

(DRAFT) AGENDA
Regular Meeting - Bremerton Planning Commission
(Subject to PC approval)
October 19, 2010
5:30 P.M.
345 – 6th Street
Meeting Chambers – First Floor

- I. CALL TO ORDER**
 - II. ROLL CALL (quorum present)**
 - III. APPROVAL OF THE AGENDA**
 - IV. APPROVAL OF MINUTES:**
 - September 21, 2010 Regular meeting.
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V. PUBLIC MEETING

- A. Call to the Public:** Public comments on any item not on tonight's agenda
 - B. Public Workshop:**
 - 1. Shoreline Master Program (SMP) educational workshop - "Regulatory Approach Options 2" (Parametrix & N. Floyd).**
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VI. BUSINESS MEETING

- A. Chair Report:** Chairman Hoell
 - B. Director Report:** JoAnn Vidinhar.
 - C. Old Business:**
 - D. New Business**
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- VII. ADJOURNMENT:** The next regular meeting of the Planning Commission is
November 16, 2010
Planning Commission meeting packets are available on-line at
www.ci.bremerton.wa.us

**Minutes for
City of Bremerton Planning Commission
Regular Meeting**

September 21, 2010

I. Call to Order

The meeting was called to order by **Chairman Hoell** at 5:30 p.m.

II. Roll Call

Those present were: Commissioner Cockburn, Commissioner Jose, Commissioner Streissguth, Commissioner Tift, and Chairman Hoell. Commissioners Kosusko and Mosiman were excused. Quorum certified.

Also present: Dave Sherrard (Parametrix), JoAnn Vidinhar, Nicole Floyd, Lindsey Sehmel, and Pam Bykonen (DCD staff).

III. Approval of Agenda

Chairman Hoell introduced the agenda. **A motion was made by Commissioner Jose and seconded by Commissioner Cockburn to approve the agenda as presented.** It was agreed by general consensus to approve the agenda as presented.

IV. Approval of Minutes

The minutes of the Regular Meeting held on August 17, 2010 were presented for approval by Chairman Hoell. It was noted that reference to Commissioner Jose's participation on the selection committee for the SKIA Sub-area Plan had not been included in the record. **A motion was made by Commissioner Tift and seconded by Commissioner Jose to approve the Regular Meeting Minutes of August 17, 2010 as amended.** Called for a vote: Commissioner Cockburn: Yes; Commissioner Jose: Yes; Commissioner Streissguth: Abstain; Commissioner Tift: Yes; Chairman Hoell: Yes. The motion carried.

V. Public Meeting

A. Call To The Public (public comments on any item not on tonight's agenda).

Chairman Hoell asked if there were any comments from citizens.

Jim Manley, Real Estate Agent representing the Souschek Property located at 2110 19th Street: "Not being an agenda item, I just wanted to give you a brief overview of something that we're working on and I want to start conversations with the City. His property is presently owned R-10 and we'd like to review that in the Comp[rehensive] Plan [amendments] coming up. My first two pages of the handout I had explain some of that but in order to go very quickly I want to explain the pictures very quickly

so you know what they are.” Mr. Manley showed photos of the property and explained the history of oil-related businesses that have been there along with surround property uses (apartments and condominiums). Because of the economy and the soil contaminants on the property, Mr. Souschek would like to work toward a change in the zoning at the next Comprehensive Plan update in 2011.

Chairman Hoell asked if there were any further comments from citizens. Seeing none, she closed this portion of the meeting.

- B. 1. Public Workshop – Capital Improvement Program (CIP) Overview: Lindsey Sehmel, City Planner**, reviewed the Capital Improvements for the City of Bremerton from 2011 through 2016. Normally CIPs would be included in the annual Comprehensive Plan amendments, but due to a reduced budget and lack of additional amendment items, there will not be a 2010 update to the Comprehensive Plan.

2. Public Workshop –Shoreline Master Program – “Structure of the Shoreline Master Program”: David Sherrard, SMP Consultant, Parametrix, began the educational workshop with an explanation of the Community Involvement stage of the update process where draft policies and regulations will be developed with input from the public. Also, the Bremerton shoreline inventory has been completed and sent to the Department of Ecology for comment.

One of the goals of the SMP update is to ensure that, although the SMP is a “stand alone” document, it will be included as a section in the Comprehensive Plan as well as the Bremerton Municipal Code where the development standards are located.

Mr. Sherrard reviewed the statutory use priority of water dependent uses, water related uses, water enjoyment uses (not industrial), and non-water oriented uses. He gave examples of each item and discussed what uses could be included in each priority item. Mr. Sherrard discussed what the current code’s policies are including priority for water-dependent uses and the requirement of a Conditional Use Permit (CUP) for many water enjoyment uses.

Karen Danis (Jacobsen Blvd.) asked if there are other areas in the code that need changes similar to the change of when a CUP is required. Mr. Sherrard said that there will be changes throughout the process, but staff is more focused on changing the structure of the code to provide a reach-based direction to determine priority.

Larry Taylor (Snyder Ave.) asked what effort was being made to have the Shoreline Master Plan conform to other agency’s requirements such as Washington State Fish & Wildlife, the Army Corps of Engineers, etc. **Mr. Sherrard** said the consulting staff will do everything they can to make sure the other agencies’ concerns will be addressed up front.

Larry Taylor then asked about the inner harbor line and the outer harbor line, specifically, if that delineation could be given up. **Mr. Sherrard** explained that the inner harbor line marks where the state has sold tidelands and the area between the inner harbor line and outer harbor line is controlled by the Department of Natural Resources (DNR). The DNR is also part of the SMP Technical Advisory Committee.

Mr. Sherrard continued the workshop with an overview of public access mandates which allow for public access to public shorelines, protection of private property, and minimizing impacts to existing views. **Commissioner Jose** noted there was a provision for charging fees for public access but it had never been used and asked Mr. Sherrard to explain. **Mr. Sherrard** said that for fees to be collected for public access a public benefit must be provided and the fees must be proportional to both the impact and the public benefit. The fees must be applied to the public access which would require a detailed plan of what is to be provided and at what cost and generally would have to be used within five years.

Mr. Sherrard moved on to Bremerton's view corridor policy. He questioned the usefulness of a view corridor policy within a residential zone or high-bank shoreline. The SMP update will include language that will deal with view corridors on a reach-by-reach basis.

Karen Danis asked if Bremerton's view corridor policy is currently in effect. **Nicole Floyd, City Planner**, explained that the view corridor policy is in effect but the rejection in 2006 by the Department of Ecology of a proposed amendment to the SMP that would have eliminated the view corridor policy could lead to confusion regarding the current policy. [The amendments to the SMP had been rejected only because of the timing of the full SMP update.]

Another goal of the SMP update is to determine the most appropriate areas for public access. Bremerton has an up-to-date inventory of all street ends that abut shorelines within the city limits. **Richard Nerf** (Madrona Point) asked about public access to privately held tidelands. **Mr. Sherrard** said the City and the SMP are required to recognize the property rights of Washington tideland owners.

Larry Taylor asked for the date of the shoreline [street-end] inventory. **Mr. Sherrard** said it had been completed in 2006 by city staff.

Commissioner Streissguth asked if there were examples of DOE approved integrated shoreline plans. **Mr. Sherrard** said that the City of Renton has an integrated shoreline plan developed by him that is ready for their City Council's approval but has not yet been approved by DOE.

Commissioner Jose asked for clarification as to why Mr. Sherrard recommends the use of an integrated shoreline plan. **Mr. Sherrard** said his recommendation is based on the diversity of the shoreline in Bremerton such as topography, ecological sensitivity, existing land use patterns, etc. and to simplify permitting rules.

Larry Taylor asked if the update would include language to speed up the process a person would have to go through to make beach improvements such as a dock or bulkhead. Currently, expensive studies and reports on the shoreline must be conducted before a permit can be obtained. **Mr. Sherrard** replied that one of the tools city staff will have by approaching things on a reach-basis is a means to use already completed studies to indicate appropriate uses in specific areas which could save resources.

In closing, **Nicole** reviewed how the community can become more involved with the Shoreline Master Program update.

