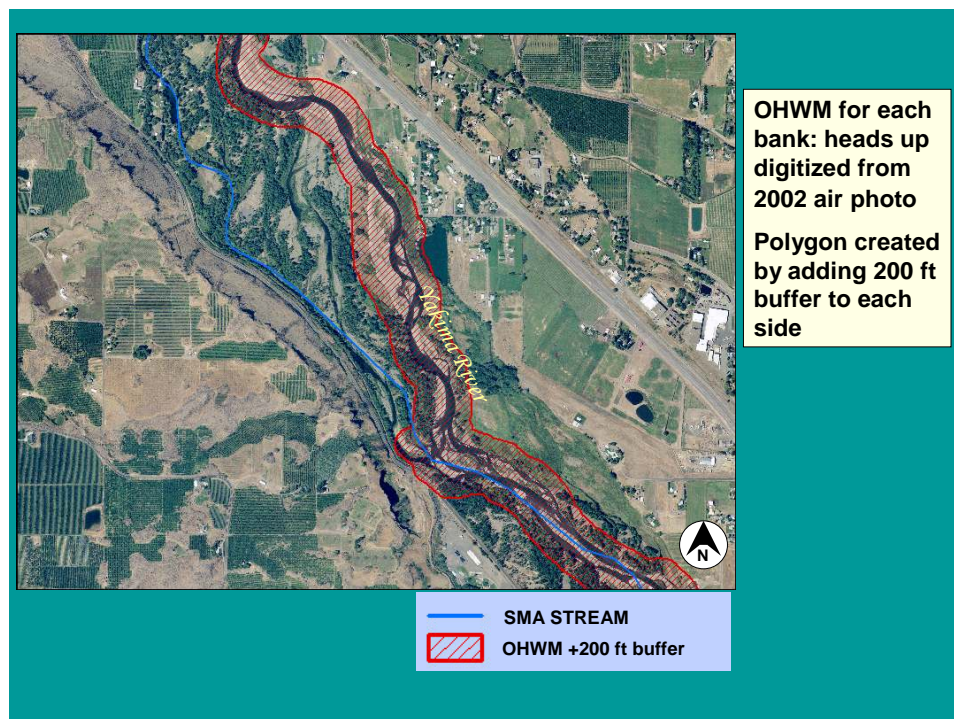


Figure 5-21: Using mapping to illustrate shoreline jurisdiction

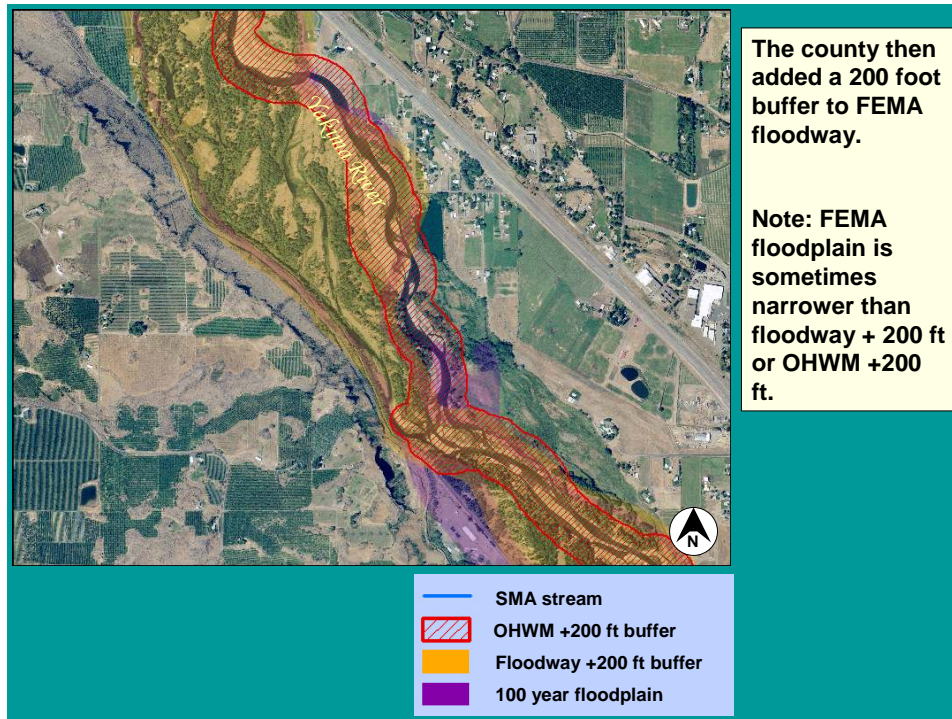


Figure 5-22: Using mapping to illustrate shoreline jurisdiction

SMA Definition of Shoreline Jurisdiction

The SMA definition of shoreline jurisdiction is long and complex. The full text is included below.

RCW 90.58.030(2)(a) through *(2)(h)* defines the geographical context of shoreline jurisdiction as follows:

(2) Geographical:

(a) "Extreme low tide" means the lowest line on the land reached by a receding tide;

(b) "Floodway" means the area, as identified in a master program, that either: (i) Has been established in federal emergency management agency flood insurance rate maps or floodway maps; or (ii) consists of those portions of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually. Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state;

(c) "Ordinary high water mark" on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: PROVIDED, That in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water;

(d) "Shorelands" or "shoreland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology.

(i) Any county or city may determine that portion of a one-hundred-year-flood plain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward two hundred feet therefrom.

(ii) Any city or county may also include in its master program land necessary for buffers for critical areas, as defined in chapter [36.70A](#) RCW, that occur within shorelines of the state, provided that forest practices regulated under chapter [76.09](#) RCW, except conversions to nonforestland use, on lands subject to the provisions of this subsection (2)(d)(ii) are not subject to additional regulations under this chapter;

(e) "Shorelines" means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (i) shorelines of statewide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes;

(f) "Shorelines of statewide significance" means the following shorelines of the state:

(i) The area between the ordinary high water mark and the western boundary of the state from Cape Disappointment on the south to Cape Flattery on the north, including harbors, bays, estuaries, and inlets;

(ii) Those areas of Puget Sound and adjacent salt waters and the Strait of Juan de Fuca between the ordinary high water mark and the line of extreme low tide as follows:

(A) Nisqually Delta—from DeWolf Bight to Tatsolo Point,

(B) Birch Bay—from Point Whitehorn to Birch Point,

(C) Hood Canal—from Tala Point to Foulweather Bluff,

(D) Skagit Bay and adjacent area—from Brown Point to Yokeko Point, and

(E) Padilla Bay—from March Point to William Point;

(iii) Those areas of Puget Sound and the Strait of Juan de Fuca and adjacent salt waters north to the Canadian line and lying seaward from the line of extreme low tide;

(iv) Those lakes, whether natural, artificial, or a combination thereof, with a surface acreage of one thousand acres or more measured at the ordinary high water mark;

(v) Those natural rivers or segments thereof as follows:

(A) Any west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at one thousand cubic feet per second or more,

(B) Any east of the crest of the Cascade range downstream of a point where the annual flow is measured at two hundred cubic feet per second or more, or those portions of rivers east of the

crest of the Cascade range downstream from the first three hundred square miles of drainage area, whichever is longer;

(vi) Those shorelands associated with (f)(i), (ii), (iv), and (v) of this subsection (2);

(g) "Shorelines of the state" are the total of all "shorelines" and "shorelines of statewide significance" within the state;

(h) "Wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.