

Preliminary Draft Proposed Changes for Chapter 173-27 WAC under the Shoreline Management Act Rulemaking

June 16, 2025

For public comment and review during the informal comment period

Summary of draft amendments to WAC 173-27, Shoreline Management Permit and Enforcement Procedures

This list of amendments under consideration will change as Ecology gathers more information during the informal comment period. Some minor revisions are not included in this list; please review the preliminary draft to see all revisions. Items with an asterisk note the provisions included to implement [HB 1181/RCW 90.58.630](#).

WAC section	Topic	Summary of change
173-27-010	Authority	<ul style="list-style-type: none">• No changes
173-27-020	Purpose	<ul style="list-style-type: none">• Includes edits for readability and/or clarification
173-27-030	Definitions	<ul style="list-style-type: none">• Adds several definitions and clarifies others
173-27-035	Shoreline permit system	<ul style="list-style-type: none">• This is a new section• Clarifies that all use and project activities proposed in shoreline jurisdiction are subject to the policies of the SMA and the SMP• Describes shoreline permit types and under what circumstances they are required• Describes exemptions from the substantial development permit process• Describes requirements for proposals and activities that are not development or substantial development• Defines development that is not considered substantial development• Includes edits for readability and/or clarification
173-27-040	Developments exempt from substantial development permit process requirements (aka “exemptions” or “SDP exemptions”)	<ul style="list-style-type: none">• Specifies that all proposals must be consistent with the SMP and SMA and follow mitigation sequencing• Adds documentation requirements for applications for an exemption• Moves some language to 173-27-035 and -140• Moves projects to improve fish or wildlife habitat or fish passage to 173-27-044• Adds requirements to some of the specific exemptions• Modifies the single-family residential bulkhead exemption to consolidate all the exemption language applicable to shoreline stabilization in

		<p>one place by adding repair and maintenance of existing and emergency stabilization subsections.</p> <ul style="list-style-type: none"> • Adds requirements for applying for an SDP exemption • Includes edits for readability and/or clarification
173-27-044	Developments not required to obtain shoreline permits	<ul style="list-style-type: none"> • Updates reflect statutory changes to RCW 90.58.355, RCW 90.58.356, RCW 90.58.357, RCW 90.58.140(2), and RCW 77.55.181 <ul style="list-style-type: none"> ○ Adds details for WSDOT projects ○ Adds fish hatchery maintenance and operations, Columbia River navigation channel projects, projects to improve fish or wildlife habitat or fish passage, and dredge material disposal
173-27-045	Developments not subject to the Shoreline Management Act	<ul style="list-style-type: none"> • Includes edits for readability and/or clarification
173-27-050	Exemptions from the substantial development permit process	<ul style="list-style-type: none"> • Adds exemption review, documentation, and transmittal process for statements of exemption <ul style="list-style-type: none"> ○ Adds requirements for local governments to submit statements of exemption and application materials to Ecology • Clarifies that a formal exemption letter is required for exempt projects that require a federal permit • Includes edits for readability and/or clarification
173-27-060	Washington's Coastal Zone Management Program (CZMP) and applicability of RCW 90.58 to federal lands and federal agency actions	<ul style="list-style-type: none"> • Adds information about the CZMP • Clarifies where RCW 90.58 and SMPs apply based on the State's approved CZMP • Describes how federal projects in the coastal zone must meet federal consistency under the Coastal Zone Management Act • Clarifies that while the enforceable policies of chapter 90.58 RCW apply to federal agency activities, these are review by Ecology under the coastal zone consistency determination process and not the shoreline permit system of an SMP
173-27-070	Application of the permit system to substantial development undertaken prior to the effective date of the SMA	<ul style="list-style-type: none"> • No changes
173-27-075	Shoreline master program administrative interpretation	<ul style="list-style-type: none"> • This is a new section • Describes the process for preparing and finalizing an administrative interpretation

173-27-080	Nonconforming uses and developments	<ul style="list-style-type: none"> • Clarifies that this section applies only under certain circumstances • Specifies that these provisions will be superseded when master programs are amended consistent with the requirements of WAC 173-26-221(2) • Definitions moved to 173-27-030 • Includes edits for readability and/or clarification
173-27-085	Moratoria	<ul style="list-style-type: none"> • No changes
173-27-090	Time requirements of permits	<ul style="list-style-type: none"> • Requires that all permits authorizing development include time requirements • Clarifies the applicant has the burden of demonstrating that a project warrants different time requirements and demonstrating that time periods should be excluded from the timeline calculation • Clarifies how to calculate the timelines • Includes edits for readability and/or clarification
173-27-100	Revisions to permits	<ul style="list-style-type: none"> • Removes a provision about revising a permit after the original has expired • Adds vegetation conservation and critical areas protection to the scope and intent of the original permit considerations • Changes term from no adverse environmental impact to no net loss of shoreline ecological functions • Includes edits for readability and/or clarification
173-27-110	Notice required	<ul style="list-style-type: none"> • Adds a section regarding combining SEPA threshold determinations and scoping notices with a notice application • Adds details about Tribal notification and coordination • Requires notice to Ecology for all shoreline permits and provision of additional opportunities for Ecology review and coordination on conditional use or variance permit applications • Includes edits for readability and/or clarification
173-27-115	Integration of shoreline permit review and environmental review under the State Environmental Policy Act (SEPA)	<ul style="list-style-type: none"> • This is a new section • Describes purpose of integrated review of shoreline permit applications and SEPA • Describes the requirements of project review under integrated review
173-27-120	Special procedures for limited utility extensions and bulkheads	<ul style="list-style-type: none"> • Includes edits for readability and/or clarification

173-27-125	Special procedures for WSDOT projects	<ul style="list-style-type: none"> • Includes edits for readability and/or clarification
173-27-130	Filing with Ecology	<ul style="list-style-type: none"> • Allows electronic filing of permits with Ecology • Adds information about how the presence or absence of a local administrative appeal option affects when filing the permit with Ecology needs to occur • Specifies process for remedying incomplete permit package submittals • Internal reorganization • Clarifies time calculations, submittal requirements, and more • Includes edits for readability and/or clarification
173-27-140	Review criteria for all proposals	<ul style="list-style-type: none"> • Defines “authorization” for the purposes of this section • Adds information on exemptions • Adds details on review of project consistency with the SMA and SMP • Internal reorganization • Includes information on proposals that do not require a shoreline permit • Includes language moved from 173-27-040 • Adds that proposals to clear vegetation or remove trees must be consistent with the SMA and SMP • Includes edits for readability and/or clarification
173-27-150	Review and approval criteria for substantial development permits (SDPs)	<ul style="list-style-type: none"> • Adds requirement to include references to timeline requirements and appeal process to SDPs • Includes edits for readability and/or clarification
173-27-160	Review criteria for conditional use permits (CUPs)	<ul style="list-style-type: none"> • Adds requirement to include references to timeline requirements and appeal process to CUPs • Adds requirement for compatibility with site conditions, hazards, and projected sea level rise* • Clarification that a CUP cannot authorize a prohibited use or development/activities supporting prohibited uses • Updates terms to reference no net loss of shoreline ecological functions • Includes edits for readability and/or clarification
173-27-170	Review criteria for variance permits	<ul style="list-style-type: none"> • Clarifies that a variance cannot authorize a prohibited use or development/activities supporting prohibited uses • Clarifies that the no net loss of shoreline ecological function principle is not bulk,

		<p>dimensional, or performance standard that can be altered through the application of a variance.</p> <ul style="list-style-type: none"> • Includes language from 173-27-180 requiring that variance applications include plans that indicate where development could occur without a variance • Adds requirement to include references to timeline requirements and appeal process • Includes edits for readability and/or clarification
173-27-180	Application requirements	<ul style="list-style-type: none"> • Contains additions and clarifications to what is required for an application • Adds new sections for technical reports, demonstration of consistency, and sea level rise hazard area* • Includes edits for readability and/or clarification
173-27-185	Application requirements for the sea level rise hazard area*	<ul style="list-style-type: none"> • This is a new section that will apply only after a master program has gone through the periodic review process to incorporate the sea level rise provisions required by WAC 173-26-246. • Requires that all proposals for development within a sea level rise hazard area demonstrate that sea level rise has been considered and incorporated into the proposal • Provides specific application requirements for proposals within sea level rise hazard areas
173-27-190	Permits for substantial development, conditional use, or variance	<ul style="list-style-type: none"> • Adds specifics about the permit data sheets in WAC 173-27-990 and -995 • Includes edits for readability and/or clarification
173-27-200	Ecology review of CUPs and variances	<ul style="list-style-type: none"> • Adds clarification about determinations of completeness and timelines for review • Includes edits for readability and/or clarification
173-27-210	Minimum standards for conditional use and variance permits	<ul style="list-style-type: none"> • Includes edits for readability and/or clarification
173-27-215	Regulatory relief requests resulting from restoration projects	<ul style="list-style-type: none"> • Changes the title to better reflect the purpose and content • Includes the following: <ul style="list-style-type: none"> ○ Definitions ○ Project qualifications ○ Steps to request relief and submittal requirements ○ Steps for local government review and Ecology review ○ Information on early coordination and qualification confirmation • Includes edits for readability and/or clarification

173-27-220	Requests for review (appeals)	<ul style="list-style-type: none"> • Adds information from RCW 90.58.180 on filing a petition for review (appeal)
173-27-240	Enforcement authority and purpose	<ul style="list-style-type: none"> • Adds information about enforcement • Includes edits for readability and/or clarification
173-27-250	Definitions	<ul style="list-style-type: none"> • Includes edits for readability and/or clarification
173-27-260	Enforcement policy	<ul style="list-style-type: none"> • Specifies that local governments and Ecology shall enforce the policy of the SMA and provisions of SMPs • Includes edits for readability and/or clarification
173-27-265	Notice of correction	<ul style="list-style-type: none"> • This is a new section • Includes procedures and requirements for Ecology to issue a notice of correction • Specifies when Ecology may issue a penalty without first issuing a notice of correction
173-27-270	Enforcement order	<ul style="list-style-type: none"> • Includes requirements for the content of an enforcement order • Includes information on penalties, enforcement order delivery method, and appeals • Includes edits for readability and/or clarification
173-27-280	Civil penalty	<ul style="list-style-type: none"> • Separates civil penalties issued by local governments from those issued by Ecology or issued jointly • Elaborates on civil penalties issued by Ecology • Adds details to the notice of penalty information • Includes edits for readability and/or clarification
173-27-290	Appeal of civil penalty	<ul style="list-style-type: none"> • Adds information about appealing a civil penalty
173-27-295	Permit rescission	<ul style="list-style-type: none"> • This is a new section • Describes the process and requirements for local government or Ecology to rescind a permit
173-27-300	Criminal penalty	<ul style="list-style-type: none"> • No changes
173-27-310	Oil or natural gas exploration penalties	<ul style="list-style-type: none"> • No changes
173-27-320	Violators liable for damages resulting from violation	<ul style="list-style-type: none"> • This is a new section • Specifies violators' liability for damage • Specifies who can bring suit for damages • Adds specifications on process for assuring restoration will be accomplished and awarding and attorney fees/costs
173-27-990	Data sheet and transmittal letter for permits	<ul style="list-style-type: none"> • Revisions to the form make it easier to use • Additional information is required • Will be available as a fillable PDF

173-27-995	Data sheet and transmittal letter for Exemptions	<ul style="list-style-type: none"> • This is a new form and is required for SDP exemption submittals required by WAC 173-27-050 • Will be available as a fillable PDF
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* These provisions are included to implement [HB 1181/RCW 90.58.630](#).

Chapter 173-27 WAC

SHORELINE MANAGEMENT PERMIT AND ENFORCEMENT PROCEDURES

Last Update: 8/7/17

PART I

PERMITS FOR DEVELOPMENT ON SHORELINES OF THE STATE

- 173-27-010 Authority.
- 173-27-020 Purpose.
- 173-27-030 Definitions.
- 173-27-035 Shoreline permit system.
- 173-27-040 Developments exempt from substantial development permit requirement.
- 173-27-044 Developments not required to obtain shoreline permits or local reviews.
- 173-27-045 Developments not subject to the Shoreline Management Act.
- 173-27-050 Letter of exemption.
- 173-27-060 Applicability of chapter 90.58 RCW to federal lands and agencies.
- 173-27-070 Application of the permit system to substantial development undertaken prior to the effective date of the act.
- WAC 173-27-075 Shoreline master program administrative interpretation.
- 173-27-080 Nonconforming use and development standards.
- 173-27-085 Moratoria.
- 173-27-090 Time requirements of permit.
- 173-27-100 Revisions to permits.
- 173-27-110 Notice required.
- 173-27-115 Integrated project review – consistency analysis and environmental review under SEPA.
- 173-27-120 Special procedures for limited utility extensions and bulkheads.
- 173-27-125 Special procedures for WSDOT projects.
- 173-27-130 Filing with department.
- 173-27-140 General project consistency review criteria for all exemptions, permits, and other authorizations.
- 173-27-150 Review criteria for substantial development permits.
- 173-27-160 Review criteria for conditional use permits.
- 173-27-170 Review criteria for variance permits.
- 173-27-180 Application requirements for substantial development, conditional use, or variance permit.
- 173-27-185 Application requirements for projects in the Sea Level Rise Hazard Area.
- 173-27-190 Permits for substantial development, conditional use, or variance.
- 173-27-200 Department review of conditional use and variance permits.
- 173-27-210 Minimum standards for conditional use and variance permits.
- 173-27-215 Shoreline restoration projects—Relief from shoreline master program development standards and use regulations.
- 173-27-220 Requests for review.

PART II
SHORELINE MANAGEMENT ACT ENFORCEMENT

173-27-240 Authority and purpose.
173-27-250 Definitions.
173-27-260 Policy.
173-27-265 Notice of correction.
173-27-270 Enforcement order.
173-27-280 Civil penalty.
173-27-290 Appeal of civil penalty.
173-27-295 Permit rescission.
173-27-300 Criminal penalty.
173-27-310 Oil or natural gas exploration—Penalty.173-27-320 Violators liable for damages resulting from violation—Attorney's fees and costs.
173-27-990 Appendix A – Shoreline permit data sheet and transmittal letter.
173-27-995 Appendix B – Exemption submittal data sheet.

PART I
PERMITS FOR DEVELOPMENT ON SHORELINES OF THE STATE

WAC 173-27-010 Authority. The provisions of this part implement the requirements of chapter 90.58 RCW, the Shoreline Management Act. Specifically, RCW 90.58.200 authorizes the adoption of rules as necessary to implement the provisions of the act, and RCW 90.58.140(3) requires that the department adopt rules for administration and enforcement of the permit system established by the act.

[Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-010, filed 9/30/96, effective 10/31/96.]

WAC 173-27-020 Purpose. RCW 90.58.140(3) requires local governments to establish a program, consistent with rules adopted by the department of ecology, for the administration and enforcement of the permit system for shoreline management. The local program should be integrated with other local government systems for administration and enforcement of land use regulations. It is the intent of these regulations to provide minimum procedural requirements as necessary to comply with statutory requirements while providing latitude for local government to establish procedural systems based on local needs and circumstances. It is also the intent of these regulations to provide for integration of the shoreline permit into a consolidated environmental review and permit process.

This regulation is drafted to also reflect RCW 90.58.050, which provides that the Shoreline Management Act is intended to establish a cooperative program between local government and the state. According to this provision, local government shall have the primary responsibility for initiating the planning required by the act and administering the regulatory program of shoreline management consistent with the policy and provisions of the act, whereas the department shall act primarily in a supportive and review capacity with an emphasis on providing assistance to local government and on ensuring compliance with the policies and provisions of the Shoreline Management Act.

[Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-020, filed 9/30/96, effective 10/31/96.]

WAC 173-27-030 Definitions. The definitions and concepts set forth in RCW 90.58.030, and chapters 173-20, 173-22, and 173-26 WAC also apply as used in this chapter. The following definitions shall apply within this chapter and to the administration and interpretation of master programs:

(1) "Act" means chapter 90.58 RCW, the Shoreline Management Act of 1971, as amended.

(XX) "Accessory"

(i) "Accessory dwelling unit" or "ADU" means a dwelling unit located on the same lot as a single-family housing unit, duplex, triplex, townhome, or other housing unit.

(ii) "Accessory structure" means a secondary structure on the same lot or parcel of land as a principal structure that is subordinate to or supportive of but unnecessary for the principal use of the property. Accessory structure is not synonymous with a normal appurtenance or appurtenant structure. See definition for normal appurtenance.

