



# Shoreline Management Act Rulemaking Local Government Sounding Board



DEPARTMENT OF  
**ECOLOGY**  
State of Washington

Misty Blair, Shoreline Management Policy Lead  
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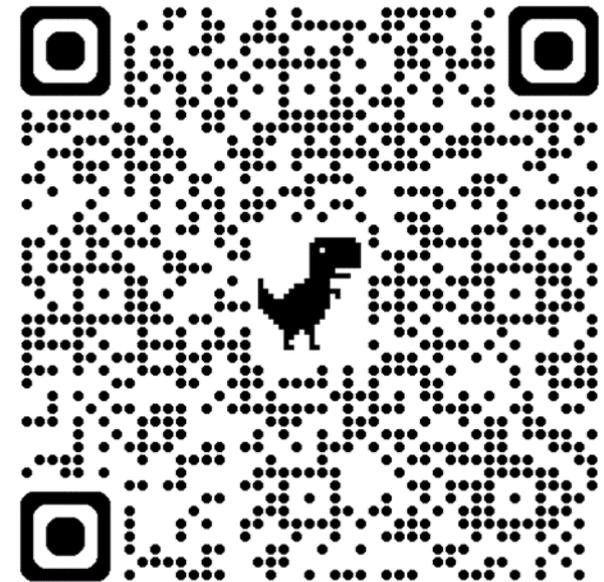


# Meeting logistics

- **Sounding board members** can use the chat and raise hand features.
- Please stay muted when not speaking.
- Add questions and comments to the Q&A.

# Non-sounding board attendees

- Please hold comments until the public input portion of the meeting at 2:50.
- You can provide input and feedback for the rule using the online comment form on our web page: <https://ecykenpub/SMARule-input>



# Agenda

- Exemptions from the substantial development permit process
- Nonconforming uses, developments, and lots
- Internal consistency with comprehensive plans, SMPs, and other required planning documents
- Opportunity for observers to provide input

# Exemptions from the substantial development (SDP) permit process

# Substantial development definition per RCW 90.58.030(3)(e)

- Total cost or fair market value exceeds \$8,504
- Materially interferes with normal public use of the water or shorelines of the state

If a development doesn't meet either of these criteria, it is not substantial development and does not need an SDP or letter of exemption.



# Exemptions from the substantial development (SDP) permit process

- The state law [SMA, at RCW 90.58.030(3)(e)], specifies what shall not be considered substantial developments.
- The rules, at WAC 173-27-040(1), specify:
  - Exemptions shall be construed narrowly
  - Proposal must be consistent with SMA & SMP
  - Burden of proof on applicant
  - If part not eligible, SDP is required
- The rules, at WAC 173-27-040(2), specify which developments shall not require a substantial development permit.

# Why do we have SDP exemptions?

- The Legislature determined that we needed a simple process for common project types that are necessary and/or are unlikely to have unforeseen impacts.
- Timeline is shorter; fewer requirements:
  - No public hearing
  - No noticing
  - Cost is usually lower because the process is simpler.

Exemptions from the SDP process are not appealable to the Shorelines Hearings Board

# Comparing SDPs to exemptions

Process Requirements	SDP	Exemptions
Notice requirement	X	
Public comment period	X	
SMA/SMP consistency review	X	X
21-day SHB appeal period	X	
14-day LUPA appeal period		X
Always filed with Ecology	X	

# Do we need to address process in the rule update?

All uses and developments authorized under an exemption must be consistent with the policies and provisions of the applicable master program and the Shoreline Management Act.

A conditional use permit and/or a variance permit may still be required for proposals exempt from the SDP process.

Local government can attach conditions.

Entire project must be eligible.