Commission Streissguth expressed concern regarding SMP updates being made without regulatory oversight during the process to ensure compliance. She asked for the timeline of the City's completion of the update and the review [by DOE] and wondered if the processes ran parallel or if the City completes its portion before having a regulatory review. Commissioner Streissguth also reminded staff about including the issue of the science of sea level rise and its best management practices for development in the SMP update. **Mr. Sherrard** explained that a Department of Ecology staff person experienced with master program updates was assigned to Bremerton who coordinates with technical staff from DOE and reviews Bremerton's draft documents. Although DOE's final approval comes at the end of the update process, Bremerton has many opportunities to "check in" with DOE, the local tribes, and other resource agencies before the final approval. **Nicole** added that coordination between Washington State Fish & Wildlife, the tribes, the Department of Natural Resources, Kitsap County jurisdictions, etc. have been meeting quarterly to discuss issues of concern and to receive input on draft documents.

Chairman Hoell closed the Public Workshop.

VI. Business Meeting

A. **Chairman's Report: None.**

B. **Director's Report: None.**

C. **Old Business: Chairman Hoell** asked if there were any questions for Lindsey Sehmel, City Planner, regarding the SKIA Sub-Area Plan that was presented at the September meeting. There were none. **Lindsey** asked for a member of Planning Commission to participate on a committee to work with public outreach. **Commissioner Jose** offered to join the committee.

Chairman Hoell asked staff for an update on directional signage for downtown Bremerton. **Nicole** said that staff had spoken to Wyn Birkenthal, Parks Department Director, and Mike Mecham, City Engineer, about additional way-finding signs directing visitors to Bremerton tourist attractions. Each sign costs approximately \$650 - \$700 (\$150 - \$200 per sign, \$500 per pole) and requires two Public Works employees to install. Currently, the Sign Shop is down to one employee and the City is still under budget constraints so it is unlikely that the City will be able to create and install way-finding signs in the near future. Washington State Department of Transportation (WSDOT) does provide generic tourist attraction signs but staff felt that type of sign would not accomplish Commissioner Jose's request. **Commissioner Streissguth** suggested having Public Works partner with WSDOT. **Commissioner Jose** asked Lindsey to add tourist/directional signage to the draft 2011 Capital Improvement Program for presentation to Public Works. **Commissioner Streissguth** thought there might be grant funding available where signage could be included.

Lindsey asked for a member of the Planning Commission to participate on the Gorst Watershed Technical Advisory Committee for 2011/2012. The committee will meet on a quarterly basis with a total of four to five meetings. **Commissioner Jose** offered to participate on the committee.

- D. New Business: Commissioner Jose** reported on the CDBG Citizen Advisory Committee (CAC) that he took part in. The CAC reviewed Block Grant funding applications, interviewed the applicants, and made a recommendation for funding that will be presented to City Council at a future date. Commissioner Jose enjoyed serving on the committee and thought well of the projects that were recommended for funding.

VII. Adjournment

Meeting was adjourned at 6:54 p.m. The next Regular Meeting is scheduled for October 19, 2010.

Respectfully submitted by:

Andrea Spencer, Executive Secretary

Approved by:

Lois Hoell, Chairman

TECHNICAL MEMORANDUM

DATE: October 12, 2010
TO: Bremerton Staff, Planning Commission and Public
FROM: David Sherrard, Parametrix
SUBJECT: Bremerton Shoreline Master Program
Regulatory Approach Options 2 – Code Provisions
For October 19, 2010 Workshop Meeting

This Technical Memorandum addresses issues relating to requirements of the Shoreline Guidelines WAC 173-26 which will need to be addressed in the Shoreline Master Program (SMP)

Issues addressed in this memorandum include:

1. Shoreline geographic designations
2. Critical Areas
3. Vegetation management
4. Building height and downtown development

More detailed discussion of each of these issues is provided below in the following format:

- Requirements of the Shoreline Guidelines WAC 173-26 –this is a summary, the full text of the referenced WACs are at the end of the memo.
- Existing Bremerton Code
- Options
- Recommendation

Other Technical Memoranda prepared to address other issues include:

- Nonconforming Uses discussed August 17, 2010
- Regulatory Options 1 discussed September 21, 2010
 - Structure of the Shoreline Master Program
 - Provisions for Shorelines of Statewide Significance
 - Water Oriented Uses
 - Public Access
- Regulatory Options 3 scheduled for November 16, 2010

- No-Net Loss
- Restoration
- Mitigation of Cumulative Impacts

1. Shoreline Geographic Environment Designations

SMA Guidelines: WAC 173-26-211(4)(c)(i) provides that “Local governments may establish a different designation system or may retain their current environment designations, provided it is consistent with the purposes and policies of this section and WAC 173-26-211(5).

Environment Designations in WAC 173-26-211(5) are envisioned as overlays similar to the existing system. Those that can apply to the city include:

- a) High Intensity
- b) Residential
- c) Urban Conservancy
- d) Natural

The Rural conservancy" environment is not applicable in an urban area such as Bremerton.

Shoreline environments must contain:

- a) A statement of purpose that describes the shoreline management objectives of the designation in a manner that distinguishes it from other designations.
- b) Classification criteria that provide the basis for classifying or reclassifying a specific shoreline area with an environment designation.
- c) Management policies that are in sufficient detail to assist in the interpretation of the environment designation regulations and to evaluate consistency with the local comprehensive plan.
- d) Regulations that address:
 - i) Types of shoreline uses permitted, conditionally permitted, and prohibited;
 - ii) Building or structure height and bulk limits, setbacks, maximum density or minimum frontage requirements, and site development standards; and
 - iii) Other topics not covered in general use regulations that are necessary to assure implementation of the purpose of the environment designation.

Existing Code: The existing SMP provides five geographic overlays that apply in addition to zoning requirements.

- a) Urban Conservancy
- b) Urban Residential
- c) Urban Commercial
- d) Downtown Waterfront
- e) Urban Industrial

These designations generally are consistent with the SMA Guidelines with Urban Commercial, Downtown Waterfront and Urban Industrial being subsets of High Intensity Environment concept.

Options: Five options are proposed for consideration for Bremerton:

- a) Retain the existing city overlay system. This approach is generally consistent with the SMA Guidelines.
- b) Use the overlay classifications in the new Shoreline Guidelines. These are less specific than those currently in use in Bremerton and don't meet the city's specific needs as well.
- c) Develop new overlay classifications that more closely parallel the city's zoning.

The advantages of this approach are:

- i) consistency between shoreline regulations and zoning regulations
- ii) Simplicity in administration

The disadvantages of this approach are that it assumes that development constrains and approaches are similar in areas with similar zoning, notwithstanding different ecological conditions.

- d) Develop overlay classifications that are based on specific shoreline reaches and recognize the specific characteristics of each area.
- e) Develop classifications that are not overlays and provide a single zoning category for shoreline properties. Such shoreline districts would parallel the city's zoning classifications.

The advantages of this approach are:

- i) There would be no shoreline overlay which would avoid inconsistency between shoreline regulations and zoning regulations
- ii) These would be somewhat more simple to administer than the current overlay

The disadvantages of this approach are:

- i) Because of the difference between shoreline and upland provisions, an individual property may be split between two zoning districts
- ii) Shoreline regulations are generally more restrictive in the range of use allowed, especially with the hierarchy of preference for
 - A water dependent uses
 - Water-related uses
 - Water enjoyment uses
 - Non-water-oriented uses

Recommendation: Consider using a combination of (c), (d), and (e).

- a) Use a system similar to the existing city system in areas where parcels have a substantial area not subject to the SMP. We may want to make some minor adjustments to reflect the city's zoning – for example separate single-family and multi-family overlays. The shoreline regulations would function as an overlay with supplemental requirements.
- b) Consider a single shoreline zoning classification (option (e)) for those properties that are entirely within shoreline jurisdiction, or where shoreline values predominate over the

- c) Develop reach-based regulations as part of the overlay for specific measures that may appropriately vary by reach. This is likely to include different setbacks and buffers based on ecological functions in each reach rather than the existing regulations (including Critical Area regulations that distinguish only Urban Commercial/Industrial/ Downtown Waterfront, Urban Residential, and Urban Conservancy.)
- d) Consider an “Isolated Shoreline” designation for lands within the 200 foot SMA jurisdiction that are isolated by roadways or other barriers that make shoreline regulations generally inapplicable.