(iii) "Accessory use" means a use or activity that is found on the same lot or parcel as a principal use and is subordinate, customary, and incidental to the principal use. (2) "Applicable master program" means the master program approved or adopted by the department pursuant to RCW 90.58.090(6) or 90.58.190(4) and effective at the time of complete permit application determination.

(3) "Average grade level" means the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property that will be directly under the proposed building or structure. Natural or existing topography means the topography of the lot, parcel, or tract of real property immediately prior to any site preparation or grading, including excavation or filling. Existing topography is prior to any associated site preparation for a proposal and does not include grade changes that were not authorized or otherwise executed in violation of the SMP. In the case of structures to be built over water, average grade level shall be the elevation of the ordinary high water mark. Calculation of the average grade level shall be made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure.

(4) "Conditional use" means a use, development, or substantial development that is classified as a conditional use or is not classified within the applicable master program. Conditional use requests are reviewed against the criteria for conditional use permits of WAC 173-27-160. A conditional use permit is not a means to authorize a prohibited use.

(5) "Department" or "Ecology" means the Washington State Department of Ecology.

(6) "Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature that interferes with the normal public use of the surface of the waters overlying lands subject to the act at any stage of water level. "Development" does not include dismantling or removing structures if there is no other associated development or redevelopment.

(7) "Exemption" means a development that is not subject to the shoreline substantial development permit process. "Exemption" may also refer to the authorization granted by the local government that establishes that an activity is exempt from substantial development permit requirements under WAC 173-27-040 and consistent with the policies and regulations of the act and the applicable master program as set forth in RCW 90.58.030(3)(e), 90.58.147, 90.58.270(6)(a), 90.58.515, and 90.58.580(3).

(8) "Fair market value" of a development is the open market bid price for conducting the work, using the equipment and facilities, and purchase of the goods, services, and materials necessary to accomplish the development. This would normally equate to the cost of hiring a contractor to undertake the

development from start to finish, including the cost of labor, materials, equipment, and facility usage; transportation; and contractor overhead and profit. The fair market value of the development shall include the fair market value of any donated, contributed, or found labor, equipment, services, or materials.

(9) "Height" is measured from average grade level to the highest point of a structure, provided that television antennas, chimneys, and similar appurtenances shall not be used in calculating height, except where such appurtenances obstruct the view of the shoreline of a substantial number of residences on areas adjoining such shorelines, or the applicable master program specifically requires that such appurtenances be included, and provided further that temporary construction equipment is excluded in this calculation.

(10) "Local government" means any county, incorporated city, or town that contains within its boundaries any lands or waters subject to chapter 90.58 RCW.

(XX) "Mitigation sequence" means the mitigation measures applied in the following sequence of steps listed in order of priority, meaning that lower-priority measures are applied only where higher-priority measures are determined to be infeasible or inapplicable, with (i) of this subsection being top priority,

- (i) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (ii) Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;
- (iii) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- (iv) Reducing or eliminating the impact over time by preservation and maintenance operations;
- (v) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and
- (vi) Monitoring the compensation provided and taking appropriate corrective measures, as needed.

(XX) "Nonconforming development" or "nonconforming structure" means an existing structure that was lawfully constructed at the time it was built but is no longer fully consistent with present regulations such as setbacks, buffers, or yards; area, bulk, height, or density standards due to subsequent changes to the master program.

(XX) "Nonconforming lot" means a lot that met dimensional requirements of the applicable master program at the time of its establishment but now contains less than the required width, depth, or area due to subsequent changes to the master program.

(XX) "Nonconforming use" means an existing shoreline use that was lawfully established prior to the effective date of the act or the applicable master program, but which does not conform to present use regulations due to subsequent changes to the master program. (XX) "Normal appurtenance" or "appurtenant structure" means a structure necessarily connected to the use and enjoyment of a single-family residence. On a statewide basis, normal appurtenances include a garage, a deck, a driveway, on-site residential utilities, a fence, and an on-site sewage system. Normal appurtenances do not include accessory dwelling units, shoreline stabilization, over-water or in-water structures, or any other development waterward of the ordinary high water mark or in a wetland.

(12) "Party of record" includes all persons, agencies, or organizations who have submitted written comments in response to a notice of application; made oral comments in a formal public hearing

conducted on the application; or notified local government of their desire to receive a copy of the final decision on a permit and who have provided an address for delivery of such notice by mail or email.

(13) "Permit" means any substantial development, variance, conditional use permit, or revision thereof authorized under chapter 90.58 RCW.

(14) "Public interest" means the interest shared by the citizens of the state or community at large in the affairs of government, or some interest by which their rights or liabilities are affected, including, but not limited to, an effect on public property or on health, safety, or general welfare resulting from a use or development.

(XX) "Significant vegetation removal" means the removal or alteration of trees, shrubs, and/or ground cover by clearing, grading, cutting, burning, chemical means, or other activity that causes significant ecological impacts to functions provided by such vegetation. The removal of invasive or noxious weeds does not constitute significant vegetation removal. Tree pruning, not including tree topping, where it does not affect ecological functions, does not constitute significant vegetation removal.

(XX) "Shall," means a mandate; the action is required. The terms "must" and "are required" have the same meaning as "shall."

(XX) "Should" means that the particular action is required unless there is a demonstrated, compelling reason for not taking the action that is established based on a policy of the Shoreline Management Act, the implementing rules, and the applicable master program.

(15) "Structure" means a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels.

(16) "Transmit" means to send from one person or place to another by mail, email, or hand delivery. The date of transmittal for mailed items is the date that the document is certified for mailing or, for emailed or hand-delivered items, is the date of receipt at the destination. If items are received outside of business hours, i.e., on weekends, holidays, and after 5pm, the date of transmittal shall be the following business day.

(17) "Variance" means a permit that is strictly limited to granting relief from one or more specific bulk, dimensional, or performance standards set forth in the applicable master program. Variance requests are reviewed against the criteria for variance permits of WAC 173-27-170. A variance is not a means to authorize a prohibited use.

(18) "Vessel" includes ships, boats, barges, or any other floating craft that are designed and used for navigation and do not interfere with the normal public use of the water.

[Statutory Authority: Chapter 90.58 RCW. WSR 17-17-016 (Order 15-06), § 173-27-030, filed 8/7/17, effective 9/7/17. Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-030, filed 9/30/96, effective 10/31/96.]

WAC 173-27-035 Shoreline permit system. All projects proposed within shoreline jurisdiction are subject to the policy of the shoreline management act and the applicable master program. Master programs contain provisions for permits for conditional uses and variances as required by RCW 90.58.100(5). The required consistency review and approval criteria are contained in WAC 173-27-040, -140, -150, -160, -170, and -185.

(1) Shoreline permit types. Each master program shall establish a permitting system for shoreline substantial development, conditional use, and variance permits consistent with the following:

(a) **Substantial Development Permit.** Required for all substantial developments not specifically listed as exempt from the substantial development permit process or statutorily excluded from review.

(i) The definition of “development” serves as a threshold in determining whether certain activities need to be reviewed and processed with a substantial development permit.

(ii) Developments authorized through a substantial development permit typically are “permitted” activities that are anticipated by the applicable master program, for which specific development regulations within the master program will ensure compliance with the Shoreline Management Act. However, local governments can add conditions of approval to ensure compliance with Shoreline Management Act policies or master program provisions.

(iii) Substantial development permits are reviewed and processed by local governments and subsequently sent to Ecology for filing.

(b) **Conditional Use Permits.** Required for proposals including uses or developments that are listed as conditional uses and for uses that are not classified or contemplated within the applicable master program. Conditional use permits are used to effectively manage unanticipated uses and address cumulative impacts.

(i) A development or use that is listed as a conditional use pursuant to the applicable master program or is an unlisted use, must obtain a conditional use permit even if the development or use does not require a substantial development permit.

(ii) Proposals that require a conditional use permit are subject to all of the additional criteria listed in [WAC 173-27-160](#).

(iii) Local government decisions on conditional use permits must be submitted to Ecology for final review and decision.

(c) **Shoreline Variance.** A variance is used to provide relief to the applicant by considering project elements that deviate from the applicable master program’s bulk, dimensional, or performance standards (e.g., buffers, setback, height, or lot coverage requirements) in order to reduce a hardship imposed by extraordinary circumstances related to the unique physical character or configuration of the property.

(i) When a development or use is proposed that does not comply with the bulk, dimensional, or performance standards of the applicable master program, such development or use can be authorized only by approval of a variance.

(ii) Proposals that require a variance are subject to all of the additional criteria listed in [WAC 173-27-170](#) and must be consistent with the shoreline environment designation and use requirements of the applicable master program.

(iii) Local government decisions on variance applications must be submitted to Ecology for final review and decision.

(2) **Exemptions from the substantial development permit process.** A statement of exemption is a local government authorization which establishes that an activity meets one or more of the narrowly construed exemptions from the substantial development permit process pursuant to WAC 173-27-040 as set forth by RCW 90.58.030(3)(e), 90.58.147, 90.58.270(6)(a), 90.58.515, and 90.58.580(3).

(a) To be authorized, all uses, developments, and activities proposed must be consistent with the policies and provision of the applicable master program and the Shoreline Management Act. This includes, but is not limited to, consistency with the Sea Level Rise Hazard Area, critical area protection, mitigation sequence, use regulations, shoreline environment designation, and shoreline modification provisions.

(b) The local government determines whether a proposal is exempt from the substantial development permit process and whether the exempt use, development, or activity can be approved, approved with conditions, or denied. Statements of exemption are transmitted to Ecology for the state record.

(3) Proposals and activities that are not development or substantial development. Some use and project activities proposed within shoreline jurisdiction are subject to the policy of the Shoreline Management Act and the provisions of the applicable master program but are not subject to a shoreline substantial development permit or statement of exemption. These include projects and use and project activities that do not meet the definition of development or that are not considered substantial development. Local governments shall still apply the master program policies and regulations to these uses and project activities as part of the land use review of associated land subdivision, lot line adjustment, clearing, tree removal, environmental review, or other associated permits and approvals.

(a) If a use or project activity does not meet the definition of “development” or is not considered substantial development, and it is determined that the project will not interfere with normal use of waters of the state, then a shoreline substantial development permit or exemption from the substantial development permit process is not required.

(b) Even if a use or project activity does not meet the definition of “development” or is not considered substantial development, all use and project activities must still be consistent with the master program bulk, dimensional, and performance standards and consistent with allowed uses.

(c) Applicable master programs may establish specific use or project activities as conditional uses; in those cases a conditional use permit is still required even if a shoreline substantial development permit or statement of exemption is not necessary.

(4) Development that is not considered substantial development. Any development of which the total cost or fair market value, whichever is higher, does not exceed the dollar threshold established in RCW 90.58.030(3)(e) as adjusted for inflation by the office of financial management, and where such development does not materially interfere with the normal public use of the water or shorelines of the state, is not considered substantial development pursuant to the Shoreline Management Act and the applicable master program. For purposes of determining whether or not the development is “substantial development”, 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).

[Statutory Authority: Chapter 90.58 RCW, RCW 90.58.200, RCW 90.58.100(5), RCW 90.58.140(3)]

WAC 173-27-040 Developments exempt from substantial development permit process requirements.

(1) Application and interpretation of exemptions. An exemption from the substantial development permit process is a local government authorization that establishes that an activity meets one or more of the narrowly construed exemptions pursuant to WAC 173-27-040 as set forth by RCW 90.58.030(3)(e), 90.58.147, 90.58.270(6)(a), 90.58.515, and 90.58.580(3).

(a) Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from the substantial development permit process.

(b) An exemption from the substantial development permit process is not an exemption from compliance with the act or the applicable master program, nor from any other regulatory requirements.

(c) To be authorized, all uses and developments must be consistent with the policies of the Shoreline Management Act and provisions of the applicable master program, as documented by the local government in a statement of exemption. Exempt activities are subject to the mitigation sequence.

(d) Statements of exemptions must:

(i) Document which exemption(s) from substantial development permit requirements under WAC 173-27-040 are applicable;

(ii) Demonstrate how the proposal meets the narrowly construed exemption criteria;

(iii) Verify consistency of the proposal with the policies of the Shoreline Management Act and the applicable master program provisions. Applicable use regulations and bulk, dimensional, and performance standards must be met, including shoreline ecological protection standards, shoreline buffers, shoreline setbacks, critical area protections standards, and critical area buffers.

(iv) Include conditions of approval necessary to ensure the project construction or execution remains consistent with the exemption criteria and applicable master program policies and provisions.

(e) The burden of proof that a development or use is exempt from the substantial development permit process is on the applicant.

(2) The following developments shall not require substantial development permits and may be authorized through an exemption from the substantial development permit process:

(a) **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 minor actions necessary to fix damage to lawfully established structures or development. These are all minor actions intended to maintain an existing useable and functional structure or development and that must be taken prior to substantial decay or destruction. Maintenance, repair, and limited replacement actions allowed through this exemption must demonstrate no net loss of shoreline ecological functions and not cause substantial adverse effects to shoreline resources or environment.

(i) Replacement of components 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. Maintenance, repair, and limited replacement activities allowed under this exemption shall result in structures or developments that are comparable to the original structure or development.

(ii) Except for in limited circumstances, the replacement must be comparable to the original structure or development, including but not limited to its size, shape, configuration, location, and external appearance. In limited circumstances, the replacement may be relocated landward

or reconfigured, provided this makes the structure more conforming to the applicable master program's protection, restoration, or hazard reduction standards. These limited circumstances include where structures or development are or will be exposed to sea level rise or other hazards, or where ecological functions at the site may be improved by changing the structure or development.

(iii) This exemption does not apply to the maintenance, repair, or replacement of shoreline stabilization.

(b) Shoreline stabilization: new normal structures protective of single-family residences; repair and maintenance of existing shoreline stabilization; and emergency shoreline stabilization actions.

Shoreline stabilization includes those actions taken to address erosion impacts for the sole purpose of protecting existing development from loss or damage from erosion caused by the natural processes of currents, tides, waves, stream flows, or wind wearing down and carrying away material over time.

(i) Construction of a new or replacement normal protective shoreline stabilization common to single-family residences:

(A) "Normal protective" shoreline stabilization includes those structural and nonstructural actions taken to address erosion impacts for the sole purpose of protecting an existing single-family residence from loss or damage by erosion.

(B) Normal protective shoreline stabilization is not exempt if it is creating dry land.

(C) Applicants must demonstrate need, consider alternatives, and analyze ecological impacts as part of all new and replacement shoreline stabilization projects.

(D) New or replacement shoreline stabilization structures shall be constructed landward of the current ordinary high water mark. When existing shoreline stabilization has failed or deteriorated such that an ordinary high water mark has been established, by the presence and action of water, landward of the existing stabilization, then the replacement must be re-located at or landward of the ordinary high water mark.

(E) 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 a vertical wall fronting an existing shoreline stabilization is proposed, it shall be considered a replacement and cannot be authorized farther waterward of the existing bulkhead than is necessary for construction of new footings.

(F) Beach nourishment, bioengineered erosion-control projects, and nature-based solutions are considered normal protective shoreline stabilization, provided any structural elements are consistent with the above requirements.

(ii) Shoreline stabilization maintenance and repair:

(A) "Shoreline stabilization maintenance" includes those usual or routine acts to prevent a decline, lapse, or cessation from a lawfully established condition of existing shoreline stabilization.

(B) "Shoreline stabilization repair" means minor actions necessary to fix damage to lawfully established shoreline stabilization.

(C) These are all minor actions intended to maintain existing useable and functional shoreline stabilization. Shoreline maintenance and repair actions must be taken prior to substantial decay or destruction.

(D) All shoreline maintenance and repair activities allowed under this exemption shall require consideration of less ecologically impactful alternatives and shall not result in any waterward or lateral expansion of existing structural shoreline stabilization. Shoreline maintenance and repair actions cannot cause substantial adverse effects to shoreline resources or ecological functions.

(iii) Emergency shoreline stabilization actions necessary to protect existing single-family residences from erosion.

(A) An "emergency" is an unanticipated and imminent threat to an existing single-family residence that requires immediate action within a time too short to allow full compliance with the permit timelines of the Shoreline Management Act and applicable master program.

(B) Emergency construction shall not include development of new permanent shoreline stabilization where none previously existed. Permanent shoreline stabilization may not be authorized by this exemption or through after-the-fact permitting. If permanent protection is necessary, the temporary measure should be the minimum necessary until a permanent structure can be designed and permitted in compliance with the local shoreline master program.