# Specific exemptions from the SDP process (1-9)

- Under cost threshold/does not interfere with normal public use
- Normal maintenance or repair of existing developments
- Bulkhead for a single-family residence
- Emergency construction
- Agricultural practices/construction
- Navigational aids
- Single-family residence construction
- Dock construction
- Irrigation canals and related facilities

## Specific exemptions from the SDP process (10–17)

- Marking of property lines/corners on state-owned lands
- Operation and maintenance of agricultural dikes/ditches, etc.
- Certification from governor for siting energy facilities
- Site exploration to prepare an application
- Controlling aquatic noxious weeds
- Watershed restoration
- Improving fish & wildlife habitat/passage
- Retrofitting structures for compliance with the Americans with Disabilities Act

# What do you think needs to be addressed in the rule related to exemptions from the SDP process?

**Raise your hand or use the chat feature**

We have the full language from the RCWs and WACs for each exemption type available if we need to refer to them during this discussion.

# Nonconforming uses, developments, and lots

# Nonconforming default language

WAC 173-27-080: Nonconforming use & development standards.

Includes default language that applies only if the SMP does not include nonconforming use and development standards. This default language includes definitions and standards for *nonconforming uses*, *nonconforming structures*, and *nonconforming lots*.

No other reference to nonconforming uses/structures/lots exists within the statute (Chapter 90.58 RCW) or any of the other implementing rules.

# Nonconforming language in SMPs

Local governments can include a direct reference to incorporate the standards in WAC 173-27-080, or they can take a different approach for addressing nonconformity.

## Is that a problem?

Should we provide specific provisions that would apply universally to all SMPs or a process for establishing and verifying the cumulative impacts of nonconforming allowances?

**Feedback/discussion: What would you want to see in the new guidelines related to nonconformity?**

# Internal Consistency

# Internal consistency between the SMA and GMA

We have been fielding a lot of questions about:

**Comprehensive Plan amendments** that include changes to Shoreline elements or policies, and

**Development regulation amendments** that address middle housing minimum density requirements, ADU allowances, and climate resilience provisions required under recently passed legislation.

# Growth Management Act goals overview

15 goals that act as the basis of all comprehensive plans (not listed in order of priority)

Urban Growth	Reduce Sprawl	Transportation
Housing	Economic Development	Property Rights
Permits	Natural Resource Industries	Open Space and Recreation
Environment	Citizen Participation and Coordination	Public Facilities and Services
Historic Preservation	Climate Change and Resiliency	<b>Shorelines of the State</b>

For shorelines of the state, the goals and policies of the Shoreline Management Act as set forth in RCW [90.58.020](#) shall be considered an element of the county's or city's comprehensive plan.

# Shoreline Management Act policy overview

To provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses.

To prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

To protect against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation.

Development of these shorelines should promote & enhance the public interest, with special consideration given in the management of shoreline of statewide significance.

Uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment or are unique to or dependent upon use of the state's shoreline.

# GMA/SMA connection (RCW 36.70A.480(1))

The goals and policies of the SMA (RCW [90.58.020](#)) are added as one of the goals of GMA (RCW [36.70A.020](#)) without creating an order of priority among the goals.

- The goals and policies of an SMP shall be considered an element the local government's comprehensive plan.
- All other portions of the SMP are considered part of the local government's development regulations.



# SMA/GMA differences

- SMPs are adopted pursuant to the procedures of chapter 90.58 RCW rather than the goals, policies, and procedures of chapter 36.70A RCW. This is separate from the adoption of comprehensive plans and development regulations.
- The policies, goals, and provisions of the SMA and applicable implementing WACs are the sole basis for determining compliance of an SMP, except for internal consistency provisions found in RCW 36.70A.070, and -040(4).

# Shoreline master program approvals

SMPs are joint Ecology/local government planning and regulatory land use documents that require Ecology **approval**.



Ecology reviews SMPs for consistency with the SMA and the implementing rules found in Chapters 173-26 & -27 WAC.

# Internal consistency among comprehensive plans, SMPs, and other required planning documents

SMP provisions are not subject to the goals, policies, and procedures set forth in the Growth Management Act (GMA).