2. Critical Areas

SMA Guidelines: Critical areas are defined as including the same areas and ecosystems as defined in the Growth Management Act [RCW 36.70A.030(5)]:

The 2003 Shoreline Guidelines in WAC 173-26-221(2) provide similar standards to those that apply to critical areas in non shoreline areas found in WAC 365-190-080 (as amended by the legislature in 2010). Specific requirements in shorelines include:

- a) Shoreline master programs shall provide a level of protection to critical areas located within shorelines of the state that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources as defined by department of ecology guidelines adopted pursuant to RCW 90.58.060. (Engrossed House Bill 1653 61st Legislature 2010 Regular Session)
- b) Are consistent with the specific provisions of the SMA Guidelines for flood hazard reduction;
- c) Buffers for critical areas, within the shorelines may be included in the SMP, even if they extend outside of normal shoreline jurisdiction;
- d) Critical area regulations must be developed using scientific and technical information developed in the Inventory/Characterization as described in WAC 173-26-201 (2)(a).
- e) The *planning* objectives of shoreline management provisions for critical areas are the protection of existing ecological functions and ecosystem-wide processes and restoration of degraded ecological functions and ecosystem-wide processes. The *regulatory* provisions for critical areas shall protect existing ecological functions and ecosystem-wide processes.
- f) Promote human uses and values that are compatible with the other objectives of this section, such as public access and aesthetic values, provided they do not significantly adversely impact ecological functions.

Existing Code: Bremerton’s critical area regulations are in Section 20.14 of the Land Use Code except for Floodplain Management which is in Section 17.60 in the same section with the Building Code.

Provisions for Critical Aquifer Recharge Areas in 20.14.400 and Geologically Hazardous Areas in 20.14.600 don’t raise many shoreline issues.

Provisions most relevant to shorelines are found in 20.14.700 FISH AND WILDLIFE HABITAT CONSERVATION AREAS.

Classification and designation of fish and wildlife habitat conservation areas follow a general statewide template developed by the Washington Department of Fish and Wildlife (WDFW) and the Department of Natural Resources (DNR) and include the following most relevant provisions.

Section 20.14.720 (a) (1) Type S water means all waters, within their bankfull width, as inventoried as "shorelines of the state" under Chapter 90.58 RCW and the rules promulgated pursuant to Chapter 90.58 RCW including periodically inundated areas of their associated wetlands.

The most relevant regulations pertain to buffers contained in the following table:

20.14.730 Table 1: Water Type Buffer Standards			
Water Types	Attributes	Minimum Building Setback	Buffer Width Standard
S Saltwater	Urban Commercial/Industrial/ Downtown Waterfront	15 feet beyond buffer	25 feet
	Urban Residential	15 feet beyond buffer	35 feet
	Urban Conservancy	15 feet beyond buffer	175 feet
S Freshwater	Freshwater Shorelines of the State	15 feet beyond buffer	175 feet

- (1) **Buffers.** Where existing buffer area plantings provide minimal vegetative cover and cannot provide the City's water quality standards or habitat functions (per the requirements of the Department of Ecology and Fish and Wildlife), buffer enhancement shall be required. Where buffer enhancement is required, a plan shall be prepared that includes plant densities that are not less than three (3) feet on center for shrubs and eight (8) feet on center for trees. Monitoring and maintenance of plants shall be required in accordance with BMC 20.14.760, Monitoring and Contingency Plan. Existing buffer vegetation is considered "inadequate" and will require enhancement through additional native plantings and removal of nonnative plants when:
- (i) Nonnative or invasive plant species provide the dominant cover;
 - (ii) Vegetation is lacking due to disturbance and marine, stream, or habitat resources could be adversely affected; or
 - (iii) Enhancement plantings in the buffer could significantly improve buffer functions.

In addition 20.14.730 provides development standards for

(b) Anadromous Fish.

- (1) All activities, uses, and alterations proposed to be located in water bodies used by anadromous fish or in areas that affect such water bodies shall give special consideration to the preservation and enhancement of anadromous fish habitat, including, but not limited to, adhering to the following standards:

- (i) Activities shall be timed to occur only during the allowable work window as designated by the Washington Department of Fish and Wildlife for the applicable species;
 - (ii) If alternative alignment or location for the activity is not feasible, then activities shall be designed so that it will not degrade the functions or values of the fish habitat or other critical areas;
 - (iii) Shoreline erosion control measures shall be designed to use bioengineering methods or soft armoring techniques, according to an approved critical area report; and
 - (iv) Any impacts to the functions or values of the habitat conservation area are mitigated in accordance with an approved habitat management plan.
- (2) Structures that prevent the migration of salmonids shall not be allowed in the portion of water bodies currently or historically used by anadromous fish. Fish bypass facilities shall be provided that allow the upstream migration of adult fish and shall prevent fry and juveniles migrating downstream from being trapped or harmed.
 - (3) Fills, when authorized by the Shoreline Master Program, shall not adversely impact anadromous fish or their habitat or shall mitigate any unavoidable impacts and shall only be allowed for a water-dependent use.

Provisions for Wetlands in 20.14.300 can be expected to undergo Ecology scrutiny. The current provisions are likely to meet Ecology standards

20.14.330(f) Wetland Buffers.

- (1) Standard Buffer Widths. The standard buffer widths presume the existence of a relatively intact native vegetation community in the buffer zone adequate to protect the wetland functions and values at the time of the proposed activity. If the vegetation is inadequate, then the buffer width shall be increased or the buffer should be planted to maintain the standard width. Required standard wetland buffers, based on wetland category, are as follows:

Wetland Category	Standard Buffer
I	200 ft.
II	100 ft.
III	75 ft.
IV	50 ft.

Options: Several options may be considered in updating the SMP:

a) Keep the existing regulations based on shoreline jurisdiction

Advantages include:

- i) Consistency with other regulatory systems using WDFW/DNR based classifications
- ii) Consistency between shoreline and non-shoreline streams

Disadvantages of this approach are:

- i) They rely on a classification system that relates regulations to the statutory classification of the shoreline and the zoning rather than the features that determine ecological functions.

- ii) The classification system does not apply the much more detailed information on shoreline ecological functions provided in the Shoreline Inventory/Characterization prepared for this update
- iii) The regulations do not incorporate decisions required to be made in the Shoreline Master Program update that balance the goals of:
 - Maintaining ecological productivity
 - Providing a priority for water related uses
 - Providing public access
- iv) The regulations include a “Reasonable Use Exception” in 20.14.155 that can be applied in SMP jurisdiction only through the variance procedure. If more specific buffers can be developed in the SMP, this process can be avoided in many cases.
- v) Some provisions for adjustment of buffers that are currently administrative may be required to be made Conditional Use Permit reviews to allow Ecology oversight.
- b) **Add a reach-based buffer and performance standard** system into the Critical Areas regulations – but keep them separate to apply to shorelines only.
- c) **Move the Critical Area regulations** for shorelines to the shoreline section and integrate critical area regulations for aquatic species in the SMP in conjunction with the regulatory system outlined in (3) Shoreline Regulatory Options, above. For example, the setback and vegetation management provisions for specific reaches would provide the functions of buffers in the current code without an additional overlay. This would recognize both existing ecological functions, development patterns and city Comprehensive Plan goals, rather than rely on the current broad classification system.

Recommendation:

- a) Adopt by reference Critical Area regulations in the Land Use Code for Critical Aquifer Recharge Areas, Geologic Hazards and Wetlands.
- b) Add additional “reach based” provisions for buffers and setbacks based on the Inventory/Characterization
- c) Include some additional provisions to recognize hardship caused by existing development where existing lot dimensions would not allow standard buffers to be practically implemented. This might take the form of a “sliding scale” based on lot depth.
- d) Whether they should be kept in the critical areas section or moved to the shoreline section is not a critical issue. We will rely on staff direction as to which is most convenient to administer.

3. Shoreline Vegetation Management

SMP Guidelines: Many pages are devoted to discussion of the importance of shoreline vegetation to ecological functions and include reference to vegetation in many criteria and standards. This discussion only references key provisions.