(C) Only temporary actions necessary to abate an emergency may be authorized through this emergency exemption. Temporary measures may include sandbags, supersacks, storm shields for windows and doors, or the like. Upon abatement of the emergency situation, all emergency actions and construction shall be removed, and any ecological functions impacted shall be restored.

(c) 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 that requires immediate action within a time too short to allow full compliance with the permit timelines of the Shoreline Management Act and applicable master program.

(i) Emergencies are unanticipated events posing an imminent threat to health, safety, or the environment that do not allow time for site-specific design, detailed study, or standard permitting processes. Important considerations are whether structures, utilities, and other key infrastructure are at imminent risk.

(ii) All emergency actions and associated construction shall be consistent with the policies of the Shoreline Management Act and the applicable master program.

(iii) 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;

(iv) Actions taken under this emergency exemption shall be the minimum necessary to abate the emergency.

(v) This exemption does not apply to emergency shoreline stabilization actions necessary to protect existing single-family residences from erosion. **(d) Construction and practices normal or necessary for farming, irrigation, and ranching activities.** Construction and practices normal or necessary for farming, irrigation, and ranching activities, include 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.

(i) Normal or necessary farming or ranching activities do not include:

(A) Feedlots of any size. A feedlot is an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed. Feedlots do not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall they include normal livestock wintering operations.

(B) All processing plants,

(C) Other activities of a commercial nature,

(D) Alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation.;

(e) **Construction or modification of navigational aids such as channel markers and anchor buoys.**

Channel markers and anchor buoys are navigational tools indicating the location of a line or marking the channel to facilitate vessel traffic. This exemption does not apply to buoys used for moorage;

(f) **Single-family residential construction.** 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, provided the following are met:

(i) The residence does not exceed a height of thirty-five feet above average grade level,

(ii) The residence is designed and sited to meet all the applicable master program residential and ecological protection standards, as well as other local government codes such as building, stormwater manual, and health department requirements.

(iii) "Single-family residence" means a detached dwelling designed for and occupied by one family, including those structures and developments within a contiguous ownership that are a normal appurtenance.

(iv) A "normal appurtenance" is a structure or development necessarily connected to the use and enjoyment of a single-family residence. Single-family residential normal appurtenances are limited to a garage, a deck, a driveway, on-site residential utilities, a fence, and an on-site sewage system.

(v) Single-family residential construction may include grading that does not exceed two hundred fifty cubic yards.

(vi) All development associated with this exemption must be on shorelands, landward of the shoreline buffer and setback, and outside of any critical areas and their buffers. (vii) Accessory uses, accessory structures, and accessory dwelling units are not eligible for this exemption.

(g) **Construction of a private residential pleasure craft dock.** The 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 accessory uses or developments. Dollar thresholds in this exemption are established in RCW 90.58.030(3)(e) as adjusted for inflation by the office of financial management. This exemption is limited to one dock per waterfront parcel and applies if either:

(i) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars (\$2,500).

(A) 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.

(ii) In fresh waters the fair market value of the dock does not exceed:

(A) Twenty-eight thousand dollars (\$28,000) for docks that are constructed to replace existing docks, are of equal or lesser square footage than the existing dock being replaced, and are designed and sited consistent with an applicable master program that has completed its comprehensive master program update; or

(B) Thirteen thousand eight hundred dollars (\$13,800) for all other docks constructed in fresh waters.

(iii) If subsequent dock-related construction is proposed 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 above in this subsection, the subsequent construction is not eligible for this exemption and shall be considered a substantial development.

(h) **Irrigation systems.** 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.

(i) **Property line or corner marking on state-owned lands.** 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.

(j) **Operation and maintenance of agricultural drainage or diking systems.** Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, that were created, developed, or used primarily as a part of an agricultural drainage or diking system. Maintenance and operations activities allowed under this exemption shall remain comparable to the original system, including but not limited to its size, shape, configuration, location, orientation, depth, and elevation. Maintenance and operation actions must achieve no net loss of shoreline ecological functions and cannot cause substantial adverse effects to shoreline resources or ecological functions.

(k) **Site exploration and investigation activities.** 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 impacts to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values.

(iii) The activity does not involve the installation of any structure.

(iv) Impacts to vegetation are minimized and do not include any tree removal. Upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity.

(v) 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 pre-existing conditions; and

(vi) The activity is not subject to the oil and gas exploration permit requirements of RCW 90.58.550.

(l) Removal and control of aquatic noxious weeds. 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.

(m) Watershed restoration projects. Watershed restoration projects are public or private projects authorized by the sponsor of a watershed restoration plan that implements the plan or a part of the plan. Watershed restoration plans are 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.

(i) Local government shall review watershed restoration projects for consistency with the master program in an expeditious manner and shall issue its decision along with any conditions within forty-five (45) days of receiving all materials necessary to review the request for exemption from the applicant.

(ii) No fee may be charged for accepting and processing requests for exemption for watershed restoration projects as used in this section.

(iii) Qualifying watershed restoration projects must consist of one or more of the following activities:

(A) A project that involves less than ten miles of stream reach, 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

(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 landward of the ordinary high water mark of the stream.

(n) Retrofitting existing structures to accommodate physical access by individuals with disabilities. The external or internal retrofitting of an existing structure with the exclusive purpose of compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) or to otherwise provide physical access to the structure by individuals with disabilities.

(3) To apply for an exemption from the substantial development permit process, the project proponent shall provide, at a minimum:

- (a) Name, address, email address, and phone number of the property owner and project proponent.
- (b) Location of the project site. Include the property address, parcel number, and latitude and longitude coordinates in degree decimals to the fourth decimal place.
- (c) Identification of the shoreline waterbody associated with the property.
- (d) A general description of the project proposal, including the proposed use or uses; vegetation to be modified, removed, or protected; development components; and staging areas, site access points, and other activities necessary to accomplish the project.
- (e) A statement of which exemption(s) apply to the project or each project component and an explanation of how the project is consistent with the applicable exemption provisions of WAC 173-27-040(1) and (2).
- (f) Site plans and if applicable construction drawings clearly depicting all information necessary to demonstrate consistency with the exemption criteria and master program regulations, including bulk and dimensional standards and shoreline ecological protection requirements.
 - (iii) Site plans and, if applicable, construction drawings that accurately represent the site, including the location of the following:
 - (A) All development and activities requested to be authorized by the exemption,
 - (B) The ordinary high water mark. This may be approximate location if the exact location is not necessary to determine the applicable master program provisions or to demonstrate compliance with the exemption criteria,
 - (C) The shoreline buffer and/or setbacks,
 - (D) All critical areas and critical area buffers,
 - (E) Existing and proposed vegetation located within shoreline jurisdiction, and
 - (F) If applicable, the floodway, channel migration zone, and sea level rise risk area.
- (g) Demonstration of the application of the mitigation sequence to the project, including specific avoidance and minimization measures applied to the project design or construction; any identified impacts to shoreline ecological functions or critical areas; and compensatory mitigation measures, if necessary.

[Statutory Authority: Chapter 90.58 RCW. WSR 17-17-016 (Order 15-06), § 173-27-040, filed 8/7/17, effective 9/7/17. Statutory Authority: RCW 90.58.030 (3)(e), 90.58.045, 90.58.065, 90.58.140(9), 90.58.143, 90.58.147, 90.58.200, 90.58.355, 90.58.390, 90.58.515, 43.21K.080, 71.09.250, 71.09.342, 77.55.181, 89.08.460, chapters 70.105D, 80.50 RCW. WSR 07-02-086 (Order 05-12), § 173-27-040, filed 1/2/07, effective 2/2/07. Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-040, filed 9/30/96, effective 10/31/96.] **WAC 173-27-044 Developments not required to obtain shoreline permits or local reviews.** Requirements to obtain a substantial development permit, conditional use permit, variance permit, statement or letter of exemption, or other review conducted by a local government to implement the Shoreline Management Act do not apply to the following:

(1) **Remedial actions.** Pursuant to RCW 90.58.355, any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department must ensure compliance with the substantive requirements of this chapter through the consent decree,

order, or agreed order issued pursuant to chapter 70.105D RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70.105D.090.

(2) **Boatyard improvements to meet NPDES permit requirements.** Pursuant to RCW 90.58.355, any person installing site improvements for stormwater treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system stormwater general permit. The department must ensure compliance with the substantive requirements of this chapter through the review of engineering reports, site plans, and other documents related to the installation of boatyard stormwater treatment facilities.

(3) **WSDOT facility maintenance and safety improvements.** The department of transportation must provide written notification to all agencies with jurisdiction, agencies with facilities or services that may be impacted, and adjacent property owners of projects and activities authorized under this section with a cost in excess of one million dollars before the design or plan is finalized. Pursuant to RCW 90.58.356, the following department of transportation projects and activities are included under this exception:

- (a) Maintenance, repair, or replacement that occurs within the roadway prism of a state highway as defined in RCW [46.04.560](#), the lease or ownership area of a state ferry terminal, or the lease or ownership area of a transit facility, including ancillary transportation facilities such as pedestrian paths, bicycle paths, or both, and bike lanes;
- (b) Construction or installation of safety structures and equipment, including pavement marking, freeway surveillance and control systems, railroad protective devices not including grade-separated crossings, grooving, glare screen, safety barriers, energy attenuators, and hazardous or dangerous tree removal;
- (c) Maintenance occurring within the right-of-way; or
- (d) Construction undertaken in response to unforeseen, extraordinary circumstances that is necessary to prevent a decline, lapse, or cessation of service from a lawfully established transportation facility.

(4) **Fish hatchery maintenance and operation.** Fish hatchery maintenance and operations activities undertaken by the department of fish and wildlife, a federally recognized Indian Tribe, a public utility district, or a municipal utility that meet the conditions of RCW [90.58.357](#). These actions are limited to those necessary to maintain the operation of fish hatcheries, including water intakes and discharges, fish ladders, water and power conveyances, weirs, and racks and traps used for fish collection.

- (a) Maintenance, repair, or replacement of equipment and components that support the larger hatchery facility and occur within the existing footprint of fish hatchery facilities;
- (b) Construction or installation of safety structures and equipment;
- (c) Maintenance occurring within existing water intake and outflow sites during times when fish presence is minimized; or
- (d) Construction undertaken in response to unforeseen, extraordinary circumstances that is necessary to prevent a decline, lapse, or cessation of operation of a fish hatchery facility.
- (e) The proponent of a project undertaken pursuant to this section must ensure compliance with the substantive requirements of the Shoreline Management Act and ensure that the project will not adversely affect public access or shoreline ecological functions.

(f) The project proponent must provide written notification of projects authorized under this section to the local government with jurisdiction and Ecology prior to beginning a maintenance or repair project.

(5) **Columbia River navigation channel projects.** Pursuant to RCW 90.58.355(5), actions taken on the Columbia river by the United States army corps of engineers, under the authority of United States Code Titles 33 and 42 and 33 C.F.R. Sec. 335, to maintain and improve federal navigation channels in accordance with federally mandated dredged material management and improvement project plans, provided the project:

(a) Has undergone environmental review under both the national environmental policy act, 42 U.S.C. Sec. 4321-4370h, and the state environmental policy act, chapter [43.21C](#) RCW; and

(b) Has applied for federal clean water act section 401 water quality certification issued by the department.

(6) **Projects to improve fish or wildlife habitat or fish passage approved pursuant to RCW [77.55.181](#).** Pursuant to RCW 77.55.181 and RCW 90.58.147, a public or private project that is designed to improve fish or wildlife habitat or fish passage is not required to obtain a substantial development permit, conditional use permit, variance permit, or letter of exemption from the local government. Fish habitat enhancement projects that conform to the provisions of RCW [77.55.181](#) are expected to result in beneficial impacts to the environment and are determined to be consistent with local shoreline master programs. Local government may not require permits or charge fees for fish habitat enhancement projects that are reviewed and approved according to the provisions RCW [77.55.181](#), provided the following all apply:

(a) The local government notification provisions of RCW [77.55.181](#) were satisfied. This notification process provides the local government with a 15-day comment period during which it may transmit comments regarding environmental impacts to the department of fish and wildlife or, for forest practices hydraulic projects, to the department of natural resources.

(b) The project has been approved in writing by the department of fish and wildlife pursuant to chapter 77.55 RCW, or by the department of natural resources for forest practices hydraulic projects approval within the scope of RCW [77.55.181](#).

(7) **Dredge material disposal.** Pursuant to RCW 90.58.140(12), a permit under this section is not required in order to dispose of dredged materials at a disposal site approved through the cooperative planning process referenced in RCW [79.105.500](#), provided the dredged material disposal proponent obtains a valid site use authorization from the dredged material management program office within the department of natural resources.

[Statutory Authority: Chapter 90.58 RCW. WSR 17-17-016 (Order 15-06), § 173-27-044, filed 8/7/17, effective 9/7/17.]

WAC 173-27-045 Developments not subject to the Shoreline Management Act. Certain developments are not required to meet the requirements of the Shoreline Management Act as follows:

(1) Pursuant to RCW 90.58.045 regarding environmental excellence program agreements, notwithstanding any other provision of law, any legal requirement under the Shoreline Management Act, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW.

(2) Any project with a certification from the governor pursuant to chapter 80.50 RCW. The holder of a certification from the governor pursuant to chapter 80.50 RCW shall not be required to obtain a permit under chapter 90.58 RCW.

[Statutory Authority: Chapter 90.58 RCW. WSR 17-17-016 (Order 15-06), § 173-27-045, filed 8/7/17, effective 9/7/17. Statutory Authority: RCW 90.58.030 (3)(e), 90.58.045, 90.58.065, 90.58.140(9), 90.58.143, 90.58.147, 90.58.200, 90.58.355, 90.58.390, 90.58.515, 43.21K.080, 71.09.250, 71.09.342, 77.55.181, 89.08.460, chapters 70.105D, 80.50 RCW. WSR 07-02-086 (Order 05-12), § 173-27-045, filed 1/2/07, effective 2/2/07.]

WAC 173-27-050 Exemption authorization and documentation process. Exemptions are developments exempt from the requirement to obtain a substantial development permit per WAC 173-27-040 as authorized by RCW 90.58.030(3)(e), 90.58.147, 90.58.270(6)(a), 90.58.515, and 90.58.580(3).

(1) **Exemption review, documentation, and transmittal requirements.** Statements of exemption are local government authorizations for which applications can be approved, approved with conditions, or denied. Statements of exemption must include written documentation of the proposal's consistency with the policy of the Shoreline Management Act, relevant provisions of the applicable master program, and confirmation of the exemption(s) applied to the project review.

(a) All local government statements of exemption, including approvals, approvals with conditions, and denials, shall be transmitted to Ecology. At the time of decision, the local government shall transmit the statement of exemption and application materials to Ecology. Once Ecology implements an online submittal system, local governments shall use that system as the means for transmitting information about exemptions to Ecology.

(b) Information transmitted to Ecology shall include:

(i) A copy of the local government decision, in the form it was provided to the applicant. This decision shall include a summary of the local government's analysis of the consistency of the project with the policy of the Shoreline Management Act, relevant provisions of the applicable master program, the specific exemption(s) applied to the proposal, the final decision to approve, approve with conditions, or deny the proposal, and any conditions of approval placed by the local government.

(ii) A completed exemption data sheet as provided by the department pursuant to WAC 173-27-995.

(iii) Application materials as required pursuant to WAC 173-27-040(3).

(c) This section does not apply to those developments not required to obtain shoreline permits or local review pursuant to WAC 173-27-044 or to developments not subject to the Shoreline Management Act as listed in WAC 173-27-045.

(2) **Letter of exemption.** In some cases, the statement of exemption will need to be in the form of a letter. Some projects conducted on shorelines of the state also require review and approval by federal agencies. Ecology is designated as the coordinating agency for the state with regard to permits issued by the U.S. Army Corps of Engineers. The following is intended to facilitate ecology's coordination of local actions, with regard to exempt development, with federal permit review.

(a) The exemption review, documentation, and transmittal requirements of WAC 173-27-050(1) shall be applied to these types of exemptions; however, the final decision shall be provided in a formal letter.