The policies, goals, and provisions of the Shoreline Management Act (SMA) and its implementing rules are the sole basis for determining compliance of an SMP with the GMA, **except for the internal consistency requirements of RCW 36.70A.070 and 36.70A.040(4).**

Therefore, SMPs and areas within shoreline jurisdiction governed by the SMA are not automatically subject to the middle housing minimum density requirements provided for in RCW 36.70A.635, ADU allowances, and climate resilience policies of the Comprehensive Plan.

# Internal consistency reviews

Internal consistency should be reviewed each time the SMP, Comprehensive Plan, or development regulations are amended. This includes other planning documents such as subarea plans, waterfront plans, hazard mitigation plans, restoration plans, transportation plans, etc.

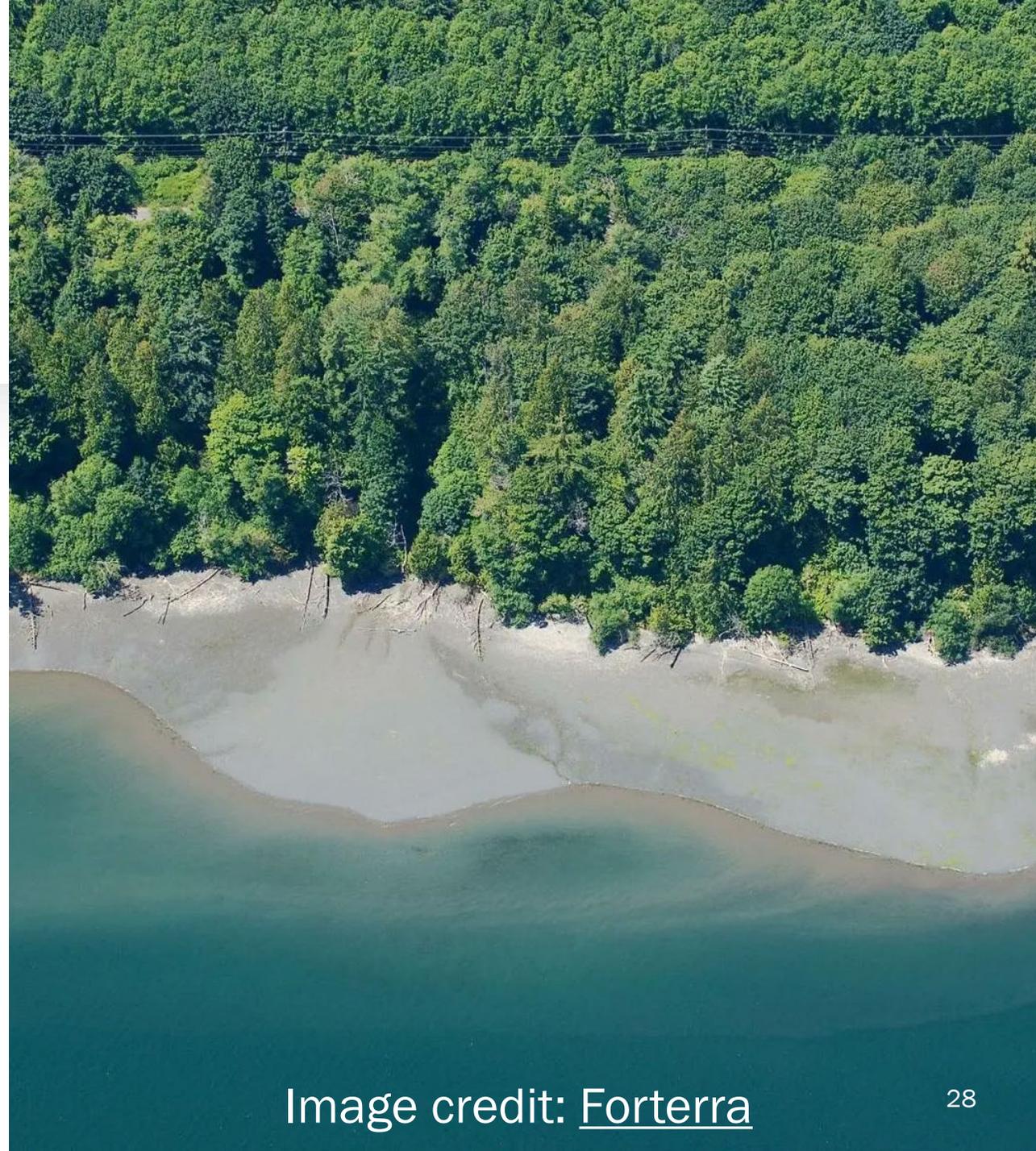
# Consistent does not mean identical

Chapter 90.58 RCW and RCW 36.70A.480 require that SMP provisions be coordinated and consistent with other local land use controls, including the comprehensive plan and zoning regulations, but ...

- The GMA planning goals and policies govern the Comprehensive Planning and development codes.
- The SMA policy and objectives govern the SMPs.

# Internal consistency: SMP shoreline environment designation

WAC 173-26-211(3) establishes criteria to assist local governments in evaluating the consistency between SMP environment designation provisions and corresponding comprehensive plan elements, zoning codes, and development regulations.



# Internal consistency consideration (1)

## Provisions not precluding one another

To meet this criterion, 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.

# Internal consistency consideration (2)

## Use compatibility

The intent is to prevent water-oriented uses, especially water-dependent uses, from being restricted on shoreline areas because of impacts to nearby non-water-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.

# Internal consistency consideration (3)

## Sufficient Infrastructure

Infrastructure and services provided in the comprehensive plan should be sufficient to support allowed shoreline uses.

# Feedback/discussion: What would you want to see in the new guidelines?

Right now, the rules at WAC 173-26-211(3) describe how consistency is considered for shoreline environment designations/allowed uses as they relate to zoning codes and other development regulations.

**Does this address the current consistency concerns and questions that middle housing, ADUs, and climate planning are driving?**

**Should the rule amendment include additional clarification around consistency? If so, where? In the amendment requirements of WAC 173-26-090?**

# Public input

Public attendees may now raise your Zoom hand if you wish to speak. Please wait for us to call on you.

You can always provide input on the rulemaking using our [online comment form](#). Use the link or the QR code.



**The following slides show the RCW and WAC exemptions text for reference and comparison**

# RCW 90.58.020(3): under the cost threshold

(e) "Substantial development" means any development of which the total cost or fair market value exceeds five thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection (3)(e) must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

# WAC 173-27-040: under the cost threshold

(a) Any development of which the total cost or fair market value, whichever is higher, does not exceed five thousand dollars, if such development does not materially interfere with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the Bureau of Labor and Statistics, United States Department of Labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect. For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030 (2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;

\*This was adjusted for inflation to \$8,504 in 2022.

# RCW: Normal maintenance or repair

(i) Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements;

# WAC: Normal maintenance or repair

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

# RCW: Bulkheads for single-family residences

(ii) Construction of the normal protective bulkhead common to single-family residences;

# WAC: Bulkheads for single-family residences

(c) Construction of the normal protective bulkhead common to single-family residences. A "normal protective" bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per one foot of wall may be used as backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the department of fish and wildlife;

# RCW: Emergency construction

(iii) Emergency construction necessary to protect property from damage by the elements;

# WAC: Emergency construction

(d) Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this chapter. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit which would have been required, absent an emergency, pursuant to chapter 90.58 RCW, these regulations, or the local master program, obtained. All emergency construction shall be consistent with the policies of chapter 90.58 RCW and the local master program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency;

# RCW: Farming, irrigation, and ranching

(iv) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels. A feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

# WAC: Farming, irrigation, and ranching

(e) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels: Provided, That a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

# Navigational aids

Language in RCW and WAC is the same:

(f) Construction or modification of navigational aids such as channel markers and anchor buoys;

# RCW: Single-family residence

(vi) Construction on shorelands by an owner, lessee, or contract purchaser of a single-family residence for his own use or for the use of his or her family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this chapter;

# WAC: Single-family residence

(g) Construction on shorelands by an owner, lessee or contract purchaser of a single-family residence for their own use or for the use of their family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to chapter 90.58 RCW. "Single-family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. On a statewide basis, normal appurtenances include a garage; deck; driveway; utilities; fences; installation of a septic tank and drainfield and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark. Local circumstances may dictate additional interpretations of normal appurtenances which shall be set forth and regulated within the applicable master program. Construction authorized under this exemption shall be located landward of the ordinary high water mark;

# RCW: Docks

(vii) Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single and multiple family residences. This exception applies if either:

- (A) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or
- (B) in fresh waters, the fair market value of the dock does not exceed:
  - (I) Twenty thousand dollars for docks that are constructed to replace existing docks, are of equal or lesser square footage than the existing dock being replaced, and are located in a county, city, or town that has updated its master program consistent with the master program guidelines in chapter 173-26 WAC as adopted in 2003; or
  - (II) ten thousand dollars for all other docks constructed in fresh waters.

However, if subsequent construction occurs within five years of completion of the prior construction, and the combined fair market value of the subsequent and prior construction exceeds the amount specified in either (e)(vii)(A) or (B) of this subsection (3), the subsequent construction shall be considered a substantial development for the purpose of this chapter. All dollar thresholds under (e)(vii)(B) of this subsection (3) must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2018, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. The office of financial management must calculate the new dollar thresholds, rounded to the nearest hundred dollar, and transmit them to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar thresholds are to take effect;

# WAC: Docks

(h) Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single-family and multiple-family residences. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. This exception applies if either:

- (i) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or
- (ii) In fresh waters the fair market value of the dock does not exceed:
  - (A) Twenty thousand dollars\* for docks that are constructed to replace existing docks, are of equal or lesser square footage than the existing dock being replaced, and are located in a county, city, or town that has updated its master program consistent with the master program guidelines in chapter [173-26](#) WAC as adopted in 2003; or
  - (B) Ten thousand dollars\* for all other docks constructed in fresh waters.

However, if subsequent construction occurs within five years of completion of the prior construction, and the combined fair market value of the subsequent and prior construction exceeds the amount specified in either (h)(ii)(A) or (B) of this subsection, the subsequent construction shall be considered a substantial development for the purpose of this chapter.

For purposes of this section salt water shall include the tidally influenced marine and estuarine water areas of the state including the Pacific Ocean, Strait of Juan de Fuca, Strait of Georgia and Puget Sound and all bays and inlets associated with any of the above;

\*Now \$28,000

\*\*Now \$13,900

# Irrigation canals

Language in RCW and WAC is the same:

(i) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored groundwater from the irrigation of lands

# Marking of property lines

Language in RCW and WAC is the same:

(j) The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water.

# Operation & maintenance of agricultural dikes, ditches, drains

Language in RCW and WAC is the same:

(k) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed or utilized primarily as a part of an agricultural drainage or diking system.

# Certification from governor

RCW 90.58.140(9) The holder of a certification from the governor pursuant to chapter 80.50 RCW\* shall not be required to obtain a permit under this section.

WAC 173-27-040(I): Any project with a certification from the governor pursuant to chapter 80.50 RCW\*

\*siting of energy facilities

# Site exploration and investigation

Language in RCW and WAC is the same:

(m) Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:

(i) The activity does not interfere with the normal public use of the surface waters;

(ii) The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;

(iii) The activity does not involve the installation of any structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;

(iv) A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and

(v) The activity is not subject to the permit requirements of RCW 90.58.550;

# Noxious weed control

Language in RCW and WAC is the same:

(n) The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the Department of Agriculture or the Department of Ecology jointly with other state agencies under chapter 43.21C RCW.

# RCW: Watershed restoration projects

90.58.515: Watershed restoration projects as defined in RCW [89.08.460](#) are exempt from the requirement to obtain a substantial development permit. Local government shall review the projects for consistency with the locally adopted shoreline master program in an expeditious manner and shall issue its decision along with any conditions within forty-five days of receiving a complete consolidated application form from the applicant. No fee may be charged for accepting and processing applications for watershed restoration projects as used in this section.

# WAC: Watershed restoration projects

(o) Watershed restoration projects as defined herein. Local government shall review the projects for consistency with the shoreline master program in an expeditious manner and shall issue its decision along with any conditions within forty-five days of receiving all materials necessary to review the request for exemption from the applicant. No fee may be charged for accepting and processing requests for exemption for watershed restoration projects as used in this section.

(i) "Watershed restoration project" means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or a part of the plan and consists of one or more of the following activities:

(A) A project that involves less than ten miles of streamreach, in which less than twenty-five cubic yards of sand, gravel, or soil is removed, imported, disturbed or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;

(B) A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or [\[continued on next slide\]](#)

# WAC: Watershed restoration projects, cont.

(C) A project primarily designed to improve fish and wildlife habitat, remove or reduce impediments to migration of fish, or enhance the fishery resource available for use by all of the citizens of the state, provided that any structure, other than a bridge or culvert or instream habitat enhancement structure associated with the project, is less than two hundred square feet in floor area and is located above the ordinary high water mark of the stream.

(ii) "Watershed restoration plan" means a plan, developed or sponsored by the department of fish and wildlife, the department of ecology, the department of natural resources, the department of transportation, a federally recognized Indian tribe acting within and pursuant to its authority, a city, a county, or a conservation district that provides a general program and implementation measures or actions for the preservation, restoration, re-creation, or enhancement of the natural resources, character, and ecology of a stream, stream segment, drainage area, or watershed for which agency and public review has been conducted pursuant to chapter 43.21C RCW, the State Environmental Policy Act.

# RCW 90.58.147: Improving fish or wildlife habitat enhancement or fish passage



(1) A public or private project that is designed to improve fish or wildlife habitat or fish passage shall be exempt from the substantial development permit requirements of this chapter when all of the following apply:

(a) The project has been approved by the department of fish and wildlife or, for forest practices hydraulic projects within the scope of RCW [77.55.181](#), the department of natural resources if the local government notification provisions of RCW [77.55.181](#) are satisfied;

(b) The project has received hydraulic project approval by the department of fish and wildlife pursuant to chapter [77.55](#) RCW or approval of a forest practices hydraulic project within the scope of RCW [77.55.181](#) from the department of natural resources if the local government notification provisions of RCW [77.55.181](#) are satisfied; and

(c) The local government has determined that the project is substantially consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.

(2) Fish habitat enhancement projects that conform to the provisions of RCW [77.55.181](#) are determined to be consistent with local shoreline master programs.

(3) Public projects for the primary purpose of fish passage improvement or fish passage barrier removal are exempt from the substantial development permit requirements of this chapter.

# WAC: Improving fish or wildlife habitat enhancement or fish passage

(p) A public or private project that is designed to improve fish or wildlife habitat or fish passage, when all of the following apply:

- (i) The project has been approved in writing by the department of fish and wildlife;
- (ii) The project has received hydraulic project approval by the department of fish and wildlife pursuant to chapter [77.55](#) RCW; and
- (iii) The local government has determined that the project is substantially consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.

Fish habitat enhancement projects that conform to the provisions of RCW [77.55.181](#) are determined to be consistent with local shoreline master programs, as follows:

(A) In order to receive the permit review and approval process created in this section, a fish habitat enhancement project must meet the criteria under (p)(iii)(A)(I) and (II) of this subsection:

[continued on next slide]

# WAC: Improving fish or wildlife habitat enhancement or fish passage, cont.

(I) A fish habitat enhancement project must be a project to accomplish one or more of the following tasks:

- Elimination of human-made fish passage barriers, including culvert repair and replacement;
- Restoration of an eroded or unstable streambank employing the principle of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or
- Placement of woody debris or other instream structures that benefit naturally reproducing fish stocks.

The department of fish and wildlife shall develop size or scale threshold tests to determine if projects accomplishing any of these tasks should be evaluated under the process created in this section or under other project review and approval processes. A project proposal shall not be reviewed under the process created in this section if the department determines that the scale of the project raises concerns regarding public health and safety; and [\[continued on next slide\]](#)

# Improving fish or wildlife habitat enhancement or fish passage, cont.

- (II) A fish habitat enhancement project must be approved in one of the following ways:
- By the department of fish and wildlife pursuant to chapter [77.95](#) or [77.100](#) RCW;
  - By the sponsor of a watershed restoration plan as provided in chapter [89.08](#) RCW;
  - By the department as a department of fish and wildlife-sponsored fish habitat enhancement or restoration project;
  - Through the review and approval process for the jobs for the environment program;
  - Through the review and approval process for conservation district-sponsored projects, where the project complies with design standards established by the conservation commission through interagency agreement with the United States Fish and Wildlife Service and the natural resource conservation service;
  - Through a formal grant program established by the legislature or the department of fish and wildlife for fish habitat enhancement or restoration; and
  - Through other formal review and approval processes established by the legislature.

[continued on next slide]

# WAC: Improving fish or wildlife habitat enhancement or fish passage, cont.

(B) Fish habitat enhancement projects meeting the criteria of (p)(iii)(A) of this subsection are expected to result in beneficial impacts to the environment. Decisions pertaining to fish habitat enhancement projects meeting the criteria of (p)(iii)(A) of this subsection and being reviewed and approved according to the provisions of this section are not subject to the requirements of [RCW 43.21C.030](#) (2)(c).

(C)(I) A hydraulic project approval permit is required for projects that meet the criteria of (p)(iii)(A) of this subsection and are being reviewed and approved under this section. An applicant shall use a joint aquatic resource permit application form developed by the office of regulatory assistance to apply for approval under this chapter. On the same day, the applicant shall provide copies of the completed application form to the department of fish and wildlife and to each appropriate local government. Local governments shall accept the application as notice of the proposed project. The department of fish and wildlife shall provide a fifteen-day comment period during which it will receive comments regarding environmental impacts. Within forty-five days, the department shall either issue a permit, with or without conditions, deny approval, or make a determination that the review and approval process created by this section is not appropriate for the proposed project. [\[continued on next slide\]](#)

# WAC: Improving fish or wildlife habitat enhancement or fish passage, cont.

The department shall base this determination on identification during the comment period of adverse impacts that cannot be mitigated by the conditioning of a permit. If the department determines that the review and approval process created by this section is not appropriate for the proposed project, the department shall notify the applicant and the appropriate local governments of its determination. The applicant may reapply for approval of the project under other review and approval processes.

(II) Any person aggrieved by the approval, denial, conditioning, or modification of a permit under this section may formally appeal the decision to the hydraulic appeals board pursuant to the provisions of this chapter.

(D) No local government may require permits or charge fees for fish habitat enhancement projects that meet the criteria of (p)(iii)(A) of this subsection and that are reviewed and approved according to the provisions of this section.

# Retrofitting for ADA compliance

Language in RCW and WAC is the same:

(q) The external or internal retrofitting of an existing structure with the exclusive purpose of compliance with the Americans with Disabilities Act of 1990 or to otherwise provide physical access to the structure by individuals with disabilities.