- a) Vegetation conservation is a separate section in WAC 173-26-221 (5).
 - i) Master programs shall include: Planning provisions that address vegetation conservation and restoration, and regulatory provisions that address conservation of vegetation; as necessary to assure no net loss of shoreline ecological functions and

- ii) Local governments should address ecological functions and ecosystem-wide processes provided by vegetation as described in WAC 173-26-201 (3)(d)(i).
 - iii) Local governments may implement these objectives through a variety of measures, where consistent with Shoreline Management Act policy, including clearing and grading regulations, setback and buffer standards, critical area regulations, conditional use requirements for specific uses or areas, mitigation requirements, incentives and nonregulatory programs.
 - iv) In establishing vegetation conservation regulations, local governments must use available scientific and technical information, as described in WAC 173-26-201 (2)(a).
- b) Vegetation is one of the elements that would be involved in “ecological restoration” that must be considered as potential mitigation of impacts to shoreline resources and values for all water-related or water-dependent commercial development unless such improvements are demonstrated to be infeasible. [WAC 173-26-411(3)(d)]
 - c) Vegetation is likely to be the major element involved in allowing nonwater-oriented commercial uses within the shoreline, which requires that the development provide “a significant public benefit with respect to the Shoreline Management Act’s objectives such as providing public access and ecological restoration.” [WAC 173-26-411(3)(d)].

Existing Code: Most provisions regarding preservation of natural vegetation for ecological benefits are in the Critical Areas Code in Section 20.14 discussed above. The existing SMP provides relatively few provisions that address vegetation conservation.

Chapter 5 SHORELINE USE POLICIES AND REGULATIONS

Residential development:

Policy 7. Residential developments should preserve shoreline vegetation for control of erosion and for aesthetic considerations.

Regulation 5. Soil Stabilization: Where development will result in disruption of vegetation with a potential for increased erosion and run-off, development plans shall include provisions for temporary soil stabilization during construction, and permanent stabilization upon completion of development.

Commercial development:

Regulation 5. Commercial development shall provide landscaping which is appropriate for the scale of structure and accessory use, such as parking area. Such landscaping shall consider the visual impact on adjacent properties.

Industrial development:

Regulation 4. Areas between industrial development and adjacent land uses and public access areas shall be located and landscaped so as to provide a transitional area.

Chapter 6 SHORE MODIFICATION ACTIVITY POLICIES AND REGULATIONS

5. Construction and Maintenance:

- a.. **Ensure that construction and maintenance of shore modification activities does not reduce the quality of the existing environment.**
- b. **Upon completion, require restoration of shore areas to as near pre-project configuration as possible, reestablishing vegetation with native species.**
- c. **Require mitigation if loss of riparian vegetation and habitat occurs.**

Options: The city has three basic options when it comes to meeting this standard:

- a) Rely primarily on the Critical Area code to address vegetation. See discussion above of options for Critical Areas.
- b) Develop specific regulations either included in or separate from the Critical Areas code based on two factors
 - i) The Shoreline Geographic Environment Designations – this would result in different policies for downtown, commercial, industrial and residential use
 - ii) With reach-based provisions based on the Inventory

Advantages are:

- It would provide predictability for administration and property owners
- It would reduce variation in application
- It would use the information developed in the Inventory/Characterization
- Specific standards for each reach would integrate city policies and regulations for upland use;
- The specific mix of ecological restoration and/or public access required for non-water-oriented development would be specified in advance.
- It may be possible to provide guidance on the mitigation to be provided and reduce the need for case-by-case analysis and mitigation.

Disadvantages are:

- It would involve a more complex system (but similar to zoning)

Recommendation:

Option (b) In the reach-based overlay system provide any needed variation in standards based on the ecological character of the reach, as well as balancing other goals, such as water-oriented uses or public access.

4. Building height

SMA Guidelines: Height is addressed height directly in two provisions and indirectly in relation to policies for aesthetics and consistency with adjacent development.

- a) The statute in RCW 90.58.320 contains the following specific provisions regarding height.

No permit shall be issued pursuant to this chapter for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such

shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

- b) The statute in RCW 90.58.100(2)(f) requires “A conservation element for the preservation of natural resources, including but not limited to *scenic vistas, aesthetics,* and vital estuarine areas for fisheries and wildlife protection [emphasis added].
- c) The statute in RCW 90.58.040 contains a mandate to review regulations, plans, and ordinances relative to lands un adjacent to the shorelines of the state so as the [to] achieve a use policy on said land consistent with the policy of this chapter, the guidelines, and the master programs for the shorelines of the state.
- d) The new shoreline guidelines require the SMP in each shoreline environment to include regulations for building or structure height and bulk limits, setbacks, maximum density or minimum frontage requirements, and site development standards (WAC 173-26-211(4)(a)(iv)(A).

Existing Code: Table 3-2 Site Development Standards generally provides for a residential height of 25 feet and a 35 foot height for other uses, with the provision in footnote 3 that

Height/View Corridor -- Structure height may be increased to designated zoning district height limit if the increase does not impair views of the water from residential properties upland of the nearest public street landward of the site; and

- a) Either: The increased height is offset by an increase in the minimum View Corridor width as follows:

Building Height View Corridor Width

Under 20 feet:25%

20-35 feet:35%

Over 35 feet: 40%

(See also: Figure 3-5 View Corridor Requirements; and Figure 3-6 View Corridor/Height Requirements.)

- b) Or: The increase is offset by maintaining comparable portions of the structure lower than the designated height limit.

Option: In determining building height standards the city will need to consider view obstruction and whether there is an overwhelming consideration of the public interest to be served.

- a) The city can continue the provisions for allowing increased height by the current view corridor provision.
- b) The city can limit height within the shoreline jurisdiction to 35 feet and allow a jump to the underlying zoning height at the shoreline jurisdiction line. This is not very practical in high intensity areas such as the downtown
- c) The city could incorporate reach-based regulations to indicate areas where view obstruction should include provisions related to the specific physical features, zoning and development patterns.

All of these options involve multiple tradeoffs between aesthetic and urban development goals of the city.

Recommendation: No specific recommendation at this time. It is likely that the appropriate regulations will depend on the context of a specific reach and may differ between shorelines of statewide significance and other shorelines.

DETAILED PROVISIONS OF THE SHORELINE GUIDELINES – WAC 173-26

1. Shoreline Geographic Environment Designations

RCW 90.58.100 Programs as constituting use regulations — Duties when preparing programs and amendments thereto — Program contents.

(1) The master programs provided for in this chapter, when adopted or approved by the department shall constitute use regulations for the various shorelines of the state. In preparing the master programs, and any amendments thereto, the department and local governments shall to the extent feasible:

subsections not reproduced

(2) The master programs shall include, when appropriate, the following:

(e) A use element which considers the proposed general distribution and general location and extent of the use on shorelines and adjacent land areas for housing, business, industry, transportation, agriculture, natural resources, recreation, education, public buildings and grounds, and other categories of public and private uses of the land;

173-26-211 Environment designation system.

(1) **Applicability.** This section applies to the establishment of environment designation boundaries and provisions as described in WAC [173-26-191](#) (1)(d).

(2) **Basic requirements for environment designation classification and provisions.**

(a) Master programs shall contain a system to classify shoreline areas into specific environment designations. This classification system shall be based on the existing use pattern, the biological and physical character of the shoreline, and the goals and aspirations of the community as expressed through comprehensive plans as well as the criteria in this section. Each master program's classification system shall be consistent with that described in WAC [173-26-211](#) (4) and (5) unless the alternative proposed provides equal or better implementation of the act.

(b) An up-to-date and accurate map of the shoreline area delineating the environment designations and their boundaries shall be prepared and maintained in the local government office that administers shoreline permits. If it is not feasible to accurately designate individual parcels on a map, the master program text shall include a clear basis for identifying the boundaries, physical features, explicit criteria, or "common" boundary descriptions to accurately define and distinguish the environments on the ground. The master program should also make it clear that in the event of a mapping error, the jurisdiction will rely upon common boundary descriptions and the criteria contained in RCW 90.58.030(2) and chapter 173-22 WAC pertaining to determinations of shorelands, as amended, rather than the incorrect or outdated map.

(c) To facilitate consistency with land use planning, local governments planning under chapter 36.70A RCW are encouraged to illustrate shoreline designations on the comprehensive plan future land use map as described in WAC 365-195-300 (2)(d).

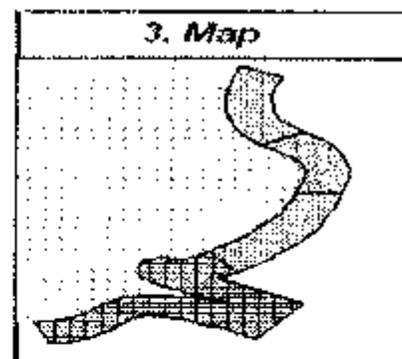
(d) Pursuant to RCW 90.58.040, the map should clearly illustrate what environment designations apply to all shorelines of the state as defined in RCW 90.58.030 (2)(c) within the local government's jurisdiction in a manner consistent with WAC [173-26-211](#) (4) and (5).

(e) The map and the master program should note that all areas within shoreline jurisdiction that are not mapped and/or designated are automatically assigned a "rural conservancy" designation, or "urban conservancy" designation if within a municipality or urban growth area, or the comparable environment designation of the applicable master program until the shoreline can be redesignated through a master program amendment.

(f) The following diagram summarizes the components of the environment designation provisions.

1. List of Designations
Aquatic
Shoreline Residential
Rural Conservancy
Natural
Others

2. Common Legal Descriptions



4. For Each Designation
Purpose of Designation
Designation Criteria
Management Policies

5. Matrices (Optional)	
	Environment
Use Category	Permitted
	Prohibited
Activities	
Height	20' 30'
Setback	100' 120'
Etc.	

6. Environment Specific Regulations
Site Development
Vegetation Management
Public Access
Etc.

Diagram summarizing the components of the environment designation provisions.

(This is for illustration purposes only and does not supplement or add to the language in the chapter text.)

(3) **Consistency between shoreline environment designations and the local comprehensive plan.** As noted in WAC 173-26-191 (1)(e), RCW 90.58.340 requires that policies for lands adjacent to the shorelines be consistent with the Shoreline Management Act, implementing rules, and the applicable master program. Conversely, local comprehensive plans constitute the underlying framework within which master program provisions should fit. The Growth Management Act, where applicable, designates shoreline master program policies as an element of the comprehensive plan and requires that all elements be internally consistent. Chapter 36.70A RCW also requires development regulations to be consistent with the comprehensive plan.

The following criteria are intended to assist local governments in evaluating the consistency between master program environment designation provisions and the corresponding comprehensive plan elements and development regulations. In order for shoreline designation provisions, local comprehensive plan land use designations, and development regulations to be internally consistent, all three of the conditions below should be met:

(a) **Provisions not precluding one another.** The comprehensive plan provisions and shoreline environment designation provisions should not preclude one another. To meet this criteria, the provisions of both the comprehensive plan and the master program must be able to be met. Further, when considered together and applied to any one piece of property, the master program use policies and regulations and the local zoning or other use regulations should not conflict in a manner that all viable uses of the property are precluded.

(b) **Use compatibility.** Land use policies and regulations should protect preferred shoreline uses from being impacted by incompatible uses. The intent is to prevent water-oriented uses, especially water-dependent uses, from being restricted on shoreline areas because of impacts to nearby nonwater-oriented uses. To be consistent, master programs, comprehensive plans, and development regulations should prevent new uses that are not compatible with preferred uses from locating where they may restrict preferred uses or development.

(c) **Sufficient infrastructure.** Infrastructure and services provided in the comprehensive plan should be sufficient to support allowed shoreline uses. Shoreline uses should not be allowed where the comprehensive plan does not provide sufficient roads, utilities, and other services to support them. Infrastructure plans must also be mutually consistent with shoreline designations. Where they do exist, utility services routed through shoreline areas shall not be a sole justification for more intense development.

(4) **General environment designation provisions.**

(a) **Requirements.** For each environment designation, the shoreline master program shall describe:

(i) **Purpose statement.** The statement of purpose shall describe the shoreline management objectives of the designation in a manner that distinguishes it from other designations.

(ii) **Classification criteria.** Clearly stated criteria shall provide the basis for classifying or reclassifying a specific shoreline area with an environment designation.

(iii) **Management policies.** These policies shall be in sufficient detail to assist in the interpretation of the environment designation regulations and, for jurisdictions planning under chapter 36.70A RCW, to evaluate consistency with the local comprehensive plan.

(iv) **Regulations.** Environment-specific regulations shall address the following where necessary to account for different shoreline conditions:

(A) Types of shoreline uses permitted, conditionally permitted, and prohibited;

(B) Building or structure height and bulk limits, setbacks, maximum density or minimum frontage requirements, and site development standards; and

(C) Other topics not covered in general use regulations that are necessary to assure implementation of the purpose of the environment designation.

(b) **The recommended classification system.** The recommended classification system consists of six basic environments: "High-intensity," "shoreline residential," "urban conservancy," "rural conservancy," "natural," and "aquatic" as described in this section and WAC [173-26-211\(5\)](#). Local governments should assign all shoreline areas an environment designation consistent with the corresponding designation criteria provided for each environment. In delineating environment designations, local government should assure that existing shoreline ecological functions are protected with the proposed pattern and intensity of development. Such designations should also be consistent with policies for restoration of degraded shorelines.

(c) **Alternative systems.**

(i) Local governments may establish a different designation system or may retain their current environment designations, provided it is consistent with the purposes and policies of this section and WAC [173-26-211\(5\)](#).

(ii) Local governments may use "parallel environments" where appropriate. Parallel environments divide shorelands into different sections generally running parallel to the shoreline or along a physical feature such as a bluff or railroad right of way. Such environments may be useful, for example, to accommodate resource protection near the shoreline and existing development further from the shoreline. Where parallel environments are used, developments and uses allowed in one environment should not be inconsistent with the achieving the purposes of the other.

(5) **The designations.**

(a) **"Natural" environment.**

(i) **Purpose.** The purpose of the "natural" environment is to protect those shoreline areas that are relatively free of human influence or that include intact or minimally degraded shoreline functions intolerant of human use. These systems require that only very low intensity uses be allowed in order to maintain the ecological functions and ecosystem-wide processes. Consistent with the policies of the designation, local government should include planning for restoration of degraded shorelines within this environment.

(ii) **Management policies.**

(A) Any use that would substantially degrade the ecological functions or natural character of the shoreline area should not be allowed.

(B) The following new uses should not be allowed in the "natural" environment:

- Commercial uses.
- Industrial uses.
- Nonwater-oriented recreation.
- Roads, utility corridors, and parking areas that can be located outside of "natural" designated shorelines.

(C) Single-family residential development may be allowed as a conditional use within the "natural" environment if the density and intensity of such use is limited as necessary to protect ecological functions and be consistent with the purpose of the environment.

(D) Commercial forestry may be allowed as a conditional use in the "natural" environment provided it meets the conditions of the State Forest Practices Act and its implementing rules and is conducted in a manner consistent with the purpose of this environment designation.

(E) Agricultural uses of a very low intensity nature may be consistent with the natural environment when such use is subject to appropriate limitations or conditions to assure that the use does not expand or alter practices in a manner inconsistent with the purpose of the designation.

(F) Scientific, historical, cultural, educational research uses, and low-intensity water-oriented recreational access uses may be allowed provided that no significant ecological impact on the area will result.

(G) New development or significant vegetation removal that would reduce the capability of vegetation to perform normal ecological functions should not be allowed. Do not allow the subdivision of property in a configuration that, to achieve its intended purpose, will require significant vegetation removal or shoreline modification that adversely impacts ecological functions. That is, each new parcel must be able to support its intended development without significant ecological impacts to the shoreline ecological functions.

(iii) **Designation criteria.** A "natural" environment designation should be assigned to shoreline areas if any of the following characteristics apply:

(A) The shoreline is ecologically intact and therefore currently performing an important, irreplaceable function or ecosystem-wide process that would be damaged by human activity;

(B) The shoreline is considered to represent ecosystems and geologic types that are of particular scientific and educational interest; or

(C) The shoreline is unable to support new development or uses without significant adverse impacts to ecological functions or risk to human safety.

Such shoreline areas include largely undisturbed portions of shoreline areas such as wetlands, estuaries, unstable bluffs, coastal dunes, spits, and ecologically intact shoreline habitats. Shorelines inside or outside urban growth areas may be designated as "natural."

Ecologically intact shorelines, as used here, means those shoreline areas that retain the majority of their

natural shoreline functions, as evidenced by the shoreline configuration and the presence of native vegetation. Generally, but not necessarily, ecologically intact shorelines are free of structural shoreline modifications, structures, and intensive human uses. In forested areas, they generally include native vegetation with diverse plant communities, multiple canopy layers, and the presence of large woody debris available for recruitment to adjacent water bodies. Recognizing that there is a continuum of ecological conditions ranging from near natural conditions to totally degraded and contaminated sites, this term is intended to delineate those shoreline areas that provide valuable functions for the larger aquatic and terrestrial environments which could be lost or significantly reduced by human development. Whether or not a shoreline is ecologically intact is determined on a case-by-case basis.

The term "ecologically intact shorelines" applies to all shoreline areas meeting the above criteria ranging from larger reaches that may include multiple properties to small areas located within a single property.

Areas with significant existing agriculture lands should not be included in the "natural" designation, except where the existing agricultural operations involve very low intensity uses where there is no significant impact on natural ecological functions, and where the intensity or impacts associated with such agriculture activities is unlikely to expand in a manner inconsistent with the "natural" designation.

(b) **"Rural conservancy" environment.**

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(c) **"Aquatic" environment.**

(i) **Purpose.** The purpose of the "aquatic" environment is to protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high-water mark.

(ii) **Management policies.**

(A) Allow new over-water structures only for water-dependent uses, public access, or ecological restoration.

(B) The size of new over-water structures should be limited to the minimum necessary to support the structure's intended use.

(C) In order to reduce the impacts of shoreline development and increase effective use of water resources, multiple use of over-water facilities should be encouraged.

(D) All developments and uses on navigable waters or their beds should be located and designed to minimize interference with surface navigation, to consider impacts to public views, and to allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.

(E) Uses that adversely impact the ecological functions of critical saltwater and freshwater habitats should not be allowed except where necessary to achieve the objectives of RCW 90.58.020, and then only when their impacts are mitigated according to the sequence described in WAC [173-26-201](#) (2)(e) as necessary to assure no net loss of ecological functions.

(F) Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions.

(iii) **Designation criteria.** Assign an "aquatic" environment designation to lands waterward of the ordinary high-water mark.

Local governments may designate submerged and intertidal lands with shoreland designations (e.g., "high-intensity" or "rural conservancy") if the management policies and objectives for aquatic areas are met. In this case, the designation system used must provide regulations for managing submerged and intertidal lands that are clear and consistent with the "aquatic" environment management policies in this chapter. Additionally, local governments may assign an "aquatic" environment designation to wetlands.

(d) **"High-intensity" environment.**

(i) **Purpose.** The purpose of the "high-intensity" environment is to provide for high-intensity water-

oriented commercial, transportation, and industrial uses while protecting existing ecological functions and restoring ecological functions in areas that have been previously degraded.

(ii) Management policies.

(A) In regulating uses in the "high-intensity" environment, first priority should be given to water-dependent uses. Second priority should be given to water-related and water-enjoyment uses. Nonwater-oriented uses should not be allowed except as part of mixed use developments. Nonwater-oriented uses may also be allowed in limited situations where they do not conflict with or limit opportunities for water-oriented uses or on sites where there is no direct access to the shoreline. Such specific situations should be identified in shoreline use analysis or special area planning, as described in WAC [173-26-200](#) (3)(d).

If an analysis of water-dependent use needs as described in WAC [173-26-201](#) (3)(d)(ii) demonstrates the needs of existing and envisioned water-dependent uses for the planning period are met, then provisions allowing for a mix of water-dependent and nonwater-dependent uses may be established. If those shoreline areas also provide ecological functions, apply standards to assure no net loss of those functions.

(B) Full utilization of existing urban areas should be achieved before further expansion of intensive development is allowed. Reasonable long-range projections of regional economic need should guide the amount of shoreline designated "high-intensity." However, consideration should be given to the potential for displacement of nonwater-oriented uses with water-oriented uses when analyzing full utilization of urban waterfronts and before considering expansion of such areas.

(C) Policies and regulations shall assure no net loss of shoreline ecological functions as a result of new development. Where applicable, new development shall include environmental cleanup and restoration of the shoreline to comply in accordance with any relevant state and federal law.

(D) Where feasible, visual and physical public access should be required as provided for in WAC [173-26-221](#) (4)(d).

(E) Aesthetic objectives should be implemented by means such as sign control regulations, appropriate development siting, screening and architectural standards, and maintenance of natural vegetative buffers.

(iii) **Designation criteria.** Assign a "high-intensity" environment designation to shoreline areas within incorporated municipalities, urban growth areas, and industrial or commercial "rural areas of more intense development," as described by RCW 36.70A.070, if they currently support high-intensity uses related to commerce, transportation or navigation; or are suitable and planned for high-intensity water-oriented uses.

(e) "Urban conservancy" environment.

(i) **Purpose.** The purpose of the "urban conservancy" environment is to protect and restore ecological functions of open space, flood plain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses.

(ii) Management policies.

(A) Uses that preserve the natural character of the area or promote preservation of open space, flood plain or sensitive lands either directly or over the long term should be the primary allowed uses. Uses that result in restoration of ecological functions should be allowed if the use is otherwise compatible with the purpose of the environment and the setting.

(B) Standards should be established for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications within the "urban conservancy" designation. These standards shall ensure that new development does not result in a net loss of shoreline ecological functions or further degrade other shoreline values.

(C) Public access and public recreation objectives should be implemented whenever feasible and significant ecological impacts can be mitigated.

(D) Water-oriented uses should be given priority over nonwater-oriented uses. For shoreline areas adjacent to commercially navigable waters, water-dependent uses should be given highest priority.

(E) Mining is a unique use as a result of its inherent linkage to geology. Therefore, mining and related activities may be an appropriate use within the urban conservancy environment when conducted in a manner consistent with the environment policies and the provisions of WAC [173-26-240](#) (3)(h) and when located consistent with mineral resource lands designation criteria pursuant to RCW 36.70A.170 and WAC 365-190-070.

(iii) **Designation criteria.** Assign an "urban conservancy" environment designation to shoreline areas appropriate and planned for development that is compatible with maintaining or restoring of the ecological functions of the area, that are not generally suitable for water-dependent uses and that lie in incorporated municipalities, urban growth areas, or commercial or industrial "rural areas of more intense development" if any of the following characteristics apply:

(A) They are suitable for water-related or water-enjoyment uses;

(B) They are open space, flood plain or other sensitive areas that should not be more intensively developed;

(C) They have potential for ecological restoration;

(D) They retain important ecological functions, even though partially developed; or

(E) They have the potential for development that is compatible with ecological restoration.

Lands that may otherwise qualify for designation as urban conservancy and which are designated as "mineral resource lands" pursuant to RCW 36.70A.170 and WAC 365-190-070 may be assigned a designation within the "urban conservancy" environment that allows mining and associated uses in addition to other uses consistent with the urban conservancy environment.

(f) **"Shoreline residential" environment.**

(i) **Purpose.** The purpose of the "shoreline residential" environment is to accommodate residential development and appurtenant structures that are consistent with this chapter. An additional purpose is to provide appropriate public access and recreational uses.

(ii) **Management policies.**

(A) Standards for density or minimum frontage width, setbacks, lot coverage limitations, buffers, shoreline stabilization, vegetation conservation, critical area protection, and water quality shall be set to assure no net loss of shoreline ecological functions, taking into account the environmental limitations and sensitivity of the shoreline area, the level of infrastructure and services available, and other comprehensive planning considerations.

Local governments may establish two or more different "shoreline residential" environments to accommodate different shoreline densities or conditions, provided both environments adhere to the provisions in this chapter.

(B) Multifamily and multilot residential and recreational developments should provide public access and joint use for community recreational facilities.

(C) Access, utilities, and public services should be available and adequate to serve existing needs and/or planned future development.

(D) Commercial development should be limited to water-oriented uses.

(iii) **Designation criteria.** Assign a "shoreline residential" environment designation to shoreline areas inside urban growth areas, as defined in RCW 36.70A.110, incorporated municipalities, "rural areas of more intense development," or "master planned resorts," as described in RCW 36.70A.360, if they are predominantly single-family or multifamily residential development or are planned and platted for residential development.

Critical Areas

173-26-221 General master program provisions.

(2) Critical areas.

(a) **Applicability.** Pursuant to the provisions of RCW 90.58.090(4) as amended by chapter 321, Laws of 2003 (ESHB 1933), shoreline master programs must provide for management of critical areas designated as such pursuant to RCW 36.70A.170 (1)(d) and required to be protected pursuant to RCW 36.70A.060(2) that are located within the shorelines of the state with policies and regulations that:

(i) Are consistent with the specific provisions of this subsection (2) critical areas and subsection (3) of this section flood hazard reduction, and these guidelines; and

(ii) Provide a level of protection to critical areas within the shoreline area that is at least equal to that provided by the local government's critical area regulations adopted pursuant to the Growth Management Act for comparable areas other than shorelines.

When approved by ecology pursuant to RCW 90.58.090(4), a local government's SMP becomes regulations for protection of critical areas in the shorelines of the state in the jurisdiction of the adopting local government except as noted in RCW 36.70A.480 (3)(b) and (6).

The provisions of this section and subsection (3) of this section, flood hazard reduction, shall be applied to critical areas within the shorelines of the state. RCW 36.70A.030 defines critical areas as:

"Critical areas" include the following areas and ecosystems:

(a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable waters; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas."

The provisions of WAC 365-190-080, to the extent standards for certain types of critical areas are not provided by this section and subsection (3) of this section flood hazard reduction, and to the extent consistent with these guidelines are also applicable to and provide further definition of critical area categories and management policies.

As provided in RCW 90.58.030 (2)(f)(ii) and 36.70A.480, as amended by chapter 321, Laws of 2003 (ESHB 1933), 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 provision of (f)(ii) of this subsection are not subject to additional regulations. If a local government does not include land necessary for buffers for critical areas that occur within shorelines of the state, as authorized above, then the local jurisdiction shall continue to regulate those critical areas and required buffers pursuant to RCW 36.70A.060(2).

(b) **Principles.** Local master programs, when addressing critical areas, shall implement the following principles:

(i) Shoreline master programs shall adhere to the standards established in the following sections, unless it is demonstrated through scientific and technical information as provided in RCW 90.58.100(1) and as described in WAC [173-26-201](#) (2)(a) that an alternative approach provides better resource protection.

(ii) In addressing issues related to critical areas, use scientific and technical information, as described in WAC [173-26-201](#) (2)(a). The role of ecology in reviewing master program provisions for critical areas in shorelines of the state will be based on the Shoreline Management Act and these guidelines and a comparison with requirements in currently adopted critical area ordinances for comparable areas to ensure that the provisions are at least equal to the level of protection provided by the currently adopted critical area ordinance.

(iii) In protecting and restoring critical areas within shoreline jurisdiction, integrate the full spectrum

of planning and regulatory measures, including the comprehensive plan, interlocal watershed plans, local development regulations, and state, tribal, and federal programs.

(iv) The planning objectives of shoreline management provisions for critical areas shall be the protection of existing ecological functions and ecosystem-wide processes and restoration of degraded ecological functions and ecosystem-wide processes. The regulatory provisions for critical areas shall protect existing ecological functions and ecosystem-wide processes.

(v) Promote human uses and values that are compatible with the other objectives of this section, such as public access and aesthetic values, provided they do not significantly adversely impact ecological functions.

(c) **Standards.** When preparing master program provisions for critical areas, local governments should implement the following standards and the provisions of WAC 365-190-080 and use scientific and technical information, as provided for in WAC [173-26-201](#) (2)(a).

In reviewing the critical areas segment of a master program, the department of ecology shall first assure consistency with the standards of this section Critical areas (WAC [173-26-221](#)(2)), and with the Flood hazard reduction section (WAC [173-26-221](#)(3)), and shall then assure that the master program also provides protection of comparable critical areas that is at least equal to the protection provided by the local governments adopted and valid critical area regulations in effect at the time of submittal of the SMP.

In conducting the review for equivalency with local regulations, the department shall not further evaluate the adequacy of the local critical area regulations. Incorporation of the adopted and valid critical area regulations in effect at the time of submittal by reference as provided in WAC [173-26-191](#) (2)(b) shall be deemed to meet the requirement for equivalency. However, a finding of equivalency does not constitute a finding of compliance with the requirements of this section and subsection (3) of this section flood hazard reduction, nor with the guidelines overall.

Note that provisions for frequently flooded areas are included in WAC [173-26-221](#)(3).

(i) **Wetlands.**

(A) **Wetland use regulations.** Local governments should consult the department's technical guidance documents on wetlands.

SPECIFIC PROVISIONS NOT REPRODUCED

(ii) **Geologically hazardous areas.** Development in designated geologically hazardous areas shall be regulated in accordance with the following:

(A) Consult minimum guidelines for geologically hazardous areas, WAC 365-190-080(4).

(B) Do not allow new development or the creation of new lots that would cause foreseeable risk from geological conditions to people or improvements during the life of the development.

(C) Do not allow new development that would require structural shoreline stabilization over the life of the development. Exceptions may be made for the limited instances where stabilization is necessary to protect allowed uses where no alternative locations are available and no net loss of ecological functions will result. The stabilization measures shall conform to WAC [173-26-231](#).

(D) Where no alternatives, including relocation or reconstruction of existing structures, are found to be feasible, and less expensive than the proposed stabilization measure, stabilization structures or measures to protect existing primary residential structures may be allowed in strict conformance with WAC [173-26-231](#) requirements and then only if no net loss of ecological functions will result.

(iii) **Critical saltwater habitats.**

(A) **Applicability.** Critical saltwater habitats include all kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as herring, smelt and sandlance; subsistence, commercial and recreational shellfish beds; mudflats, intertidal habitats with vascular plants, and areas with which

priority species have a primary association. Critical saltwater habitats require a higher level of protection due to the important ecological functions they provide. Ecological functions of marine shorelands can affect the viability of critical saltwater habitats. Therefore, effective protection and restoration of critical saltwater habitats should integrate management of shorelands as well as submerged areas.

(B) **Principles.** Master programs shall include policies and regulations to protect critical saltwater habitats and should implement planning policies and programs to restore such habitats. Planning for critical saltwater habitats shall incorporate the participation of state resource agencies to assure consistency with other legislatively created programs in addition to local and regional government entities with an interest such as port districts. Affected Indian tribes shall also be consulted. Local governments should review relevant comprehensive management plan policies and development regulations for shorelands and adjacent lands to achieve consistency as directed in RCW 90.58.340. Local governments should base management planning on information provided by state resource agencies and affected Indian tribes unless they demonstrate that they possess more accurate and reliable information.

The management planning should include an evaluation of current data and trends regarding the following:

- Available inventory and collection of necessary data regarding physical characteristics of the habitat, including upland conditions, and any information on species population trends;
- Terrestrial and aquatic vegetation;
- The level of human activity in such areas, including the presence of roads and level of recreational types (passive or active recreation may be appropriate for certain areas and habitats);
- Restoration potential;
- Tributaries and small streams flowing into marine waters;
- Dock and bulkhead construction, including an inventory of bulkheads serving no protective purpose;
- Conditions and ecological functions in the near-shore area;
- Uses surrounding the critical saltwater habitat areas that may negatively impact those areas, including permanent or occasional upland, beach, or over-water uses; and
- An analysis of what data gaps exist and a strategy for gaining this information.

The management planning should address the following, where applicable:

- Protecting a system of fish and wildlife habitats with connections between larger habitat blocks and open spaces and restoring such habitats and connections where they are degraded;
- Protecting existing and restoring degraded riparian and estuarine ecosystems, especially salt marsh habitats;
- Establishing adequate buffer zones around these areas to separate incompatible uses from the habitat areas;
- Protecting existing and restoring degraded near-shore habitat;
- Protecting existing and restoring degraded or lost salmonid habitat;
- Protecting existing and restoring degraded upland ecological functions important to critical saltwater habitats, including riparian vegetation;
- Improving water quality;

- Protecting existing and restoring degraded sediment inflow and transport regimens; and
- Correcting activities that cause excessive sediment input where human activity has led to mass wasting.

Local governments, in conjunction with state resource agencies and affected Indian tribes, should classify critical saltwater habitats and protect and restore seasonal ranges and habitat elements with which federal-listed and state-listed endangered, threatened, and priority species have a primary association and which, if altered, may reduce the likelihood that a species will maintain its population and reproduce over the long term.

Local governments, in conjunction with state resource agencies and affected Indian tribes, should determine which habitats and species are of local importance.

All public and private tidelands or bedlands suitable for shellfish harvest shall be classified as critical areas. Local governments should consider both commercial and recreational shellfish areas. Local governments should review the Washington department of health classification of commercial and recreational shellfish growing areas to determine the existing condition of these areas. Further consideration should be given to the vulnerability of these areas to contamination or potential for recovery. Shellfish protection districts established pursuant to chapter 90.72 RCW shall be included in the classification of critical shellfish areas. Local governments shall classify kelp and eelgrass beds identified by the department of natural resources' aquatic resources division, the department, and affected Indian tribes as critical saltwater habitats.

Comprehensive saltwater habitat management planning should identify methods for monitoring conditions and adapting management practices to new information.

Vegetation management

173-26-221 General master program provisions.

(5) Shoreline vegetation conservation.

(a) **Applicability.** Vegetation conservation includes activities to protect and restore vegetation along or near marine and freshwater shorelines that contribute to the ecological functions of shoreline areas. Vegetation conservation provisions include the prevention or restriction of plant clearing and earth grading, vegetation restoration, and the control of invasive weeds and nonnative species.

Unless otherwise stated, vegetation conservation does not include those activities covered under the Washington State Forest Practices Act, except for conversion to other uses and those other forest practice activities over which local governments have authority. As with all master program provisions, vegetation conservation provisions apply even to those shoreline uses and developments that are exempt from the requirement to obtain a permit. Like other master program provisions, vegetation conservation standards do not apply retroactively to existing uses and structures, such as existing agricultural practices.

(b) **Principles.** The intent of vegetation conservation is to protect and restore the ecological functions and ecosystem-wide processes performed by vegetation along shorelines. Vegetation conservation should also be undertaken to protect human safety and property, to increase the stability of river banks and coastal bluffs, to reduce the need for structural shoreline stabilization measures, to improve the visual and aesthetic qualities of the shoreline, to protect plant and animal species and their habitats, and to enhance shoreline uses.

Master programs shall include: Planning provisions that address vegetation conservation and restoration, and regulatory provisions that address conservation of vegetation; as necessary to assure no net loss of shoreline ecological functions and ecosystem-wide processes, to avoid adverse impacts to soil hydrology, and to reduce the hazard of slope failures or accelerated erosion.

Local governments should address ecological functions and ecosystem-wide processes provided by vegetation as described in WAC [173-26-201](#) (3)(d)(i).

Local governments may implement these objectives through a variety of measures, where consistent with Shoreline Management Act policy, including clearing and grading regulations, setback and buffer standards, critical area regulations, conditional use requirements for specific uses or areas, mitigation requirements, incentives and nonregulatory programs.

In establishing vegetation conservation regulations, local governments must use available scientific and technical information, as described in WAC [173-26-201](#) (2)(a). At a minimum, local governments should consult shoreline management assistance materials provided by the department and *Management Recommendations for Washington's Priority Habitats*, prepared by the Washington state department of fish and wildlife where applicable.

Current scientific evidence indicates that the length, width, and species composition of a shoreline vegetation community contribute substantively to the aquatic ecological functions. Likewise, the biota within the aquatic environment is essential to ecological functions of the adjacent upland vegetation. The ability of vegetated areas to provide critical ecological functions diminishes as the length and width of the vegetated area along shorelines is reduced. When shoreline vegetation is removed, the narrower the area of remaining vegetation, the greater the risk that the functions will not be performed.

In the Pacific Northwest, aquatic environments, as well as their associated upland vegetation and wetlands, provide significant habitat for a myriad of fish and wildlife species. Healthy environments for aquatic species are inseparably linked with the ecological integrity of the surrounding terrestrial ecosystem. For example, a nearly continuous corridor of mature forest characterizes the natural riparian conditions of the Pacific Northwest. Riparian corridors along marine shorelines provide many of the same functions as their freshwater counterparts. The most commonly recognized functions of the shoreline vegetation include, but are not limited to:

- Providing shade necessary to maintain the cool temperatures required by salmonids, spawning forage fish, and other aquatic biota.
- Providing organic inputs critical for aquatic life.
- Providing food in the form of various insects and other benthic macroinvertebrates.
- Stabilizing banks, minimizing erosion, and reducing the occurrence of landslides. The roots of trees and other riparian vegetation provide the bulk of this function.
- Reducing fine sediment input into the aquatic environment through storm water retention and vegetative filtering.
- Filtering and vegetative uptake of nutrients and pollutants from ground water and surface runoff.
- Providing a source of large woody debris into the aquatic system. Large woody debris is the primary structural element that functions as a hydraulic roughness element to moderate flows. Large woody debris also serves a pool-forming function, providing critical salmonid rearing and refuge habitat. Abundant large woody debris increases aquatic diversity and stabilization.
- Regulation of microclimate in the stream-riparian and intertidal corridors.
- Providing critical wildlife habitat, including migration corridors and feeding, watering, rearing, and refugia areas.

Sustaining different individual functions requires different widths, compositions and densities of vegetation. The importance of the different functions, in turn, varies with the type of shoreline setting. For example, in forested shoreline settings, periodic recruitment of fallen trees, especially conifers, into the stream channel is an important attribute, critical to natural stream channel maintenance. Therefore, vegetated areas along streams which once supported or could in the future support mature trees should be wide enough to accomplish this periodic recruitment process.

Woody vegetation normally classed as trees may not be a natural component of plant communities in some environments, such as in arid climates and on coastal dunes. In these instances, the width of a vegetated area necessary to achieve the full suite of vegetation-related

shoreline functions may not be related to vegetation height.

Local governments should identify which ecological processes and functions are important to the local aquatic and terrestrial ecology and conserve sufficient vegetation to maintain them. Such vegetation conservation areas are not necessarily intended to be closed to use and development but should provide for management of vegetation in a manner adequate to assure no net loss of shoreline ecological functions.

(c) **Standards.** Master programs shall implement the following requirements in shoreline jurisdiction.

Establish vegetation conservation standards that implement the principles in WAC [173-26-221](#) (5)(b). Methods to do this may include setback or buffer requirements, clearing and grading standards, regulatory incentives, environment designation standards, or other master program provisions. Selective pruning of trees for safety and view protection may be allowed and the removal of noxious weeds should be authorized.

Additional vegetation conservation standards for specific uses are included in WAC [173-26-241](#)(3).

Building height

Height is addressed directly in two provisions and indirectly in relation to policies for aesthetics and consistency with adjacent development.

The statute in RCW 90.58.320 contains the following specific provisions regarding height.

No permit shall be issued pursuant to this chapter for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

The statute in RCW 90.58.100(2)(f) requires

“A conservation element for the preservation of natural resources, including but not limited to scenic vistas, aesthetics, and vital estuarine areas for fisheries and wildlife protection [emphasis added].

The statute in RCW 90.58.040 contains a mandate to review regulations, plans, and ordinances relative to lands adjacent to the shorelines of the state so as the [to] achieve a use policy on said land consistent with the policy of this chapter, the guidelines, and the master programs for the shorelines of the state.

WAC 173-26-211(4)(a)(iv)(A) requires the SMP in each shoreline environment to include regulations for building or structure height and bulk limits, setbacks, maximum density or minimum frontage requirements, and site development standards

WAC 173-26-186(5)(d)(ii)(E) directs: that objectives should be implemented by means such as sign control regulations, appropriate development siting, screening and architectural standards, and maintenance of natural vegetative buffers.

WAC 173-26-211(2)(b)(v) directs promotion of human uses and values that are compatible with the other objectives of this section, such as public access and aesthetic values, provided they do not significantly adversely impact ecological functions.

WAC 173-26-211(4)(b)(iii) provides for protecting the public's opportunity to enjoy the physical and aesthetic qualities of shorelines of the state, including views of the water, to the greatest extent feasible consistent with the overall best interest of the state and the people.

WAC 173-26-211 (4)(d) (iv) directs adoption of provisions, such as maximum height limits, setbacks, and view corridors, to minimize the impacts to existing views from public property or substantial numbers of residences. Where there is an irreconcilable conflict between water-dependent shoreline uses or physical public access and maintenance of views from

adjacent properties, the water-dependent uses and physical public access shall have priority, unless there is a compelling reason to the contrary.

WAC 173-26-211(6)(b)(i) Prevent impacts to water quality and storm water quantity that would result in a net loss of shoreline ecological functions, or a significant impact to aesthetic qualities, or recreational opportunities.