(b) The local government shall prepare a letter of exemption addressed to the applicant and the department whenever a development is determined by a local government to be exempt from the substantial development permit requirements, and the development is subject to one or more of the following federal permit requirements:

(i) A U.S. Army Corps of Engineers section 10 permit under the Rivers and Harbors Act of 1899; (The provisions of section 10 of the Rivers and Harbors Act generally apply to any project occurring on or over navigable waters. Specific applicability information should be obtained from the Corps of Engineers.), or

(ii) A section 404 permit under the Federal Water Pollution Control Act of 1972. (The provisions of section 404 of the Federal Water Pollution Control Act generally apply to any project that may involve discharge of dredge or fill material to any water or wetland area. Specific applicability information should be obtained from the Corps of Engineers.)

(c) The letter shall indicate the specific exemption provision from WAC 173-27-040 that is being applied to the development and provide a summary of the local government's analysis of the consistency of the project with the master program and the act. [Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-050, filed 9/30/96, effective 10/31/96.]

WAC 173-27-060 Washington's Coastal Zone Management Program and applicability of chapter 90.58 RCW to federal lands and federal agency actions.

(1) The federal Coastal Zone Management Act authorizes states with approved Coastal Zone Management Programs to review projects where the proposal is in, or has the potential to affect, a state's coastal zone, and the project has a federal nexus. These projects are known as "federal actions." States review such projects for consistency with their approved Coastal Zone Management Program's enforceable policies. A "federal action" can be:

(a) A development project or other activity with reasonably foreseeable coastal effects that is proposed by a federal agency;

(b) An application for a federal license or permit or other form of federal authorization that is listed by the state's Coastal Zone Management Program as being subject to review; or

(c) A state or local application for a form of federal financial assistance for a project with reasonably foreseeable coastal effects that is listed by the state's Coastal Zone Management Program as being subject to review.

(2) **Washington's Coastal Zone Management Program (CZMP).** Washington's CZMP consists of two parts: the enforceable policies that must be complied with through the federal consistency process; and the activities that the department undertakes review of pursuant to the enforceable policies in accordance with the federal CZM grant. Washington's CZMP includes enforceable policies that are found in the Shoreline Management Act, Water Pollution Control Act, Washington Clean Air Act, and Ocean Resources Management Act, their implementing regulations, and in the Marine Spatial Plan for Washington's Pacific Coast.

(a) Washington's coastal zone, as established in the state's approved CZMP, includes all of the lands and waters, as well as submerged lands seaward out to three nautical miles, within the following coastal counties: Whatcom, Skagit, San Juan, Island, Snohomish, King, Pierce, Thurston, Mason, Kitsap, Jefferson, Clallam, Grays Harbor, Pacific, and Wahkiakum.

(b) The policies and provisions of chapter 90.58 RCW, including the permit system, shall apply statewide to all nonfederal developments and uses undertaken on federal lands and on lands subject to nonfederal ownership, lease or easement, even though such lands may fall within the external boundaries of federal ownership.

(c) Nonfederal applicants subject to coastal zone consistency determinations under this section must comply with applicable master programs and obtain necessary shoreline permits or authorizations from the local government. The local review, authorization, and/or permit should be provided to Ecology to demonstrate consistency with the policy of the Shoreline Management Act through consistency with the applicable master program.

(d) The coastal zone excludes Tribal lands held in trust by the federal government and lands that the federal government owns, leases, holds in trust, or otherwise has the sole discretion to determine their use. However, a proposed federal action within these excluded areas may still be subject to review by Ecology under the CZMA if there are effects to state coastal uses or resources.

(3) Applicability of chapter 90.58 RCW to federal lands and federal agency actions. Pursuant to the Federal Coastal Zone Management Act (CZMA), 16 U.S.C. 1451 et seq. and federal regulations adopted pursuant thereto, proposed direct federal agency activities with reasonably foreseeable effects to state uses and resources within Washington's coastal zone shall be consistent to the maximum extent practicable with the enforceable policies of the most recent federally approved Washington CZMP in a process known as federal consistency.

(a) The CZMA federal consistency decision-making process for federal agency activities is prescribed in the CZMA (16 U.S.C. 1456 (c)(1) and (2), in federal regulations at 15 C.F.R. part 930, subpart C, and in Washington's current federally approved CZMP program document.

(b) The Washington State Department of Ecology has the responsibility and authority for implementing Washington's CZMP, ensuring compliance with the state's enforceable policies, and accepting federal consistency determinations for review.

(c) The Shoreline Management Act is incorporated into Washington's CZMP, and therefore, those direct federal agency activities affecting the uses or resources that are subject to the act must be consistent to the maximum extent practicable with the enforceable provisions. (d) While the enforceable policies of chapter 90.58 RCW apply to federal agency activities, the permit system does not, except when required by other federal laws.

(e) Federal agencies proposing activities with effects on state coastal uses or resources must demonstrate to the Washington State Department of Ecology how their proposed action is consistent with Washington's approved enforceable policies, including portions of the Shoreline Management Act and implementing regulations contained in chapters 173-18, 173-20, 173-22, 173-26, and 173-27 WAC.

(f) The Washington State Department of Ecology shall consult with affected state agencies, local governments, Tribes, and the public prior to responding to federal coastal zone management consistency determinations for uses and activities occurring on the federal outer continental shelf.

[Statutory Authority: RCW 90.58.030 (3)(e), 90.58.045, 90.58.065, 90.58.140(9), 90.58.143, 90.58.147, 90.58.200, 90.58.355, 90.58.390, 90.58.515, 90.58.570, 43.21K.080, 71.09.250, 71.09.342, 77.55.181, 89.08.460, chapters 70.105D, 80.50 RCW. WSR 07-02-086 (Order 05-12), § 173-27-060, filed 1/2/07, effective 2/2/07. Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-060, filed 9/30/96, effective 10/31/96.]

WAC 173-27-070 Application of the permit system to substantial development undertaken prior to the effective date of the act.

(1) Substantial development undertaken on the shorelines of the state prior to the effective date of the act, including changes in shoreline jurisdiction as described in subsection (2) of this section, shall not require a permit except under the following circumstances:

- (a) When the activity was unlawful prior to the effective date of the act.
- (b) When there has been an unreasonable period of dormancy in the project between its inception and the effective date of the act.
- (c) When the development is not completed within two years after the effective date of the act.
- (d) When substantial development occurred prior to the effective date of the act on a shoreline and continued on to a different lake, river or tributary after the effective date, a permit shall be required for the development undertaken after the effective date.
- (e) Substantial development undertaken prior to the effective date of the act shall not continue without a permit into other phases that were not part of the plan being followed at the time construction commenced.

(2) The effective date of the act is determined by one of the following procedures:

- (a) When a change in the area subject to the jurisdiction of the act occurs as a result of a determination of jurisdiction by the department based on the provisions of RCW 90.58.030(2)(d) or (e), the effective date of the act shall be the date the department provides written notice of the change to the local government(s) in which the affected area is located.
- (b) When a change in the area subject to the jurisdiction of the act occurs as a result of an updated shoreline master program that supersedes the jurisdiction lists in chapter 173-18, 173-20 and 173-22 WAC, the effective date of the act shall be the date the department approves the updated master program.

[Statutory Authority: RCW 90.58.030 (3)(e), 90.58.045, 90.58.065, 90.58.140(9), 90.58.143, 90.58.147, 90.58.200, 90.58.355, 90.58.390, 90.58.515, 43.21K.080, 71.09.250, 71.09.342, 77.55.181, 89.08.460, chapters 70.105D, 80.50 RCW. WSR 07-02-086 (Order 05-12), § 173-27-070, filed 1/2/07, effective 2/2/07. Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-070, filed 9/30/96, effective 10/31/96. **WAC 173-27-075 Shoreline master program administrative interpretation.**

Within the scope of the SMA, an SMP administrative interpretation refers to a process that clarifies the intent, meaning, or application of language within the applicable master program. Administrative interpretations are prepared by the local government and affirmed by the department.

(1) Process:

- (a) The local government shall consult with the department as early as is reasonably possible to allow collaboration and informal review for consistency with the purpose and intent of chapter 90.58 RCW and the SMA implementing rules contained in chapters 173-22, -26, and -27 WAC.
- (b) The local government shall conduct the needed analysis and prepare the necessary documentation outlining its administrative interpretation, including, at a minimum:
 - (i) The provision(s) at issue, an overview of clarification that is needed, and a statement of the administrative interpretation being made.
 - (ii) The relevant master program citations and definitions,

(iii) The statutory provisions in chapter 90.58 RCW authorizing or supporting the interpretation and the relevant rule language in chapter 173-22, -26, and -27 WAC,

(iv) Findings and conclusions outlining the administrative interpretation, and

(v) Documentation that necessary process steps were completed.

(c) The local government shall submit its interpretation to the department for review prior to finalization or formal issuance. Only after the department issues formal written concurrence with the interpretation shall the interpretation be considered final and implemented.

[Statutory Authority: RCW 90.58.140(3), RCW 90.58.050 and [90.58].200.]

WAC 173-27-080 Nonconforming use and development standards.

(1) Applicability. This section is intended to apply if a local government has not completed its comprehensive master program update, the comprehensively updated master program does not contain locally adopted nonconforming use and development standards, or the comprehensively updated master program includes a reference to these provisions. These provisions will be superseded when master program periodic review amendments are completed incorporating the requirements of WAC 173-26-221(2).

(2) Nonconforming structures.

(a) Structures that were legally established and are used for a conforming use but are nonconforming with regard to setbacks, buffers or yards, area, bulk, height, or density standards may continue as legal nonconforming structures and may be maintained and repaired.

(b) Nonconforming structures may be enlarged or expanded provided that said enlargement meets the applicable provisions of the master program. In the absence of other, more-specific regulations, proposed expansion shall not increase the extent of nonconformity by further encroaching upon or extending into areas where construction would not be allowed for new structures, unless a shoreline variance permit is obtained.

(c) Nonconforming single-family residences that are located landward of the ordinary high water mark may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances as defined in WAC 173-27-040(2)(f) upon approval of a conditional use permit.

(d) A structure for which a variance has been issued shall be considered a legal nonconforming structure, and the requirements of this section shall apply as they apply to pre-existing nonconformities.

(e) In the absence of other, more-specific regulations, a structure that is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a conditional use permit. A conditional use permit may be approved only upon a finding that:

(i) No reasonable alternative conforming use is practical; and

(ii) The proposed use will be at least as consistent with the policies and provisions of the act and the master program and as compatible with the uses in the area as the pre-existing use.

In addition, such conditions may be attached to the permit as are deemed necessary to ensure compliance with the above findings and the requirements of the master program and the Shoreline Management Act, and to ensure that the use will not become a nuisance or a hazard.

(f) A nonconforming structure that is moved any distance must be brought as closely as practicable into conformance with the applicable master program and the act.

(g) If a nonconforming development is damaged to an extent not exceeding seventy-five percent of the replacement cost of the original development, it may be reconstructed to those configurations existing immediately prior to the time the development was damaged, provided that application is made for the permits necessary to restore the development within two years of the date the damage occurred.

(3) Nonconforming uses.

(a) Uses that were legally established and are nonconforming with regard to the use regulations of the master program may continue as legal nonconforming uses.

(b) In the absence of other, more-specific regulations in the master program, such uses shall not be enlarged or expanded, except upon approval of a conditional use permit.

(c) If a nonconforming use is discontinued for twelve consecutive months or for twelve months during any two-year period, the nonconforming rights shall expire and any subsequent use shall be conforming unless re-establishment of the use is authorized through a conditional use permit, which must be applied for within the two-year period. Water-dependent uses should not be considered discontinued when they are inactive due to dormancy, or where the use includes phased or rotational operations as part of typical operations. A use authorized pursuant to subsection (2)(e) of this section shall be considered a conforming use for purposes of this section.

(4) Nonconforming lot. A nonconforming lot may be developed if permitted by other land use regulations of the local government and so long as such development conforms to all other requirements of the applicable master program and the act.

[Statutory Authority: Chapter 90.58 RCW. WSR 17-17-016 (Order 15-06), § 173-27-080, filed 8/7/17, effective 9/7/17. Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-080, filed 9/30/96, effective 10/31/96.]

WAC 173-27-085 Moratoria.

(1) Local governments may adopt moratoria or other interim official controls as necessary and appropriate to implement chapter 90.58 RCW.

(2) A local government adopting a moratorium or control under this section must:

(a) Hold a public hearing on the moratorium or control within sixty days of its adoption;

(b) Adopt detailed findings of fact that include, but are not limited to, justifications for the proposed or adopted actions and explanations of the desired and likely outcomes;

(c) Notify the department of the moratorium or control immediately after its adoption. The notification must specify the time, place, and date of any public hearing required by this subsection;

(d) Provide that all lawfully existing uses, structures, or other development shall continue to be deemed lawful conforming uses and may continue to be maintained, repaired, and redeveloped, so long as the use is not expanded, under the terms of the land use and shoreline rules and regulations in place at the time of the moratorium.

(3) A moratorium or control may be effective for up to six months if a detailed work plan for remedying the issues and circumstances necessitating the moratorium or control is developed and made available

for public review. A moratorium or control may be renewed for two six-month periods if the local government complies with subsection (2)(a) of this section before each renewal. If a moratorium or control is in effect on the date a proposed master program or amendment is submitted to the department, the moratorium or control must remain in effect until the department's final action under RCW 90.58.090; however, the moratorium expires six months after the date of submittal if the department has not taken final action.

[Statutory Authority: Chapter 90.58 RCW. WSR 17-17-016 (Order 15-06), § 173-27-085, filed 8/7/17, effective 9/7/17.]

WAC 173-27-090 Time requirements of permit.

(1) The time requirements of this section shall apply to all substantial development permits and to any development authorized pursuant to a variance or conditional use permit authorized by this chapter.

(a) Each substantial development permit and variance or conditional use permit authorizing development shall include the time requirement of permits required by this section.

(b) Upon finding of good cause, based on the requirements and circumstances of the project proposed and consistent with the policy and provisions of the master program and this chapter, local government may include different permit time limits from those set forth in subsections (2) and (3) of this section as a part of its approval of a substantial development permit, conditional use permit, or variance permit. The applicant shall have the burden of demonstrating that a project warrants different time requirements. The finding of good cause shall be directly connected to the project scope, proposed phases, and/or ecological protection and enhancement elements such as meeting approved fish windows.

(2) Construction activities shall be commenced or, where no construction activities are involved, the use or activity shall commence within two years of the effective date of a substantial development permit.

(a) However, local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record on the substantial development permit and to the department.

(3) Authorization to conduct development activities shall terminate five years after the effective date of a substantial development permit.

(a) However, local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and to the department.

(4) The effective date of a substantial development permit shall be the date of filing as provided in RCW 90.58.140(6).

(5) Calculation of the two-year timeline to commence construction and the five-year timeline to complete development. The local government can exclude from the permit time periods in subsections (2) and (3) of this section the time during which a use or activity could not be commenced or pursued due to the pendency of administrative appeals, legal actions, or other government permits and approvals needed for the development authorized to proceed. This includes all reasonably related administrative or legal actions related to other government permits or approvals. The burden for demonstrating the pendency of appeals; legal actions; or other federal, state, or local government

approvals is on the applicant and must be provided to the local government prior to the expiration of the authorization as calculated from the date of filing.

(6) Revisions to permits under WAC 173-27-100 may be authorized after the development has commenced but cannot be used to extend the time requirements of the authorization to conduct development activities.

(7) Local government shall notify the department in writing of any change to the time requirements of a permit, as authorized by this section, with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those authorized by RCW 90.58.143 as amended shall require a new permit application.

[RCW 90.58.143. Statutory Authority: RCW 90.58.030 (3)(e), 90.58.045, 90.58.065, 90.58.140(9), 90.58.143, 90.58.147, 90.58.200, 90.58.355, 90.58.390, 90.58.515, 43.21K.080, 71.09.250, 71.09.342, 77.55.181, 89.08.460, chapters 70.105D, 80.50 RCW. WSR 07-02-086 (Order 05-12), § 173-27-090, filed 1/2/07, effective 2/2/07. Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-090, filed 9/30/96, effective 10/31/96.]

WAC 173-27-100 Revisions to permits.

A permit revision is required whenever the applicant proposes substantive changes to the design, terms, or conditions of a project from that which is approved in the permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, the master program, and/or the policies and provisions of chapter 90.58 RCW. Changes that are not substantive in effect do not require approval of a revision.

When an applicant seeks to revise a permit, local government shall request from the applicant detailed plans and text describing the proposed changes.

(1) If local government determines that the proposed changes are within the scope and intent of the original permit and are consistent with the applicable master program and the act, local government may approve a revision.

(2) "Within the scope and intent of the original permit" means all of the following:

(a) No additional over-water construction is involved except that pier, dock, or float construction may be increased by five hundred square feet or ten percent from the provisions of the original permit, whichever is less,

(b) Ground area coverage and height may be increased a maximum of ten percent from the provisions of the original permit,

(c) The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of the applicable master program except as authorized under a variance granted as the original permit or a part thereof,

(d) Original permit requirements for vegetation conservation and critical areas protection remain unaltered by the proposed revisions.

(e) Additional or revised landscaping or mitigation is consistent with any conditions attached to the original permit and with the applicable master program,

(f) The use authorized pursuant to the original permit is not changed, and

(g) The proposed revision will not result in a net loss of shoreline ecological functions.

(3) If the sum of the revisions proposed and any previously approved revisions violate the provisions in subsection (2) of this section, the local government shall require that the applicant apply for a new permit.

(4) The revision approval, including the revised site plans and text consistent with the provisions of WAC 173-27-180 as necessary to clearly indicate the authorized changes, and the final ruling on consistency with this section, shall be filed with the department. In addition, the local government shall notify parties of record of their action.

(5) If the original project being revised included a conditional use permit or variance, the local government shall submit the revision to the department for the department's approval, approval with conditions, or denial.

(a) The submittal shall indicate that the revision is being submitted under the requirements of this subsection.

(b) The department shall render and transmit to local government and the applicant its final decision within fifteen days of the date of the department's receipt of the submittal from local government.

(c) Local government shall notify parties of record of the department's final decision.

(6) The revised permit is effective immediately upon final decision by local government or, when appropriate under subsection (5) of this section, upon final action by the department.

(7) Appeals shall be in accordance with RCW 90.58.180 and shall be filed within twenty-one days from the date of receipt of the local government's action by the department or, when appropriate under subsection (6) of this section, the date the department's final decision is transmitted to local government and the applicant. Appeals shall be based only upon contentions of noncompliance with the provisions of subsection (2) of this section. Construction undertaken pursuant to that portion of a revised permit not authorized under the original permit is at the applicant's own risk until the expiration of the appeals deadline. If an appeal is successful in proving that a revision is not within the scope and intent of the original permit, the decision shall have no bearing on the original permit.

[RCW 90.58.140. Statutory Authority: RCW 90.58.030 (3)(e), 90.58.045, 90.58.065, 90.58.140(9), 90.58.143, 90.58.147, 90.58.200, 90.58.355, 90.58.390, 90.58.515, 43.21K.080, 71.09.250, 71.09.342, 77.55.181, 89.08.460, chapters 70.105D, 80.50 RCW. WSR 07-02-086 (Order 05-12), § 173-27-100, filed 1/2/07, effective 2/2/07. Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-100, filed 9/30/96, effective 10/31/96.]

WAC 173-27-110 Notice required.

(1) Local government shall develop and adopt a permit system that provides for notification of the public, Tribes, the department, and other affected or interested agencies of applications for a shoreline substantial development, conditional use, or variance permit. Notification pursuant to this section may be carried out as a part of an integrated local permit notification procedure, provided the standards of this section are met. (2) The system shall ensure that the notice of application shall be provided within fourteen days after the determination of completeness as provided in RCW 36.70B.070 and WAC 173-27-180.

(3) If a local government has made a threshold determination under chapter [43.21C](#) RCW concurrently with the notice of application, the notice of application may be combined with the threshold determination and the scoping notice for a determination of significance. Nothing in this section prevents a determination of significance and scoping notice from being issued prior to the notice of

application. Nothing in this section prevents a lead agency, when it is a project proponent or is funding a project, from conducting its review under chapter [43.21C](#) RCW or from allowing appeals of procedural determinations prior to submitting a project permit.

(4) Notice of application shall include the following in whatever sequence or format the local government deems appropriate:

- (a) The date of application, the date of the notice of completion for the application, and the date of the notice of application,
- (b) A description of the proposed project action and a list of the project permits included in the application and, if applicable, a list of any studies provided or requested under RCW 36.70B.070, RCW 36.70B.090 and WAC 173-27-180,
- (c) The identification of other local, state, or federal permits needed for the project, to the extent known by the local government,
- (d) The identification of existing environmental documents that evaluate the proposed project and , the location where the application and any studies can be reviewed,
- (e) A statement of the public comment period, which shall:
 - (i) be not less than thirty days, and
 - (ii) include statements of the right of any person to comment on the application, receive notice of and participate in any hearings, and request a copy of the decision once made, and
 - (iii) state any appeal rights.
- (f) The date, time, place, and type of hearing, if applicable, and scheduled by the date of notice of the application,
- (g) A statement of the preliminary determination, if one has been made by the time of notice, of those development regulations that will be used for project mitigation and of the proposal's consistency with those regulations; and
- (h) Any other information determined appropriate by the local government.

(5) A local government may accept public and Tribal comments at any time prior to the closing of the record of an open-record pre-decision hearing, if any, or, if no open-record pre-decision hearing is provided, prior to the decision on the project permit.

(6) If an open-record pre-decision hearing, as defined in RCW 36.70B.020, is required for the requested project permits, the notice of application shall be provided at least fifteen days prior to the open-record hearing.

(7) The notification system shall ensure that notice to the general public and property owners in the vicinity of such application is given by at least one of the following methods:

- (a) Mailing the notice to the latest recorded real property owners as shown by the records of the county assessor within at least three hundred feet of the boundary of the property upon which the development or use is proposed;
- (b) Posting of the notice in a conspicuous manner on the property upon which the project is to be undertaken; or
- (c) Any other manner deemed appropriate by local authorities to accomplish the objectives of reasonable notice to adjacent landowners and the public.

(8) The notification system shall:

- (a) Provide for timely notification of individuals and organizations that request such notice in writing.
- (b) Provide notification and opportunity for coordination with affected Tribes.
- (c) Provide notice to all agencies with jurisdiction per chapter 43.21C RCW, and to all other agencies that request in writing any such notice.
- (d) Provide notice to the department for all shoreline permits and provide additional opportunities for department review and coordination on any application that includes a shoreline conditional use permit or variance.

[RCW 90.58.140, RCW 90.58.050, RCW 36.70B.110. Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-110, filed 9/30/96, effective 10/31/96.]

WAC 173-27-115 Integrated project review – SMP project consistency analysis and environmental review under SEPA

(1) **Purpose.** Integration of shoreline permit review and environmental review under the State Environmental Policy Act (SEPA) can eliminate duplication in processes and requirements. Master program consistency analysis and determinations of whether environmental impacts have been adequately addressed involve many of the same studies and analyses.

(a) **The role of SEPA.** The primary role of environmental review under SEPA at the project level is to focus on those environmental impacts that have not been addressed by a local government's master program policies and regulations. SEPA substantive authority should be used only when identified impacts cannot be adequately addressed by existing laws.

(b) **Master program consistency analysis.** The master program consistency analysis applies Shoreline Management Act policies and master program policies and regulations to a specific project. If this analysis identifies project impacts that are not adequately addressed with the provisions and authorities of the master program, SEPA can be used to mitigate these impacts.

(2) **Project review.** During the project review, a local government may determine whether some or all of the environmental impacts of the project have been addressed by its master program or other applicable local codes. During the course of environmental review and preparation of a threshold determination (including initial consistency review), if the impacts have been adequately addressed in the applicable regulations, plan policies, or other laws, that can be included in the determination. If a determination has been made that an impact has been adequately addressed, the local government will not need to require additional mitigation for that impact under its SEPA substantive authority.

Thus, through the project review process:

- (a) If the applicable regulations require studies that adequately analyze all of the project's specific probable adverse environmental impacts, additional studies under SEPA will not be necessary on those impacts;
- (b) If the applicable regulations require measures that adequately address such environmental impacts, additional measures would likewise not be required under SEPA; and
- (c) If the applicable regulations do not adequately analyze or address a proposal's specific probable adverse environmental impacts, SEPA provides the authority and procedures for additional review per RCW 43.21C.240.

[Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-120, filed 9/30/96, effective 10/31/96.]

WAC 173-27-120 Special procedures for limited utility extensions and bulkheads.

(1) An application for a substantial development permit for a limited utility extension or for the construction of a shoreline stabilization measure to protect a single-family residence and its appurtenant structures from shoreline erosion shall be subject to all of the requirements of this chapter, except that the following time periods and procedures shall be used:

(a) The public comment period shall be twenty days. The notice provided shall state the manner in which the public may obtain a copy of the local government decision on the application no later than two days following its issuance,

(b) The local government shall issue its decision to approve, approve with conditions, or deny the permit within twenty-one days of the last day of the comment period specified in subsection (2)(a) of this section; and

(c) If there is an appeal of the decision to the local government legislative authority, the appeal shall be finally determined by the local legislative authority within thirty days.

(2) For purposes of this section, a limited utility extension means the extension of a utility service that:

(a) Is categorically exempt under chapter 43.21C RCW for one or more of the following: natural gas, electricity, telephone, water, or sewer,

(b) Will serve an existing use that is in compliance with this chapter; and

(c) Will not extend more than two thousand five hundred linear feet within the shorelines of the state.

[RCW 90.58.140(11)(a), Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-120, filed 9/30/96, effective 10/31/96.]

WAC 173-27-125 Special procedures for WSDOT projects.

(1) Permit review time for projects on a state highway. Pursuant to RCW 47.01.485, the legislature established a target of ninety days review time for local governments.

(2) Optional process allowing construction to commence twenty-one days after the date of filing. Pursuant to RCW 90.58.140, Washington state department of transportation projects that address significant public safety risks may begin twenty-one days after the date of filing if all components of the project will achieve no net loss of shoreline ecological functions.

[RCW 90.58.140(5) Statutory Authority: Chapter 90.58 RCW. WSR 17-17-016 (Order 15-06), § 173-27-125, filed 8/7/17, effective 9/7/17.]

WAC 173-27-130 Filing with department.

(1) All final decisions by the local government on shoreline substantial development, conditional use, and variance applications and permit revisions, whether it is an approval, conditional approval, or denial, shall be concurrently transmitted to the department for filing and provided to the attorney general. The transmittal to Ecology shall be provided by return receipt, either using return receipt mail or email. The copy provided to the attorney general must be by return receipt mail Once Ecology implements an

online permit submittal system, local governments shall use that system as a means for transmitting permit decisions to Ecology.

(a) Final decision by a local government shall mean the order or ruling, whether it be an approval, approval with conditions, or denial, that is established after all local administrative appeals related to the permit have concluded or the opportunity to initiate such appeals have lapsed.

(i) If the local government does not provide opportunity for local administrative appeals, the filing with the department shall occur concurrently with the issuance of the decision to the applicant.

(ii) If the local government provides a local administrative appeal, the filing shall occur after all local administrative appeals related to the permit have concluded or the opportunity to initiate such appeals has lapsed.

(b) Permit decisions become effective after the appeal period, which is set by the date of filing, so any permit not filed with the department is not effective.

(2) When a substantial development permit and a conditional use or variance permit are required for a project proposal, the submittal on the permits shall be made concurrently.

(3) Any permit for a variance or a conditional use issued with approval or conditional approval by the local government is subject to the department's approval, conditional approval, or denial after the department's determination of a complete submittal.

(4) A complete submittal shall consist of the following documents and information:

(a) A copy of the complete application pursuant to WAC 173-27-180,

(b) Findings and conclusions that establish the basis for the decision, including, but not limited to,

(i) Identification of the shoreline environment designation,

(ii) Applicable master program policies and regulations, and

(iii) Documentation of the consistency of the project with appropriate review criteria for the type of permit(s) as established in WAC 173-27-140 through 173-27-170,

(c) The final decision of the local government,

(d) The permit data sheet required by WAC 173-27-990,

(e) Where applicable, local government shall also file the applicable documents required by chapter 43.21C RCW, the State Environmental Policy Act, or in lieu thereof, a statement summarizing the actions and dates of such actions taken under chapter 43.21C RCW,

(f) If the proposal is for development within a Sea Level Rise Hazard Area, include additional submittal requirements as established in WAC 173-27-185,

(g) If the proposal is subject to the Ocean Resource Management Act (ORMA) or the Marine Spatial Plan (MSP), include additional submittal requirements and approval criteria as established in WAC 173-26-360 and -365, and (h) When the project has been modified in the course of the local review process, plans or text shall be provided to the department that clearly indicate the final approved project.

(5) Submittal of substantial development permits, conditional use permits, variance permits, rescissions, and revisions is complete when all of the documents required pursuant to subsection (5) of this section have been received by the department.

(6) If the department determines that the submittal of a conditional use permit or variance permit, or the revision thereof, does not contain all of the documents and information required by this section, the department shall identify the deficiencies and so notify local government and the applicant in writing.

(a) Ecology will provide a deadline for response or submittal of materials to resolve the deficiencies within its written notification.

(b) Ecology will not act on conditional use permit or variance application submittals until the materials requested in writing are submitted to the department or the deadline provided in writing has lapsed.

(c) As appropriate, either the local government or the applicant may reply or respond to the written request within the necessary documents or information, or they may request additional time. Ecology will grant time extensions based on the complexity of the information needed, reasonableness of the time extension, and the applicant or local government's justification.

(d) Failure to respond to the department within the allowed timeframe may result in a denial of the permit on the basis of insufficient information to demonstrate consistency with the policy of the act or the provisions of the applicable master program.

(e) The department's review, and decision as outlined in WAC 173-27-200, will begin after receipt of a complete submittal, and the 30-day timeframe to render and transmit the decision will be reset with the submittal of additional information.

(7) "Date of filing" of a local government final decision involving approval, conditional approval, or denial of a substantial development permit is the date of actual receipt by the department of a local government's final decision on the permit.

(8) "Date of filing" involving approval, conditional approval, or denial of a variance or conditional use permit is the date of transmittal of the department's final decision on the variance or conditional use permit to local government and the applicant.

(9) Date of filing for a substantial development permit transmitted simultaneously with a shoreline conditional use permit or variance permit, or both, has the same meaning as subsection (8) of this section.

(10) The department shall notify the local government and the applicant of the date of filing by written communication, either through mail or email, followed by telephone if necessary, to ensure that the applicant has received the full written decision.

(11) When a substantial development permit has been appealed pursuant to RCW 90.58.180, upon conclusion of all review proceedings, a copy of the final order shall be provided by the local government to the department.

(a) When the project has been modified in the course of the appeal proceeding, plans or text shall be provided to the local government, consistent with the provisions of WAC 173-27-180, that clearly indicate the final approved plan, and the local government shall reissue the permit accordingly and submit a copy of the reissued permit and supporting documents consistent with subsection (5) of this section to the department for completion of the file on the permit.

(b) The purpose of this provision is to ensure that the local and department files on the permit are complete and accurate, and not to provide a new opportunity for appeal of the permit.

[RCW 90.58.140, RCW 43.17.095. Statutory Authority: Chapter 90.58 RCW. WSR 17-17-016 (Order 15-06), § 173-27-130, filed 8/7/17, effective 9/7/17. Statutory Authority: RCW 90.58.030 (3)(e), 90.58.045, 90.58.065, 90.58.140(9),

90.58.143, 90.58.147, 90.58.200, 90.58.355, 90.58.390, 90.58.515, 43.21K.080, 71.09.250, 71.09.342, 77.55.181, 89.08.460, chapters 70.105D, 80.50 RCW. WSR 07-02-086 (Order 05-12), § 173-27-130, filed 1/2/07, effective 2/2/07. Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-130, filed 9/30/96, effective 10/31/96.]

WAC 173-27-140 General project consistency review criteria for all exemptions, permits, and other proposals not requiring a shoreline permit.

For the purpose of this section, authorization means an exemption from the substantial development permit process, a shoreline permit (substantial development, conditional use, or variance), and any other proposal occurring in shoreline jurisdiction, including vegetation modification and use changes that do not meet the definition of development.

(1) **Project consistency review.** Consistency with the Shoreline Management Act and applicable master program shall be considered in the project review process by analyzing four factors found in applicable master programs. The intent is that consistency analysis is largely a matter of code checking for most projects that are simple or routine. More-complex projects may require more analysis of these factors, including any required studies. The following shall be reviewed to ensure consistency with the Shoreline Management Act and the applicable master program:

(a) Review against the policy of the Shoreline Management Act.

(i) It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses, to ensure the development of these shorelines in a manner that will promote and enhance the public interest, and 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 and corollary rights incidental thereto.

(A) In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally.

(B) To this end 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.

(C) Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single-family residences and their appurtenant structures; ports; shoreline recreational uses, including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state; industrial and commercial developments that are particularly dependent on their location on or use of the shorelines of the state; and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state.

(ii) Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

(b) **Consider the use proposed.** Determine whether the proposed use is allowed or permitted, allowed with the approval of a conditional use permit, or prohibited. Base this review on the use matrix, use-specific regulations, and environment designation management policies and regulations contained in the applicable master program.

(c) **Review the development proposed.** Determine whether the proposed development is allowed based upon use regulations; shoreline modification standards; shoreline environment designation policies and regulations; and bulk, dimensional, and performance standards. All development proposed shall be in support of allowed uses or a use approved through a conditional use permit.

(d) **Apply critical area and shoreline ecological function protections.** Ensure critical area and shoreline ecological function protection standards are met.

(2) No authorization to undertake use or development on shorelines of the state shall be granted by the local government unless upon review the proposal is determined to be consistent with the policy and provisions of the Shoreline Management Act and the master program.

(3) No permit shall be issued for any new or expanded building or structure of more than thirty-five (35) feet above average grade level on shorelines of the state except as follows:

(a) When the applicant demonstrates that the building or structure will not obstruct the view of a substantial number of residences on areas adjoining such shorelines,

(b) When the applicable master program and established shoreline environment designation allows height above thirty-five (35) feet, and

(c) Only when overriding considerations of the public interest will be served.

(4) An exemption shall be granted only when all parts of a proposed project meet the precise terms of one or more of the listed exemptions in WAC 173-27-040. If any part of the proposal is not eligible for exemption, then a substantial development permit is required for the entire proposed development project. The burden of proof that a development or use is exempt from the substantial development permit process is on the applicant.

(5) Local government may attach conditions to any authorization as necessary to ensure the project is consistent with the act and the applicable master program.

(6) A development or use that is listed as a conditional use pursuant to the applicable master program or is an unlisted use must obtain a conditional use permit even if the development or use does not require a substantial development permit.

(7) When a development or use is proposed that does not comply with the bulk, dimensional, and performance standards of the master program, such development or use can be authorized only by approval of a variance.

(8) No authorization to clear vegetation or remove trees on shorelines of the state shall be granted by the local government unless, upon review, the proposal is determined to be consistent with the policy and provisions of the act and the master program.

[RCW 90.58.140, 90.58.320, 90.58.020. Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-140, filed 9/30/96, effective 10/31/96.]

WAC 173-27-150 Review and approval criteria for substantial development permits.

(1) A substantial development permit shall be granted only when the development proposed is consistent with:

(a) The policies and procedures of chapter 90.58 RCW, Shoreline Management Act.

(b) The provisions of chapter 173-27 WAC.

(c) The applicable master program.

(i) This shall include a permit review consistency analysis as provided for in WAC 173-27-140.

(ii) Provided that where no master program has been approved for an area, the development shall be reviewed for consistency with the provisions of chapter 173-26 WAC, and to the extent feasible, any draft or approved master program that can be reasonably ascertained as representing the policy of the local government.

(2) Local government may attach conditions to the approval of permits as necessary to assure consistency of the project with the act and the applicable master program.

(3) All shoreline substantial development permit approvals or conditional approval shall include explicit reference to the timeline requirements of WAC 173-27-090 and appeal process of WAC 173-27-220.

[Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-150, filed 9/30/96, effective 10/31/96.]

WAC 173-27-160 Review criteria for conditional use permits.

The purpose of a conditional use permit is to provide a system within the master program that allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020. In authorizing a conditional use, special conditions may be attached to the permit by local government or the department to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the act and the local master program.

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

(a) That the proposed use is consistent with the policies of RCW 90.58.020 and the master program,

(b) That the proposed use will not interfere with the normal public use of public shorelines,

(c) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program,

(d) That the proposed use will not cause a net loss of shoreline ecological functions and is consistent with the designation criteria and management policies of the shoreline environment in which it is to be located,

(e) That the public interest suffers no substantial detrimental effect, and

(f) That the proposed use is compatible with the conditions of the site and exposure to current and reasonably foreseeable future hazards, including projected sea level rise impacts as required by WAC 173-26-241 (2)(a)(v).

(2) In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not result in a net loss of shoreline ecological function.

(3) Other uses that are not classified or set forth in the applicable master program can only be authorized as conditional uses if the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program.

(4) Uses that are specifically prohibited by the master program shall not be authorized by a conditional use permit. Development or other activities proposed in support of prohibited uses shall not be authorized by a conditional use permit.

(5) All shoreline conditional use permit approvals or conditional approval shall include explicit reference to the timeline requirements of WAC 173-27-090 and appeal process of WAC 173-27-220.

[Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-160, filed 9/30/96, effective 10/31/96.]

WAC 173-27-170 Review criteria for variance permits.

The purpose of a variance permit is strictly limited to granting relief from specific bulk, dimensional, or performance standards set forth in the applicable master program where there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of the master program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.

(1) Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances exist and the public interest shall suffer no substantial detrimental effect.

(2) Variance permit applications for development and/or uses that will be located on shorelands (landward of the ordinary high water mark) and without any direct impacts to wetlands may be authorized provided the applicant can demonstrate all of the following:

(a) That the strict application of the bulk, dimensional, or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property.

(b) That the hardship described in (a) of this subsection is specifically related to the property and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions.

(c) That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program.

(d) That the project will not cause adverse impacts to the shoreline environment and through the application of the mitigation sequence the project has demonstrated no net loss of shoreline ecological function.

(e) That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area.

(f) That the variance requested is the minimum necessary to afford relief from the specific hardship that precludes or significantly interferes with reasonable use of the property.

(g) That the public interest will suffer no substantial detrimental effect.

(h) That the variance requested will not increase the vulnerability of proposed or existing developments or uses to current or reasonably foreseeable future hazards, including projected sea level rise.

(3) Variance permit applications for development and/or uses that will be located waterward of the ordinary high water mark, or within any wetland may be authorized provided the applicant can demonstrate all of the following:

(a) That the strict application of the bulk, dimensional, or performance standards set forth in the applicable master program precludes all reasonable use of the property;

(b) That the proposal is consistent with the criteria established under subsection (2)(b) through (g) of this section; and

(c) That the public rights of navigation and use of the shorelines will not be adversely affected.

(4) In the granting of all variance permits, consideration shall be given to the cumulative impact of previously issued, other pending, and possible future requests for like actions in the area. For example, if variances were granted to other like developments and/or uses in the area where similar circumstances exist, the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not result in a net loss of shoreline ecological function.

(5) A variance cannot be approved that would authorize or support a use that is prohibited by the applicable master program. Furthermore, the use prohibitions in a master program and the no net loss of shoreline ecological function principle are not bulk, dimensional, or performance standards that can be altered through the application of a variance.

(6) All variance applications shall include plans that clearly indicate where development could occur without approval of a variance, the physical features and circumstances on the property that provide a basis for the request, and the location of adjacent structures and uses.

(6) All shoreline variance approvals or conditional approval shall include explicit reference to the timeline requirements of WAC 173-27-090 and appeal process of WAC 173-27-220.

[Statutory Authority: Chapter 90.58 RCW. WSR 17-17-016 (Order 15-06), § 173-27-170, filed 8/7/17, effective 9/7/17. Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-170, filed 9/30/96, effective 10/31/96.]

WAC 173-27-180 Application requirements for substantial development, conditional use, or variance permit. A complete application for a substantial development, conditional use, or variance permit shall contain, at a minimum, the following information:

(1) **Owner contact information.** The name, address, email, and phone number of the applicant. The applicant shall be the owner of the property..

(2) **Representative contact information, if applicable.** The name, address, email, and phone number of the applicant's representative if identified by the applicant.

(3) **Project proponent contact information, if different from the owner.** The name, address, email, and phone number of the project proponent, if other than the applicant.

(4) **Location of the project.** Where available, this shall include all of the following: the property address, parcel number, and latitude and longitude coordinates in degree decimals to the fourth place. All applications for projects located in open-water areas away from land or within public rights-of-way shall provide a longitude and latitude location, and parcel and address information for all adjacent parcels.

(5) **Shoreline waterbody.** Identification of the name of the shoreline (water body) with which the site of the proposal is associated. This should be the water body from which jurisdiction of the act over the project is derived.

(6) **Project description.** A general description of the proposed project that includes the proposed use or uses, all development components, and the activities necessary to accomplish the project.

(7) **Property description.** A general description of the property as it now exists, including its physical characteristics, improvements, and structures.

(8) **Vicinity description.** A general description of the vicinity of the proposed project, including identification of the adjacent uses, structures and improvements, intensity of development, and physical characteristics.

(9) **Site Plan.** A site development plan consisting of maps and elevation drawings, drawn to an appropriate scale to depict clearly all required information, photographs, and text, which shall include:

(a) The boundary of the parcel(s) of land upon which the development is proposed.

(b) The ordinary high water mark (OHWM) of all water bodies located adjacent to or within the boundary of the project site; all buffers, setbacks, and other development-restricted areas that are measured landward from this mark; and the full extent of shoreline jurisdiction. The OHWM may be an approximate location, provided that for any development where a determination of consistency with the applicable regulations requires a precise location of the OHWM, the mark shall be located precisely, and the biological and hydrological basis for the location as indicated on the plans shall be included in the development plan. Where the OHWM is neither adjacent to nor within the boundary of the project, the plan shall indicate the distance and direction to the nearest OHWM of a shoreline.

(c) Existing and proposed land contours. The contours shall be at intervals sufficient to accurately determine the existing character of the property and the extent of proposed change to the land that is necessary for the development. Areas within the boundary that will not be altered by the development may be indicated as such and contours approximated for that area.

(d) The location of all critical areas, critical area buffers, and setbacks on or adjacent to the proposed project site.

(e) Existing vegetation located on the project site and a general indication of the character of vegetation found on the site.

(f) Proposed vegetation plan for the project site and, where applicable, a landscaping plan, habitat management plan, vegetation management plan, and/or restoration plan.

(g) The dimensions and locations of all existing and proposed structures and improvements, including but not limited to buildings, paved or graveled areas, roads, utilities, on-site sewage systems, material stockpiles or surcharge, and stormwater management facilities.

(h) Where applicable, location of proposed on- or off-site compensatory mitigation for impacts associated with the proposed project, and a compensatory mitigation plan.

(i) Quantity, source, and composition of any fill material that is proposed to be placed on the site, whether temporary or permanent.

(j) Quantity, composition, and destination of any proposed material to be excavated or dredged.

(k) A vicinity map showing the relationship of the property and proposed development or use to roads, utilities, and existing developments and uses on adjacent properties.

(l) Where applicable, a depiction of the impacts to views from existing residential uses and public areas.

(m) On all variance applications the plans shall clearly indicate where development could occur without approval of a variance, the physical features and circumstances on the property that provide a basis for the request, and the location of adjacent structures and uses.

(10) **Technical reports.** All necessary technical reports, such as geotechnical, critical areas, channel migration, arborist, and wetland, including those necessary to establish what shoreline ecological functions exist at the site and how mitigation sequencing will be implemented to achieve no net loss of shoreline ecological functions and the functions of critical areas within shoreline jurisdiction.

(11) **Demonstration of consistency.** A narrative addressing the proposal's consistency with the policies and regulations of the master program and the applicable approval criteria as required pursuant to WAC 173-27-140 through -170, as applicable.

(12) **Sea Level Rise Hazard Area requirements.** If a project is proposed within a Sea Level Rise Hazard Area, as identified within an applicable master program, the additional application requirements contained within WAC 173-27-185 are required.

[Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-180, filed 9/30/96, effective 10/31/96.]

WAC 173-27-185 Application requirements for projects in the Sea Level Rise Hazard Area.

(1) **Applicability.** The provisions in this subsection are applicable only after a master program has gone through the periodic review process to incorporate the sea level rise provisions required by WAC 173-26-246.

(2) Development, uses, and activities proposed within a sea level rise risk area are subject to additional review considerations and submittal requirements, regardless of whether the proposal is processed as a substantial development, conditional use, variance, or exemption, or if the activity does not meet the definition of development.

(3) Any proposal occurring within a Sea Level Rise Hazard Area, as identified within an applicable master program, must document consideration of the sea level rise impacts and include the following information to demonstrate that the proposal meets the requirements the master program:

(a) Statement that the project is located wholly or partly within the Sea Level Rise Hazard Area, description of the extent of overlap of the project location with the hazard area, and one or more descriptive maps or demonstration on the site plan showing the location and extent of overlap.

(b) Information necessary to screen the project for potential sea level rise impacts. If the local government determines the proposed development is low risk, the submittal requirements in subsections (c) through (i) below do not apply.

(c) Statement of how much sea level rise is projected for the location of the project over its functional lifespan. The amount of sea level rise should, for scenario-based projections, align with at least the intermediate scenario or a higher amount of sea level rise. For probabilistic projections, the amount of sea level rise should align with the 50% likelihood or a lower likelihood and high emissions scenario. Sea level rise amounts evaluated should be relative, incorporating local vertical land movement. Applicants should consider the risk tolerance associated with the project when determining the appropriate sea level rise projection.

(d) In addition to the requirements in WAC 173-27-180(9)(c) above, the site plan or supplementary depictions must also show contour lines approximating the extent of projected inundation at mean higher high water and at least a 20-year high-water event, corresponding with the scenarios

evaluated by the local government's vulnerability assessment, as well as the projected extent of other coastal hazards that may affect the site for which information is available. The information available for site scale analysis may be limited or of variable quality; hazard extents should still be estimated.

(e) Additional description of the proposed project, including whether the proposed development involves installation of a new structure, replacement or redevelopment of an existing structure, expansion of an existing structure, or minor repair and maintenance; the expected functional lifespan of the development; and, if applicable, a description of the adaptive capacity of the project.

(f) Demonstration of an evaluation of the adaptation alternatives listed in the master program and demonstration that the most precautionary adaptation alternative that is feasible and applicable has been selected.

(g) If applicable, a description of the specific measures taken to design or retrofit structures to accommodate projected sea level rise impacts, or an adaptation plan for the project describing how the project will adapt over time when sea level rise thresholds are reached.

(h) If a new structure or replacement, expansion, or redevelopment of an existing structure is proposed, unless the structure is for a water-dependent use, public access, or restoration, demonstration that it is not located within the area of future tidal inundation and thus will not become an overwater structure.

(i) Demonstration of how the project aligns with any other applicable requirements for development within Sea Level Rise Hazard Areas listed in the master program.

(4) Proposals must be reviewed for consistency with the sea level rise provisions of the shoreline master program.

[Statutory Authority: RCW 90.58.630, RCW 90.58.200, and RCW 90.58.140(3)]

WAC 173-27-190 Permits for substantial development, conditional use, or variance.

(1) Each permit for a substantial development, conditional use or variance issued by local government shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated, whichever is later; except as provided in RCW 90.58.140(5)(a) and (b).

(2) Permit application forms for substantial development, conditional use, or variance may be in any form prescribed and used by local government, including a combined permit application form. Such forms will be supplied by local government.

(3) A permit data sheet shall be submitted to the department with each shoreline permit and exemption authorization decision. The permit data sheet form and exemption submittal data sheet are provided in WAC 173-27-990, Appendix A, and WAC 173-27-995, Appendix B, of this regulation, respectively.

[Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-190, filed 9/30/96, effective 10/31/96.]

WAC 173-27-200 Department review of conditional use and variance permits.

(1) After local government approval of a conditional use or variance permit, local government shall submit the permit to the department for the department's approval, approval with conditions, or denial.

(a) The department shall review the submittal and determine completeness pursuant to WAC 173-27-130.

(b) The department shall strive to render and transmit to local government and the applicant its final decision approving, approving with conditions, or denying the permit within thirty days of the date of its determination that the submittal is complete.

(2) The department shall review the complete file submitted by local government on conditional use and variance permits and any other information submitted or available that is relevant to the application. The department shall base its determination to approve, approve with conditions, or deny a conditional use or variance permit on consistency with the policy and provisions of the act and, except as provided in WAC 173-27-210, the criteria in WAC 173-27-140, 173-27-160 and 173-27-170, as applicable.

(3) Local government shall provide timely notification of the department's final decision to those interested persons having requested notification from local government pursuant to WAC 173-27-130.

[Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-200, filed 9/30/96, effective 10/31/96.] **WAC 173-27-210 Minimum standards for conditional use and variance permits.**

Pursuant to RCW 90.58.100(5) and 90.58.140(3), the criteria contained in WAC 173-27-140, WAC 173-27-160, and WAC 173-27-170 for shoreline conditional use and variance permits shall constitute the minimum criteria for review of these permits by local government and the department. Local government and the department may, in addition, apply more-restrictive criteria where they exist in the applicable master program.

[Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-210, filed 9/30/96, effective 10/31/96.]

WAC 173-27-215— Regulatory relief requests resulting from restoration projects.

(1) **Purpose.** In adopting RCW 90.58.580, the legislature found that restoration of degraded shoreline conditions is important to the ecological function of our waters. However, restoration projects that shift the location of the shoreline can inadvertently create hardships for property owners, particularly in urban areas. Hardship may occur when a shoreline restoration project shifts Shoreline Management Act jurisdiction and master program regulations into areas that had not previously been regulated under the act or shifts the location of required shoreline buffers. The intent of this section is to provide relief to property owners within urban growth areas in such cases, while protecting the viability of shoreline restoration projects.

(2) **Definitions.** The definitions in this subsection apply throughout this section:

(a) "Shoreline restoration project" means a project designed to restore the impaired ecological function of a shoreline.

(b) "Urban growth area" has the same meaning as defined in RCW [36.70A.030](#).

(3) **Eligibility qualifications.** Regulatory relief requests resulting from a qualifying restoration project can be submitted by eligible property owners or project proponents.

(a) Eligible property owners or proponents are either:

(i) Restoration site property owners. A property owner is affected by new shoreline jurisdiction on their own property due to a past voluntary restoration project or other action on their property, provided it was not associated with the property owner's compensatory mitigation requirement.

(ii) Adjacent property owners. Property owners on properties adjacent to property where restoration was performed, where the restoration caused a change in shoreline jurisdiction on the adjacent property.

(b) Restoration project qualifications. If a shoreline restoration project causes or would cause a landward shift in the ordinary high water mark or otherwise extend the shoreline jurisdiction, it is considered a qualifying restoration project.

(i) To confirm restoration project qualification, the eligible property owner must demonstrate:

(A) That land that was not previously regulated under an applicable master program prior to construction of the restoration project was brought into shoreline jurisdiction as a result of the restoration project; or

(B) That additional regulatory requirements apply due to a landward shift in required shoreline buffers or other regulations of the applicable master program.

(ii) Where a shoreline restoration project is created as mitigation to obtain a development permit, the project proponent required to perform the mitigation is not eligible for relief under this section; and

(iii) The property where the restoration relief is sought or where the qualifying restoration project occurred are both located within the urban growth area.

(4) Regulatory Relief Qualifications. The applicant requesting regulatory relief on qualifying property must demonstrate all the following:

(a) Application of shoreline master program regulations presents a hardship by precluding or interfering with an otherwise permitted use of the property. Otherwise permitted use means a use that is allowed by local zoning or development regulations that currently apply or that would have applied in the absence of the qualifying restoration project.

(b) The proposed relief is the minimum necessary to relieve the hardship.

(c) There remains a net environmental benefit from the restoration project after relief is afforded.

(d) Granting the proposed relief is consistent with the objectives of the shoreline restoration project and consistent with the policy of the Shoreline Management Act and applicable master program.

(e) That neither the applicant requesting regulatory relief nor the owner of the property where the relief is sought was obligated to install the qualifying restoration project as compensation for a development permit or authorization.

(f) The property where the restoration relief is sought or where the qualifying restoration project occurred are both located within the urban growth area.

(g) This regulatory relief mechanism is not available on sites where the shoreline jurisdiction change or movement in the ordinary high water mark is the result of shoreline erosion processes or due to sea level rise, coastal flooding, or channel migration.

(5) Formal Request for Regulatory Relief. The qualifying property owner or applicant shall submit a formal request for regulatory relief to the local government. The application shall include:(a) A project description and explanation of perceived hardship.

(b) Identification and description of alternative options for relief of the identified hardship imposed by the restoration project on the proposed development or use.

(c) Demonstration that the applicant is a qualified property owner per WAC 173-27-215(3)(a).

(d) Documentation of the qualified restoration project with responses to the criteria provided in WAC 173-27-215(3)(b).

(e) Responses to the regulatory relief qualifications provided in WAC 173-27-215(4).

(f) Any additional background information, photos, consultation letters, restoration project construction drawings, site plans, and environmental analysis or reports, as appropriate and available.

(6) Local Government Review. The local government shall review the application for consistency with the requirements and criteria of this section and RCW 90.58.580.

(a) A substantial development permit is not required on land within urban growth areas as defined in RCW 36.70A.030 that is brought under shoreline jurisdiction due to a shoreline restoration project's creating a landward shift in the ordinary high water mark. This provision applies only to those lands that were not previously subject to the master program prior to the qualifying restoration project. All other portions of the qualifying property are still subject to the master program, including the permitting requirements of chapter 173-27.

(a) Local government shall approve, conditionally approve, or deny the request for relief as part of the required shoreline permit and submit to Ecology along with the standard permit filing per RCW 90.58.140(6). This option is used when other development or use components of a project are occurring within an area of shoreline jurisdiction that existed prior to or regardless of the qualifying restoration project, in which case those elements of the project are still subject to the applicable master program and its permit requirements.

(b) If no such shoreline permit is required, the local government shall provide a copy of the complete application and all supporting materials to Ecology outside of the permit filing obligation.

(7) Department Review. The application for relief must be submitted to the department for written approval, conditional approval, or denial.

(a) This review must occur during the department's normal review of a shoreline substantial development, conditional use, or variance permit.

(b) If no such permit is required, then the department shall conduct its review when the local government provides a copy of a complete application and all supporting information necessary to conduct the review.

(c) The department may need to initiate a public comment period.

(i) The public notice and comment period requirements do not apply if the qualifying shoreline restoration project was included in a shoreline master program or shoreline restoration plan as defined in WAC 173-26-201, as follows:

(A) The restoration plan has been approved by the department;

(B) The qualifying restoration project is specifically identified in the master program or its restoration plan or is located along a shoreline reach identified in the master program or its restoration plan; and

(C) The master program or its restoration plan includes policies addressing the nature of the relief and why, when, and how it would be applied.

(i) Except as otherwise provided in subsection (7)(c) of this section, the department shall provide at least twenty days' notice to parties that have indicated interest in reviewing applications for relief under this section and post the notice on its website.

(d) The department shall act within thirty calendar days of the close of the public notice period, or within thirty days of receipt of the proposal from the local government if additional public notice is not required. The department will provide written notice of its decision to the local government and applicant.

(8) Early coordination and qualification confirmation. Early coordination can help to garner property owner support for a potential restoration project. To this end, the qualifications identified within subsection (3) of this section can be confirmed prior to the completion of a restoration project or in anticipation of an application for restoration relief. The department, in coordination with local government, may review proposed restoration projects prior and provide confirmation to restoration project proponents, adjacent property owners, or other potentially affected parties regarding the following:

(a) Whether the restoration project meets the qualification criteria for use in future restoration relief applications.

(b) Whether an adjacent or neighboring property would qualify as an eligible property.

(c) Confirmation of potential use or regulatory requirements that could present a hardship for future development proposals and would be eligible for application of this restoration relief mechanism. This would not impact the local government's or the department's ability to review and decide upon future applications, but is intended to provide written confirmation of the new use restriction and development regulations, if any, that would apply to adjacent properties if a restoration project were installed.

[90.58.580, 90.58.200 Statutory Authority: Chapter 90.58 RCW. WSR 17-17-016 (Order 15-06), § 173-27-215, filed 8/7/17, effective 9/7/17.]

WAC 173-27-220 Requests for review.

Per RCW 90.58.180, any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 may seek review from the shorelines hearings board by filing a petition for review within 21 days of the date of filing of the decision as defined in RCW 90.58.140(6).

All requests for review of any final permit decisions under chapter 90.58 RCW and chapter 173-27 WAC are governed by the procedures established in RCW 90.58.180 and chapter 461-08 WAC, the rules of practice and procedure of the shorelines hearings board.

[RCW 90.58.180 Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-220, filed 9/30/96, effective 10/31/96.]

PART II SHORELINE MANAGEMENT ACT ENFORCEMENT

WAC 173-27-240 Authority and purpose.

Enforcement plays a crucial role in the protection of fragile and unique shoreline environments, in preserving public use and enjoyment of shorelines, and in assuring the appropriate use and development of these areas. Alongside permitting, enforcement is essential to achieving the goals of the act and local master programs by correcting unauthorized uses, developments, and activities. This part is adopted under RCW 90.58.140, 90.58.200, and 90.58.210 to implement the enforcement responsibilities of the department and local government under the Shoreline Management Act. The act calls for a cooperative program between local government and the state. It provides for a variety of means of enforcement, including notices of correction, civil and criminal penalties, orders to cease and desist, orders to take corrective action, and permit rescission. The following should be used in addition to other mechanisms already in place at the local level and does not preclude other means of enforcement, such as abatement authority, or attempts by local government or the department to achieve voluntary compliance.

[Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-240, filed 9/30/96, effective 10/31/96.]

WAC 173-27-250 Definitions.

The definitions contained in WAC 173-27-030 shall apply in this part also except that the following shall apply when used in this part of the regulations:

- (1) "Permit" means any form of permission required under the act prior to undertaking activity on shorelines of the state, including substantial development permits, variance permits, conditional use permits, permits for oil or natural gas exploration activities, permission that may be required for selective commercial timber harvesting, and shoreline exemptions; and
- (2) "Exemption" means authorization from local government that establishes that an activity is exempt from substantial development permit requirements under WAC 173-27-040, but subject to regulations of the act and the local master program.

[Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-250, filed 9/30/96, effective 10/31/96.]

WAC 173-27-260 Policy.

- (1) The local government and the department shall enforce the policy of the act and the provisions of approved master programs. Local government, the department, or both acting jointly, shall take action when necessary to ensure that no uses are made of the shorelines of the state or development commenced on shorelines of the state in conflict with the act and applicable master program provisions. These regulations should be used by local government and the department in carrying out enforcement responsibilities under the act, unless local government adopts separate rules to implement the act's enforcement provision.
- (2) Enforcement action by the department or local government may be taken whenever a person undertakes a development or use on shorelines of the state without first obtaining authorization; fails to conform to the terms of a permit issued under the act; or has violated any provision of the act, any master program, or regulation promulgated under the act.
- (3) The choice of enforcement action and the severity of any penalty should be based on:
 - (a) the nature of the violation,
 - (b) the damage or risk to the public or to public resources, and/or
 - (c) the existence or degree of bad faith of the persons subject to enforcement action.

[RCW 90.58.210 Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-260, filed 9/30/96, effective 10/31/96.]

WAC 173-27-265 Notice of correction.

If the department becomes aware of conditions that are not in compliance with the act or the master program, the department may issue a notice of correction to the responsible party. A notice of correction is not a formal enforcement action, is not subject to appeal, and is a public record. Except as provided in subsection (2) below, if the department issues a notice of correction, it shall not issue a civil penalty for the violation(s) identified in the notice of correction unless the responsible party fails to comply with the notice.

(1) The notice of correction shall include:

- (a) A description of the condition that is not in compliance and the text of the applicable specific section or subsection of the act and/or applicable master program.
- (b) A statement of what is required to achieve compliance.
- (c) The date by which the department requires compliance to be achieved.
- (d) Notice of the means to contact any technical assistance services provided by the department or others.
- (e) Information about civil penalties under the act that may be issued if compliance is not obtained.
- (f) Notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with the department.

(2) The department may issue a penalty under WAC 173-27-280 without first issuing a notice of correction when the requirements of RCW 43.05.070 are met.

[Statutory Authority: RCW 90.58.210(1), RCW 43.05.060, RCW 43.05.070, RCW 90.58.200]

WAC 173-27-270 Enforcement order.

(1) Local government and the department, acting alone or jointly, shall have the authority to serve upon a person a cease and desist order and/or an order directing necessary corrective actions as a means of enforcement if an activity being undertaken or that has occurred on shorelines of the state is in violation of chapter 90.58 RCW or the applicable master program.

(1) **Content of order.** The order shall set forth and contain all of the following:

- (a) Notice of the violation or potential violation. A description of the specific nature, extent, approximate time, and duration of the violation, and the damage or potential damage.
- (b) Notice to cease and desist the violation or potential violation, if applicable.
- (c) Notice of the specific corrective action to be taken within a given time, as appropriate.
- (d) Notice of when, where, and to whom a request for an extension of the time to achieve compliance for good cause may be filed with the local government or the department.
- (e) Contact information for any technical information or technical assistance services available from the department or others.
- (f) Information about civil penalties that can be issued if compliance is not obtained, unless a penalty is being issued with the enforcement action.

- (2) **Effective date.** The cease and desist order issued under this section shall become effective immediately upon receipt by the person to whom the notice of order is directed.
- (3) **Compliance.** Failure to comply with the terms of an enforcement order can result in enforcement actions including, but not limited to, the issuance of a civil penalty.
- (4) **Penalty.** A civil penalty under WAC 173-27-280 may be issued with an enforcement order.
- (5) **Method of delivery.** An order shall be imposed in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department, the local government, or from both jointly.
- (6) **Appeal.** When an enforcement order is issued by the department without a penalty, appeals may be filed with the county superior court pursuant to chapter 34.05 RCW. When an enforcement order is issued with a penalty by the department, appeals may be filed as provided by WAC 173-27-290.

[Statutory Authority: RCW 90.58.140(3) and [90.58].200, RCW 90.58.210. WSR 96-20-075 (Order 95-17), § 173-27-270, filed 9/30/96, effective 10/31/96.]

WAC 173-27-280 Civil penalty.

- (1) Civil penalty issued by the local government. A person who fails to conform to the terms of a substantial development, conditional use, or variance permit, who undertakes a development or use on shorelines of the state without first obtaining a permit; or who fails to comply with a cease and desist or enforcement order issued under these regulations may be subject to a civil penalty by local government.
- (2) Civil penalty issued by the department.
- (a) A person who fails to conform to the terms of a substantial development, conditional use, or variance permit, who undertakes a development or use on shorelines of the state without first obtaining a permit, or who fails to comply with a cease and desist or enforcement order issued under these regulations may be subject to a civil penalty by the department acting alone or acting jointly with the local government. The department may impose a penalty upon finding that:
- (i) A person has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule; or
 - (ii) A person has been given previous notice of the same or similar type of violation of the same statute or rule; or
 - (iii) The violation has a probability of placing a person in danger of death or bodily harm; or
 - (iv) The violation has a probability of causing more than minor environmental harm; or
 - (v) The violation has a probability of causing physical damage to the property of another in an amount exceeding one thousand dollars.
- (b) In the alternative, the department, alone or jointly with local government, may issue a penalty to a person or persons for violations that do not meet the criteria of subsection (2)(a)(i) through (v) of this section, after providing the following information in writing to a person or persons through a compliance assistance letter, notice of correction, cease and desist or enforcement order:
- (i) A description of the condition that is not in compliance and a specific citation to the applicable law or rule.
 - (ii) A statement of what is required to achieve compliance.

- (iii) The date by which the department requires compliance to be achieved.
 - (iv) Notice of the means to contact any technical assistance services provided by the department or others.
 - (v) Notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with the department.
- (3) No penalty shall be issued by the department until the individual or business has been given a reasonable time to voluntarily correct the violation and has not done so.
- (4) Amount of penalty. The penalty shall not exceed one thousand dollars for each violation. Each permit violation, or each day of continued development without a required permit or authorization issued under the act shall constitute a separate violation.
- (5) Aiding or abetting. Any person who, through an act of commission or omission procures, aids, or abets in the violation shall be considered to have committed a violation for the purposes of the civil penalty.
- (6) Notice of penalty. A civil penalty shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department and/or the local government, or from both jointly. The notice shall describe the violation, approximate date(s) and duration of violation, and order the act or acts constituting the violation to a cease and desist, and, when appropriate, to take required corrective actions within a specific time.

[RCW 90.58.210 Statutory Authority: RCW 90.58.120, 90.58.200, 90.58.060 and 43.21A.681. WSR 11-05-064 (Order 10-07), § 173-27-280, filed 2/11/11, effective 3/14/11. Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-280, filed 9/30/96, effective 10/31/96.]

WAC 173-27-290 Appeal of civil penalty.

- (1) Right of appeal. Persons incurring a penalty imposed by the department or imposed jointly by the department and local government may appeal the same to the shorelines hearings board. Appeals to the shorelines hearings board are adjudicatory proceedings subject to the provisions of chapter 34.05 RCW. Persons incurring a penalty imposed by local government may appeal the same to the local government legislative authority or locally appointed hearings examiner. When a local government has not established a local review process, appeals of civil penalties are governed by the Land Use Petition Act, RCW 36.70C.
- (2) Timing of appeal. Appeals shall be filed within thirty days of the date of receipt of the penalty. The term "date of receipt" has the same meaning as provided in RCW 43.21B.001.
- (3) Penalties due.
- (a) Penalties imposed under this section shall become due and payable thirty days after receipt of notice imposing the same unless application for remission or mitigation is made or an appeal is filed. Whenever an application for remission or mitigation is made, penalties shall become due and payable thirty days after receipt of local government's and/or the department's decision regarding the remission or mitigation. Whenever an appeal of a penalty is filed, the penalty shall become due and payable upon completion of all review proceedings and upon the issuance of a final decision confirming the penalty in whole or in part.
 - (b) If the amount of a penalty owed the department is not paid within thirty days after it becomes due and payable, the attorney general, upon request of the department, shall bring an action in the

name of the state of Washington to recover such penalty. If the amount of a penalty owed local government is not paid within thirty days after it becomes due and payable, local government may take actions necessary to recover such penalty.

(4) Penalty recovered. Penalties recovered by the department shall be paid to the state treasurer. Penalties recovered by local government shall be paid to the local government treasury. Penalties recovered jointly by the department and local government shall be divided equally between the department and the local government unless otherwise stipulated in the order.

[Statutory Authority: RCW 90.58.120, 90.58.200, 90.58.210, 90.58.060 and 43.21A.681. WSR 11-05-064 (Order 10-07), § 173-27-290, filed 2/11/11, effective 3/14/11. Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-290, filed 9/30/96, effective 10/31/96.]

WAC 173-27-295 Permit rescission.

(1) A local government may rescind a permit upon the finding that a permittee has not complied with the authorization. Permit rescission will typically be undertaken after other attempts to bring a permittee into compliance have failed, and it is appropriate where the intent is to discontinue the use authorized under the permit.

(a) The local government may rescind a permit after a public hearing with adequate notice to the permittee, property owner, and the public. Such notice of the public hearing shall not be less than thirty (30) days.

(2) After rescission, work approved by the permit cannot proceed until a new permit is obtained. If the permit authorized a new use, that use must also be discontinued.

(3) Notice of proposed permit rescission. The notice of proposed permit rescission shall set forth and contain:

(a) The reasons for permit rescission and a description of the condition(s) that is not in compliance with the shoreline permit.

(b) A statement of the technical assistance and enforcement attempts previously made by the local government and/or the department to obtain compliance.

(c) The date, time, and place of the public hearing.

(d) A statement of the effect of permit rescission.

(e) A statement regarding the effective date. The effective date of the permit rescission will be no earlier than thirty (30) days from the local government's final decision to rescind a permit.

(f) Any other information determined appropriate by the local government.

(4) Notice of permit rescission. A notice of the final decision by the local government to rescind a permit shall contain:

(a) The decision date.

(b) The reasons for permit rescission and a description of the condition that is not in compliance with the shoreline permit.

(c) A statement of the effect of permit rescission.

(d) The effective date of permit rescission, which shall not be less than thirty (30) days from the date of decision.

(e) A statement of the right to appeal. Appeals shall be to the shorelines hearings board and shall be filed within twenty-one (21) days from the date of receipt of the local government notice.

(f) Any other information determined appropriate by the local government.

(5) Any final decision to rescind a shoreline permit shall be filed with the department and the attorney general after all local administrative appeals related to the permit have been concluded or the opportunity to initiate such appeals has lapsed.

(6) When a permit rescission has been appealed, the local government shall provide a copy of the final order to the department upon conclusion of all review proceedings.

(7) The department may also take steps to rescind a permit. If the department finds that a permittee is not complying with a permit, the department shall provide written notice to the local government and the permittee with information about the permit violation and information on the ability of the department to petition the shorelines hearings board for permit rescission. If the department is of the opinion that the noncompliance continues to exist thirty (30) days after the date of the department's notice, and the local government has taken no action to rescind the permit, the department may petition the hearings board for a rescission of the permit. Such a petition to the hearings board shall be made within fifteen days of the expiration of the thirty-day notice to the local government.

[Statutory Authority: RCW 90.58.140(8), 90.58.200, 90.58.180]

WAC 173-27-300 Criminal penalty.

The procedures for criminal penalties shall be governed by RCW 90.58.220.

[Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-300, filed 9/30/96, effective 10/31/96.]

WAC 173-27-310 Oil or natural gas exploration—Penalty.

Persons violating the provisions of RCW 90.58.550 or chapter 173-15 WAC shall be subject to a civil penalty issued by the department in an amount of up to five thousand dollars a day. The procedures for oil or natural gas exploration penalties shall be governed by RCW 90.58.560.

[Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-310, filed 9/30/96, effective 10/31/96.]

WAC 173-27-320 Violators liable for damages resulting from violation—Attorney's fees and costs.

(1) Any person who undertakes a development or use on shorelines of the state without first obtaining a permit; fails to conform to the terms of a permit issued under the act; or has violated any provision of the act, any master program, or regulation promulgated under the act shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to violation.

(a) The attorney general or local government attorney shall bring a suit for damages under this section on behalf of the state or local governments.

(b) Private persons shall have the right to bring a suit for damages under this section on their own behalf and on behalf of all persons similarly situated.

(c) If liability has been established for the cost of restoring an area affected by a violation, the court shall make provisions to assure that restoration will be accomplished within a reasonable time at the expense of the violator.

(d) In addition to such relief, including money damages, the court in its discretion may award attorney's fees and costs of the suit to the prevailing party.

[Statutory Authority: RCW 90.58.200, 90.58.230]

WAC 173-27-990 Appendix A.

Shoreline Management Act
Permit Data Sheet and Transmittal Letter

From: _____ (local government) To: _____ (appropriate Ecology office)

Date of Transmittal: _____ Date of Receipt: _____ (provided by Ecology)

Type of Permit: (Indicate all that apply)
Substantial Development ; Conditional Use ; Variance ; Revision ; Other .

Local Government Decision: Approval ; Conditional Approval ; Denial :

Applicant Information: _____ Applicant's Representative: (if primary contact)

Name: _____ Name: _____

Address: _____ Address: _____

Phone(s): _____ Phone: _____

Is the applicant the property owner? yes no

Location of the Property: (Section Township and Range to the nearest 1/4, 1/2 Section or latitude and longitude, and a street address where available)

Water Body Name: _____

Shoreline of Statewide Significance: Yes No .

Environment Designation: _____

Description of the Project: (Summary of the intended use or project purpose)

Notice of Application Date: _____ Final Decision Date: _____

By: _____ (Local Government Primary Contact on this Application)

Phone No: _____

[Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-990, filed 9/30/96, effective 10/31/96.]

WAC 173-27-990 Appendix A.

**Shoreline Management Act
Shoreline Permit Data Sheet and Transmittal Letter**

From: (local government)	To: (appropriate Ecology office) <input type="checkbox"/> NWRO <input type="checkbox"/> SWRO <input type="checkbox"/> CRO <input type="checkbox"/> ERO
Date of transmittal:	Date of receipt: (provided by Ecology)
Type of permit or authorization (indicate all that apply): <input type="checkbox"/> Substantial development <input type="checkbox"/> Conditional use <input type="checkbox"/> Variance <input type="checkbox"/> Revision <input type="checkbox"/> Rescission <input type="checkbox"/> Restoration Relief	
For conditional use permits and variances, identify what aspect(s) of the proposal trigger the conditional use permit and/or variance?	
Local Government Decision. <input type="checkbox"/> Approval <input type="checkbox"/> Conditional Approval <input type="checkbox"/> Denial	
Project Name , if applicable:	
Property Owner Information.	
Name:	
Address:	
Phone number:	
Email:	
Project proponent (if different from owner):	Applicant's Representative: (if applicable)
Name:	Name:
Address:	Address:
Phone number:	Phone number:
Email:	Email:
Water body name:	<input type="checkbox"/> Marine <input type="checkbox"/> Pacific Coast <input type="checkbox"/> Stream/River <input type="checkbox"/> Lake
Shoreline of statewide significance: <input type="checkbox"/> yes <input type="checkbox"/> no	
Location of the project. Street address: Latitude and longitude in degree decimals to the fourth decimal place: Parcel number(s):	
Shoreline environment designation (SED). Check the applicable or most similar to the locally tailored SED: <input type="checkbox"/> Natural <input type="checkbox"/> Rural Conservancy <input type="checkbox"/> Urban Conservancy <input type="checkbox"/> Residential <input type="checkbox"/> High Intensity <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (please describe) _____	

Description of the project. A general description of the proposed project that includes the proposed use or uses, all development components, and the activities necessary to accomplish the project.			
Use Type (select all that apply): <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquaculture <input type="checkbox"/> Boating Facility <input type="checkbox"/> Commercial <input type="checkbox"/> Enhancement/Restoration <input type="checkbox"/> Forest Practices <input type="checkbox"/> Industrial <input type="checkbox"/> Mining <input type="checkbox"/> Recreational <input type="checkbox"/> Residential Multi-unit <input type="checkbox"/> Residential Single-family <input type="checkbox"/> Science/Research <input type="checkbox"/> Transportation/Parking <input type="checkbox"/> Utilities <input type="checkbox"/> Other (please describe) _____			
Characterize the proposal (select all that apply): <input type="checkbox"/> Environmental restoration <input type="checkbox"/> Development of a vacant lot <input type="checkbox"/> Expansion of an existing use or development <input type="checkbox"/> Re-development project <input type="checkbox"/> Subdivision			
Proposed Modifications (select all that apply): <table style="width: 100%; border: none;"> <tr> <td style="vertical-align: top; width: 50%;"> <input type="checkbox"/> Access structure <input type="checkbox"/> Boat Launch <input type="checkbox"/> Beach and dunes management <input type="checkbox"/> Breakwaters, jetties, groins, or weirs <input type="checkbox"/> Dredging and dredging material disposal <input type="checkbox"/> Fencing <input type="checkbox"/> Fill <input type="checkbox"/> Grading and excavation <input type="checkbox"/> Mooring Buoy <input type="checkbox"/> On-site sewage system <input type="checkbox"/> Outfalls and drainage dispersion systems <input type="checkbox"/> Other (please describe) _____ </td> <td style="vertical-align: top; width: 50%;"> <input type="checkbox"/> Piers and docks <input type="checkbox"/> Scientific data-collection or monitoring devices <input type="checkbox"/> Shoreline restoration and habitat enhancement projects <input type="checkbox"/> Tide gate <input type="checkbox"/> Vertical evacuation structure <input type="checkbox"/> Upland retaining wall <input type="checkbox"/> Utilities <input type="checkbox"/> Vegetation modification <input type="checkbox"/> In-stream structure <input type="checkbox"/> Shoreline stabilization <input type="checkbox"/> Flood hazard reduction </td> </tr> </table>		<input type="checkbox"/> Access structure <input type="checkbox"/> Boat Launch <input type="checkbox"/> Beach and dunes management <input type="checkbox"/> Breakwaters, jetties, groins, or weirs <input type="checkbox"/> Dredging and dredging material disposal <input type="checkbox"/> Fencing <input type="checkbox"/> Fill <input type="checkbox"/> Grading and excavation <input type="checkbox"/> Mooring Buoy <input type="checkbox"/> On-site sewage system <input type="checkbox"/> Outfalls and drainage dispersion systems <input type="checkbox"/> Other (please describe) _____	<input type="checkbox"/> Piers and docks <input type="checkbox"/> Scientific data-collection or monitoring devices <input type="checkbox"/> Shoreline restoration and habitat enhancement projects <input type="checkbox"/> Tide gate <input type="checkbox"/> Vertical evacuation structure <input type="checkbox"/> Upland retaining wall <input type="checkbox"/> Utilities <input type="checkbox"/> Vegetation modification <input type="checkbox"/> In-stream structure <input type="checkbox"/> Shoreline stabilization <input type="checkbox"/> Flood hazard reduction
<input type="checkbox"/> Access structure <input type="checkbox"/> Boat Launch <input type="checkbox"/> Beach and dunes management <input type="checkbox"/> Breakwaters, jetties, groins, or weirs <input type="checkbox"/> Dredging and dredging material disposal <input type="checkbox"/> Fencing <input type="checkbox"/> Fill <input type="checkbox"/> Grading and excavation <input type="checkbox"/> Mooring Buoy <input type="checkbox"/> On-site sewage system <input type="checkbox"/> Outfalls and drainage dispersion systems <input type="checkbox"/> Other (please describe) _____	<input type="checkbox"/> Piers and docks <input type="checkbox"/> Scientific data-collection or monitoring devices <input type="checkbox"/> Shoreline restoration and habitat enhancement projects <input type="checkbox"/> Tide gate <input type="checkbox"/> Vertical evacuation structure <input type="checkbox"/> Upland retaining wall <input type="checkbox"/> Utilities <input type="checkbox"/> Vegetation modification <input type="checkbox"/> In-stream structure <input type="checkbox"/> Shoreline stabilization <input type="checkbox"/> Flood hazard reduction		
Does the submittal include a site plan consistent with the requirements of WAC 173-27-180(9)? <input type="checkbox"/> Yes <input type="checkbox"/> No Does the submittal include documentation of the application of mitigation sequencing ? <input type="checkbox"/> Yes <input type="checkbox"/> No Was compensatory mitigation required and provided? <input type="checkbox"/> Yes <input type="checkbox"/> No	Does the submittal include special reports? Geotechnical report? <input type="checkbox"/> Yes <input type="checkbox"/> No Channel migration zone? <input type="checkbox"/> Yes <input type="checkbox"/> No Sea level rise risk assessment? <input type="checkbox"/> Yes <input type="checkbox"/> No Arborist report? <input type="checkbox"/> Yes <input type="checkbox"/> No Wetland report? <input type="checkbox"/> Yes <input type="checkbox"/> No Other? _____ <input type="checkbox"/> Yes <input type="checkbox"/> No		
Notice of application date:	Final local government decision date:		
Submitted by: (local government primary contact on this application)			
Phone No:	Email:		

WAC 173-27-995 Appendix B.

**Shoreline Management Act
Exemption Data Sheet and Transmittal Form**

From: (local government)	To: (appropriate Ecology office) <input type="checkbox"/> NWRO <input type="checkbox"/> SWRO <input type="checkbox"/> CRO <input type="checkbox"/> ERO
Date of transmittal:	Date of local government decision:
Exemption(s) applied to the project (indicate all that apply):	
Does the submittal include the following? A copy of the local government decision, in the form it was provided to applicant. <input type="checkbox"/> yes <input type="checkbox"/> no A site plan consistent with WAC 173-27-040(3)(f). <input type="checkbox"/> yes <input type="checkbox"/> no Demonstration of the application of mitigation sequence. <input type="checkbox"/> yes <input type="checkbox"/> no Any special reports. <input type="checkbox"/> yes <input type="checkbox"/> no	
Local Government Decision. <input type="checkbox"/> Approval <input type="checkbox"/> Conditional Approval <input type="checkbox"/> Denial	
Project Name , if applicable:	
Property Owner Information.	Representative: (if applicable)
Name:	Name:
Address:	Address:
Phone number:	Phone number:
Email:	Email:
Location of the project. Street address: Latitude and longitude in degree decimals to the fourth decimal place: Parcel number(s):	
Water body name:	<input type="checkbox"/> Marine <input type="checkbox"/> Pacific Coast <input type="checkbox"/> Stream/River <input type="checkbox"/> Lake
Shoreline of statewide significance: <input type="checkbox"/> yes <input type="checkbox"/> no	
Shoreline environment designation (SED). Check the applicable or most similar to the locally tailored SED: <input type="checkbox"/> Natural <input type="checkbox"/> Rural Conservancy <input type="checkbox"/> Urban Conservancy <input type="checkbox"/> Residential <input type="checkbox"/> High Intensity <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (please describe) _____	
Description of the project. A general description of the proposed project that includes the proposed use or uses, all development components, and the activities necessary to accomplish the project.	

Use Type (select all that apply):

- ☐ Agriculture ☐ Aquaculture ☐ Boating Facility ☐ Commercial ☐ Enhancement/Restoration
☐ Forest Practices ☐ Industrial ☐ Mining ☐ Recreational ☐ Residential Multi-unit
☐ Residential Single-family ☐ Science/Research ☐ Transportation/Parking ☐ Utilities
☐ Other (please describe)_____

Local government staff contact submitting the exemption:

Name:

Phone No:

Email: