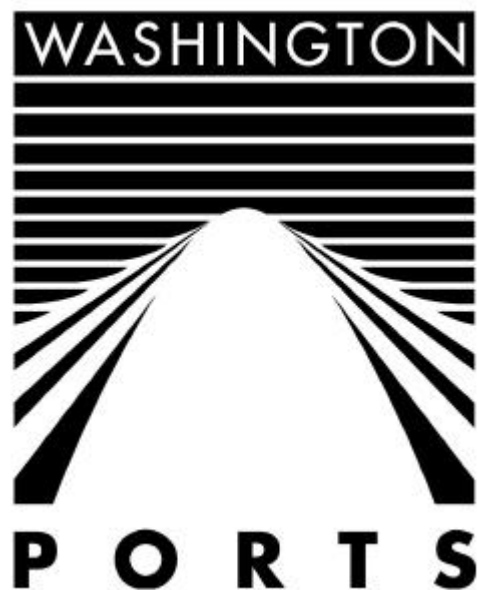


*A handbook designed to assist ports with environmental and land use issues*

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***WPPA  
Environmental &  
Land Use  
Handbook***

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*December 2001*

Acknowledgements:

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Table of Contents

1. Introduction.....1
Handbook Purpose ..... 1
Handbook Organization ..... 1
Understanding Environmental and Land Use Laws in America..... 2
The Federal Government ..... 2
The States ..... 2
Local Governments ..... 3
Public Involvement Processes..... 3
2. Port Planning.....5
An Introduction to Planning..... 5
Overview of Planning Laws and Regulations..... 5
National Environmental Policy Act and State Environmental Policy Act ..... 5
Growth Management Act ..... 6
Shoreline Management Act and the Coastal Zone Management Act..... 6
Port Comprehensive Planning ..... 7
NEPA and SEPA: Numerous Subtleties ..... 7
Shoreline and Growth Management: Comparison of Regulations..... 9
The Shoreline Management Act ..... 9
The Growth Management Act ..... 9
Water Rights and Watershed Management..... 10
Port Comprehensive Planning: Considerations..... 11
Facility Master Planning ..... 12
Port Management Agreements..... 12
3. Development, Redevelopment and Construction.....13
Project-Specific Permitting: Getting Things Built..... 13
Conceptual Plan Approvals: Getting Started on the Right Foot ..... 13
National and State Environmental Policy Acts..... 13
Land Use Approvals..... 14



*Coastal Zone Management Act Federal Consistency Determination*..... 14

Design Approvals: Getting the Project Off the Ground..... 14

*Clean Water Act*..... 15

    Section 404 Permit ..... 16

    Section 401 Water Quality Certification ..... 17

    Coastal Zone Management Act Federal Consistency Determination ..... 18

*Endangered Species Act*..... 18

*Washington Hydraulic Code*..... 19

*Tribal Treaty Rights*..... 20

Construction Approvals: Getting Ready to Mobilize ..... 21

*NPDES and Stormwater Management*..... 21

*Local Jurisdiction Construction Permits* ..... 22

**4. Environmental Cleanup ..... 23**

    Introduction to Environmental Cleanup Regulations ..... 23

*The Comprehensive Environmental Response, Compensation and Liability Act*..... 23

*The Model Toxics Control Act* ..... 24

    CERCLA and MTCA: A Process ..... 24

*Sediment Management Concepts* ..... 25

    Potentially Liable / Responsible Party Activities and Considerations..... 26

    Natural Resource Damage Assessment ..... 26

**5. Operations ..... 27**

    Operational Permits: Keeping a Clean Shop ..... 27

    Requirements from Project Approvals..... 27

    Hazardous Materials Handling and Accidental Releases ..... 28

*Stormwater Management*..... 28

*Hazardous Materials Handling* ..... 28

            The Resource Conservation and Recovery Act (RCRA) ..... 28

            Toxics Release Inventory / Community-Right-to-Know ..... 29

*Underground Storage Tanks*..... 29

    Requirements in Aquatic Leases and Port Management Agreements ..... 29

    Controlling Tenant Operations ..... 29



**Glossary.....31**  
**Index.....35**

**List of Diagrams**

Regulatory and Permit Requirements Potentially Applicable to Port Projects

**List of Appendices**

- Appendix A List of Abbreviations
- Appendix B List of Federal and State Laws
- Appendix C List of Resources for Additional Information

## 1. Introduction

### Handbook Purpose

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The purpose of this handbook is to provide a general overview of the primary federal, state, and local environmental and land use laws and programs that apply to ports in Washington State.

*The handbook has been written to orient port Commissioners and senior port non-technical staff to what is often described as the mind-boggling world of environmental and land use regulation.* It is not a comprehensive training manual for port environmental staff.

*There is a complex array of potentially applicable federal, state, and local environmental and land use regulations and laws that are administered by federal, state, and local jurisdictions under both direct and delegated authorities.*

Not only do these laws have complex interrelationships, the programs and permits that implement the laws are also intertwined. Keeping track of these interrelationships can be very challenging and frustrating at times. The Washington Public Ports Association (WPPA) hopes that this handbook gives readers an idea of the intent behind a law or program, practical information on how it applies to port projects, and enough information so that readers can ask clearer questions of their environmental staff and project managers.

The handbook is not intended to be a comprehensive source of information on environmental and land use requirements, applicable permits, or other project-specific federal, state or local laws and programs. For example, this handbook does not present information related to land use or other requirements issued by the Federal Aviation Administration, worker safety or hazardous materials abatement, or air quality requirements.

Environmental laws and regulations are frequently in a state of flux. Although WPPA intends to update the information contained in the handbook on a regular basis, *port Commissioners are encouraged to contact their port's environmental staff or the WPPA Environmental Committee for more thorough and up-to-date information.*

### Handbook Organization

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Port Commissioners are typically faced with four types of environmental and land use decision-making:

1. Port Planning
2. Development, Redevelopment, and Construction
3. Environmental Cleanup
4. Operations

In addition to its main text, this handbook contains the following resources:

- Focus boxes highlighting various topics throughout the document

- Glossary of terms
- Index for ease of use
- Appendix of abbreviations
- Appendix of federal and state laws
- Appendix listing resources for additional information
- Diagram: Regulatory and Permit Requirements Potentially Applicable to Port Projects

The *Regulatory and Permit Requirements Potentially Applicable to Port Projects* diagram (see back cover) is segregated by federal, state, and local programs, and by project phase. Individual programs briefly described on the diagram are discussed in more detail in the remaining chapters of this handbook.

## Understanding Environmental and Land Use Laws in America

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Environmental regulations are imposed on ports from all three levels of government (federal, state, and local). Because oversight responsibilities lie with multiple levels of government, and the regulations can be highly technical, it is easy to get confused. Additionally, the location or scope of a project might trigger responsibilities to Native American Tribes.

### ***The Federal Government***

Everything starts with the U.S. Constitution, which gives the government four basic powers that are used to regulate decisions affecting the use of land:

- a. The power to regulate anything affecting interstate commerce (i.e., the *Commerce Clause*).
- b. The power to adopt rules and regulations for federal land.
- c. The power to negotiate treaties with other nations.
- d. The power to tax and spend. (Although the power to tax and spend is not per se the power to regulate, tax and spending decisions do affect a lot of behavior.)

***Nearly all of the federal environmental laws flow from the Commerce Clause, under the theory that the regulated activities are related to commerce between the states.***

The federal government's power to negotiate treaties with other nations comes into play during projects in which the location or scope triggers interaction with Native American Tribes. The federal government has a responsibility to manage natural resources in a manner that is consistent with federal trust obligations towards Native American Tribes.

### ***The States***

States move within the boundaries that have been left to them by the federal government. Most states, including Washington, typically do one of two things:

**Delegated Authority**

For example, the Washington State Department of Ecology (Ecology) administers the Water Quality Certification program and the National Pollution Discharge Elimination System (NPDES) program, both of which implement portions of the federal Clean Water Act. Refer to Chapter 3 for more information on each of these programs.

- Use *police powers* to create a general program to regulate something (such as fish habitat through the Washington Hydraulic Code or land use planning through the Growth Management Act) and empower a state agency to implement that program.
- Enter into a contract with the federal government to implement a federal program on behalf of the federal government. This is called a *delegated authority*.

**Local Governments**

Land use planning and local development decisions are generally carried out by counties or cities, which are, like ports, *creatures of the state*. Two important state laws implemented by counties and cities are the Growth Management Act (GMA) and the Shoreline Management Act (SMA), which are discussed in detail in Chapter 2.

**Public Involvement Processes**

Most federal, state, and local environmental and land use regulatory processes encourage public involvement. Many laws themselves contain specific requirements that technical or decision-making documents be released for a minimum 30-day review, and that the agency with authority consider and provide a response to each comment (sometimes called a Responsiveness Summary).

Public involvement can be proactive, formal and / or legal. Proactive public involvement or community outreach involves soliciting and incorporating citizen input at the conceptual or early design stages of a project and maintaining community updates through implementation. ***Proactive public involvement can lead to a feeling of community ownership from planning through construction – which is especially important to the public service mandate of Washington State Ports.***

Receiving citizen input early in the process can often expedite the formal public involvement requirements at later project stages, reducing the possibility of a citizen appeal of a permit or approval.

Examples of public involvement mechanisms include:

- Public workshops, meetings, and hearings
- Review and comment periods (30-, 60-, 90-day) for documents or permits
- Newsletters, web pages, and surveys

In addition to project-specific public involvement opportunities, citizens can often become involved in the development and review of draft regulations, agency guidance documents, rulings, and general or programmatic permits.

The enclosed diagram of potentially applicable regulatory and permit requirements contains symbols that refer to required public involvement processes and appeal opportunities applicable to the laws or programs shown.





## 2. Port Planning

### An Introduction to Planning

Planning the development of an area or site provides an opportunity to think about how all of the parts of the project – such as transportation corridors, public access, territorial views, structures, wildlife / fish habitat, and utilities – fit together. Planning activities typically involve the local community stakeholders (business, residential, Tribal, and environmental interests). *Land use planning provides an opportunity to achieve balance between different land uses, minimize impacts to adjacent land uses, and build a sense of community ownership into the project...*so the project is something that everyone does, not something that is done to everyone.

At its most general level, planning can be conceptual, where “what if” scenarios can be scratched out on paper and cost estimates penciled in. Such activities may help determine what is feasible for an area or site. *Master planning activities may achieve greater specificity than conceptual planning, as an approved master plan will guide future site-specific planning and design for years into the future.* Project-specific planning activities occur before design begins in order to work out the smaller details specific to a single site or facility.



Master planning, or comprehensive planning, frequently must occur before project-specific actions. For example, ports may wish to build a project in a location currently not zoned by the local jurisdiction for the project’s land use. Comprehensive planning activities would provide a forum for rezoning the project location and can make future project actions easier by gaining local community and regulatory acceptance of the project at a general level.

*Conceptual, comprehensive, and project-specific planning activities are governed by a suite of land use laws and regulations, which range from required processes to voluntary frameworks.* A simple overview of these laws and regulations is provided below, followed by more detailed discussions of the processes, opportunities and constraints imbedded within them.

### Overview of Planning Laws and Regulations

#### **National Environmental Policy Act and State Environmental Policy Act**

Probably the most fundamental laws that were passed at the height of the environmental movement of the 1960s and 70s were the National Environmental Policy Act (NEPA) and the State Environmental Policy Act (SEPA). These laws have since become institutions in themselves, and truck-loads of regulations, procedures and court cases have resulted from their passage. At their most basic level, however, these two laws say a very simple thing: *All levels of government must think about the environmental consequences of their actions before they take them.*

The details of the laws go further, of course, saying that governments should avoid environmental consequences if they can, or mitigate them if they can’t, and they should document all of their thinking and let others comment on it. But the basic message remains: take actions with your environmental eyes wide open.

These laws do not say that governments must avoid environmental consequences, but rather that they have to think about them, disclose them, minimize them, show how they made decisions, and let others comment along the way. Numerous subtleties of the NEPA and SEPA processes are described later in this chapter.

## **Growth Management Act**

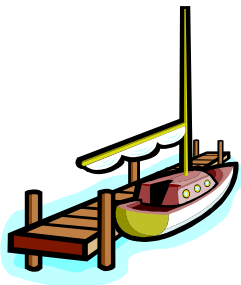
The Washington State Growth Management Act (GMA) of 1990, and its 1991 amendments, created new roles and responsibilities for planning at the local, regional, and state level. *The GMA established a state-wide planning framework and required many county and city governments to develop Comprehensive Plans (Comp Plans) for managing growth.*

These Comp Plans must identify how, where, and when growth is to be directed; they must specify density, type, and location of development; and they must designate urban growth areas, open space areas, agriculture, forest, and mineral resource lands, as well as critical areas such as wetlands, aquifers, and fish and wildlife habitat areas. Components of a comprehensive plan include: land use, housing, capital facilities, utilities, rural element, and transportation.

City and county Comp Plans are developed with significant community involvement and undergo SEPA reviews at a programmatic level. A Comp Plan generally takes the old concept of zoning to a new level, describing a *vision* for an area and then promoting development consistent with that vision. A port project should be consistent with the applicable Comp Plan for the project site. If the two do not match, that fact will be highlighted in the SEPA review and through public involvement processes. Comp Plan revisions are possible, but require the same level of effort that went into creating them in the first place.

## **Shoreline Management Act and the Coastal Zone Management Act**

In the early 1970s, there was great concern in Washington State that shorelines were being developed into too many hotel and residential uses, and that we were in danger of eventually looking like Miami Beach. A group of activists began a campaign that led to passage of the Washington State Shoreline Management Act (SMA) by the voters in 1971. The basic point of the law is to decide which areas of the shoreline to develop for what purposes. (*“Build things here ... do not build things there.”*)



The law places great emphasis on *water-dependent uses*, and mentions ports prominently as being desirable and necessary in the proper areas. The debate over the specifics of the law was fierce, and single-family residences were also given protection in order to pass the measure at the ballot.

The law tells cities and counties to plan for shoreline uses, and creates certain principles that these local governments are supposed to use when they write a shoreline management plan. The Washington State Department of Ecology (Ecology) must approve each shoreline plan because the citizens who created the law believed that the state has a broad interest in shoreline development that transcends local development interests. Most of the public agreed with this point, and, at least at that time, felt that the needs for necessary waterfront development and shoreline conservation were balanced about right.

It turned out that Washington's citizens were onto something, because about the same time Washington's citizens were deciding that they did not want to look like Miami Beach, Congress decided the same thing about the whole nation. ***In the case of Congress, they created the U.S. Coastal Zone Management Act (CZMA), which said that each state should create some type of plan for balancing uses in all of the counties that border salt water.*** The state plan, in turn, gets approved by the federal National Oceanic and Atmospheric Administration (NOAA).

This means that in Washington State, everyone in the counties bordering either the ocean or Puget Sound is covered by both the state SMA and the federal CZMA – even though the practical effect is that both laws are met through the same shoreline plan.

### **Port Comprehensive Planning**

*The specific language pertaining to port planning is found in RCW 53.20.010 and 020, and RCW 53.25.090.*

### **Port Comprehensive Planning**

Port Comprehensive Planning applies to lands and submerged lands owned or managed by a port, and all development of these lands must be described in the port's comprehensive plan or *comprehensive scheme*. The primary purpose of these plans is to require communication between the port Commission and the public regarding spending for capital improvements that the port is planning.

## **NEPA and SEPA: Numerous Subtleties**

As stated above, NEPA and SEPA require project proponents to think about the environmental consequences of their actions. They are applicable to private landowners as well as all levels of government. ***A review under NEPA is applicable to (1) federal projects, (2) any project requiring a federal permit, and (3) projects receiving federal funding, while SEPA applies to all projects in Washington State if the project involves any government action and the project is not "categorically exempt".***

NEPA and SEPA review can be applied to both planning efforts and specific project proposals. Project level NEPA / SEPA review is discussed in more detail in Chapter 3.

Each federal agency is required to adopt its own procedures to meet the requirements and intent of NEPA. In general, the NEPA process includes the preparation of an environmental assessment (EA) followed by either a finding of no significant impact (FONSI) or by the preparation of an Environmental Impact Statement (EIS). SEPA, adopted in 1971, applies to all levels of state and local government. It was modeled after the 1969 NEPA and requires a similar evaluation.

SEPA has a unique role of bringing planning and project-specific actions together under a regulatory review. Some planning documents themselves must undergo a SEPA review (see below for more details). Projects that undergo a SEPA review must show consistency with local planning regulations.

The agency or local government that performs the NEPA or SEPA review is dubbed the "lead agency". Because this process can involve multiple levels of government and public involvement requirements, and because so many types of project actions require an environmental review, it is easy for big or controversial actions to get bogged down in NEPA and / or SEPA review. ***Both NEPA and SEPA have established procedures for the lead agency. Since port districts are governments too, ports can become the lead agency for their own projects.*** This is one of the most powerful tools that ports have to manage environmental review (timelines and appeals) of their projects. Port Commis-

sions themselves adopt SEPA policies, and can hear appeals that others raise about the environmental consequences of port actions.

A SEPA review consists first of completing an Environmental Checklist for the project or plan. The environmental checklist poses questions regarding the project’s location, components, traffic impacts, relationship to sensitive areas, endangered species habitat, and historic landmarks. *The project’s proponent typically completes the checklist and submits it to the lead agency. The lead agency will issue a threshold determination regarding the proposal’s likelihood of causing adverse environmental impact.* (If the port is serving as its own lead agency, then the port makes this determination itself.) *After public and agency reviews, the lead agency will issue its final decision.* A procedural appeal may be used to challenge a threshold decision, while a substantive appeal may challenge the lead agency’s final decision.

Several types of threshold determinations exist and are described briefly below.

**Threshold Determination**  
 Most port projects, such as typical building construction and other routine projects, receive either a DNS or a MDNS level of SEPA review.

- **Determination of Nonsignificance (DNS):** the project or plan as described in the checklist will not have significant environmental impact and may proceed.
- **Mitigated Determination of Nonsignificance (MDNS):** the project or plan described in the checklist must mitigate for its environmental impacts. Specific mitigation is called out as requirements in the determination letter.
- **Determination of Significance (DS):** the project or plan as described in the checklist must undergo a full environmental impact review before a decision under SEPA can be made. *In this case, preparation of an Environmental Impact Statement is required.*

An EIS is a comprehensive review of the project or plan and its environmental impacts. In order to address environmental impacts, an “alternatives analysis” is included in the EIS. This analysis describes several alternatives for project design and environmental mitigation. The EIS must be released for public and agency review and comment. Public involvement requirements vary for threshold determinations and an EIS.



When both NEPA and SEPA apply to an action, the lead agencies usually work out a method to coordinate the processes. Examples include:

- Issuing a joint NEPA / SEPA EIS that meets the requirements of both laws
- Using NEPA documents to meet SEPA requirements
- Using existing SEPA documents to meet NEPA requirements

*Piecemealing* of a project is not allowed under SEPA. One intent behind SEPA is to evaluate the cumulative impacts of a project. If a project is developed in phases, and one phase relies on a previous phase in order to be functional, a SEPA review must be conducted for all connected phases of the project.

*Phased SEPA review* is significantly different than an effort to piecemeal a SEPA review. One approach often used is to prepare a master plan for the site, facility, or area that undergoes a “programmatic” SEPA review. Design details that are specific to each later project phase can then be evaluated in a SEPA checklist or EIS for that later phase. While at first glance this approach may appear to be more work, for large complex

projects this may be the best choice. Refer to the Facility Master Planning section below for more information.

## Shoreline and Growth Management: Comparison of Regulations

### The Shoreline Management Act

#### **Public Access to the Shoreline**

*A fundamental component of local Comprehensive and Shoreline Master Plans is the importance of maintaining and improving public access to the shorelines of Washington State. This regulatory mandate provides ports with excellent stewardship opportunities that can enhance a port's relationship with its community, consistent with the port's public mandate. Port Commissioners are encouraged to communicate with their community regarding the port's stewardship role, which can be demonstrated by shoreline public access such as shoreline parks, picnic areas, and other public facilities coordinated with economic development projects.*

The goal of the SMA is "to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines." SMA provisions apply to all marine waters, some streams and lakes, shorelands, and associated wetlands and floodplains. The SMA establishes a broad policy giving preference to uses that:

- Protect the quality of water and the natural environment.
- Depend on proximity to the shoreline ("water-dependent uses").
- Preserve and enhance public access or increase recreational opportunities for the public along shorelines.

Balancing these preferred uses can be an important planning tool for ports, such as between port facilities and public shoreline access.

Ecology is tasked with developing the guidelines that local governments must meet to develop a shoreline master program (SMP). ***Each SMP is tailored to the specific geographic, economic and environmental needs of the community, and provides a permit system for administering the program.*** Ecology reviews SMPs for consistency with the state guidelines and provides technical assistance to local governments as requested. Master program development and revisions require public involvement and approval from Ecology.

If both a city or county GMA Comp Plan and SMP exist for a given reach of shoreline, the Comp Plan designates the shoreline area boundaries. Projects that fall within the shoreline boundary require a local permit under the local SMP. ***This permit is typically called a Shoreline Substantial Development permit, although conditional use permits or variances may apply depending upon your project and the local SMP provisions.***

The SMA strongly supports public involvement in shoreline decision-making. Citizens participate on advisory boards preparing local master programs. Public comment is required for individual Shoreline Substantial Development permits, which can be appealed by the public.

### The Growth Management Act

One premise of the GMA is to prevent the high economic and environmental costs of urban sprawl. Blending the designation of critical and natural resource areas, public infrastructure investments, habitat improvements, and resource management with growth planning means growth can be directed to the best locations.

The GMA requires cities and counties of a particular population size, plus some fast-growing counties, to develop Comp Plans. All cities and counties, however, are required to develop and implement Critical Areas Ordinances under the GMA, regardless of whether or not the jurisdiction is planning under the GMA. So, some cities or counties may not have Comp Plans, but they will have Critical Areas Ordinances, others will have references to Critical Areas Ordinances built in to their





Comp Plans. Typically the actual Critical Areas Ordinances are a part of the city’s zoning code.

**Land Use Planning Appeals and Oversight**

State oversight of GMA and SMA implementation is provided through quasi-judicial hearings boards. The GMA created three regional Growth Management Hearings Boards (Eastern Washington, Western Washington and Central Puget Sound) to monitor state agency, county, and city compliance with the GMA’s provisions. Similarly, the Shoreline Hearings Board is made up of six members representing citizen interests to address SMA compliance issues. Decisions regarding approval of Comp Plans and shoreline master programs, and the implementation of Critical Areas Ordinances, may be appealed to the appropriate regional Growth Management Hearings Board, if the jurisdiction is planning under the GMA. If the jurisdiction is not planning under the GMA, decisions regarding shoreline master programs may be appealed to the Shorelines Hearings Board. Decisions by any of the Hearings Boards are appealable to the courts.

*Critical Areas Ordinances provide a mechanism to protect the functions and values of the following five types of critical areas: wetlands, fish and wildlife habitat, aquifer recharge zones, geological hazards (i.e., steep slopes, seismically active zones), and frequently flooded areas.*

When Critical Area Ordinances are developed, public notice and hearing requirements apply. The state is allowed 60 days to review and comment on a Critical Areas Ordinance, but approval authority has not been given to the state. Recently adopted legislation requires counties and cities to include the Best Available Science (BAS) in developing critical areas policies and development regulations. Because this is a new requirement and BAS is difficult to define, it is not known at this time what impact the requirement will have.

**Water Rights and Watershed Management**

Every development needs a supply of water, and some industrial facilities require a great deal of it for processing purposes. Water is increasingly scarce in most basins in Washington, and water supply planning is driving many development decisions. Washington’s system of water law is typical of Western states: the system is based on seniority (“*First in time, first in right*”). Ecology manages water rights, and a new water right can only be issued if it does not impair prior (or senior) rights, and if the “in-stream flows” of the river or stream are protected. In addition, a user of water needs to put the water to a *beneficial use*, or else risk giving up (or relinquishing) the right. The rules governing all of these arrangements could fill a large book, and consist of a mix of court decisions, state law, and federal law.

**Water Resources**

Whiskey is for sipping, and water is for fighting over.  
– Mark Twain.

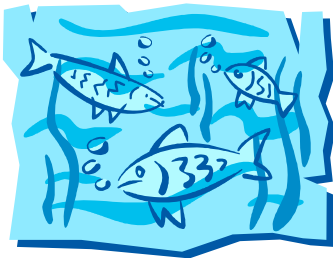
In 1998 the State of Washington tried to get its arms around planning for water supply by creating the Watershed Management Act (WMA). ***This law allows local governments, citizens, state agencies and tribes to organize themselves by river basin and develop watershed plans.*** Each major river basin is called a Water Resource Inventory Area, or WRIA (variously pronounced “why-ruh” or “rye-uh”).

Each basin group tries to figure out how much water they have, and how much demand there is for various uses such as habitat, agriculture, municipal and industrial uses. They are given some latitude to develop strategies for reconciling competing uses, and they receive funding from the State for their efforts. Not all watersheds have planning groups, but many do.

Although the Watershed Management Act allows Washington’s 62 watersheds to develop watershed management plans to address basin-wide water quantity issues, the WMA also provides for optional planning to additionally address water quality, fish habitat, and in-stream flows. In general, each of these issues will be addressed by the state if local

WRIA planning groups either do not form, or form only to address the water quantity issues. A synopsis of each of the four issue areas is provided below.

- **Water Quantity / Availability:** Simply put, each basin has many demands on its water. Because each watershed is an interconnected system, some prioritization and balance must be accomplished to meet the competing needs of a finite water supply.
- **Water Quality:** While more will be discussed regarding water quality laws and regulations in Chapter 3, we can say here that water quality criteria include bacterial contaminants, chemical contaminants, artificial temperatures, and suspended solids / turbidity. Water that does not meet a given criterion may be inappropriate for a given use, thus complicating further the issues surrounding water availability. To address water quality concerns via the watershed planning process allows greater local involvement in an otherwise federal- and state-led effort to regulate water quality through Total Maximum Daily Loads (TMDLs), National Pollution Discharge Elimination System (NPDES) permits, and stormwater management regulations.
- **Fish Habitat:** Although this can be considered one of the competing interests in water quantity and one of the drivers in water quality criteria, additional variables are applicable, such as Native American Usual and Accustomed Fishing Grounds, requirements under the Endangered Species Act (ESA) (see Chapter 3), and non-water habitat features (stream beds, banks, and riparian corridors).
- **In-stream Flows:** In addition to its relationship to water quantity, water quality, and fish habitat, the in-stream flow issue also looks at seasonal water level variations. This may be important, for example, when trying to balance the water supply for irrigation when crops need it most with water supply for fish habitat when fish need it to reach spawning habitat, while also providing for the next decade's recreational fishing interests.



As you might guess, WRIA planning activities can be highly controversial. *The planning process involves the designation or volunteerism of lead entities (a local or Tribal government body or partnership), who serve as project and grant managers. Many committees are formed, data is compiled and collected, and management scenarios are developed and evaluated.* A selected management approach can then be implemented, potentially involving water rights abandonment and reallocation, monitoring requirements, and habitat / resource conservation designations.

Ports might get involved in shaping their WRIA planning as a lead entity, as a committee member or as an interested stakeholder. You can check the status of your watershed's planning activities at [www.ecy.wa.gov/programs/eap/wrias/index.html](http://www.ecy.wa.gov/programs/eap/wrias/index.html).

### Port Comprehensive Planning: Considerations

Comprehensive planning conducted by port districts for port-owned and managed land and tidelands involves developing a Scheme of Harbor Area Improvements or Comp Plan for future port growth and / or redevelopment. Port plans often address a variety of land use considerations, such as public access and transportation. These plans may also identify environmental programs (i.e., for habitat and water quality protection), environmental impacts, and mitigation measures to address adverse impacts. A SEPA review (environmental checklist and potential programmatic EIS) is sometimes required, so public



notification, comment, and appeal periods apply. Of course, port plans should also be consistent with city and county Comp Plans and any applicable SMP.

*The WPPA publishes the Comprehensive Plan Guidelines for Washington Public Ports, a report describing the how-tos of port comprehensive planning.* It is a helpful resource for more information on this subject.

## **Facility Master Planning**

By preparing a master plan for a specific facility prior to having a completely designed project, a port might accomplish a couple objectives that make the actual project permitting easier. *Master plan review and approval under SEPA, if accurately reflecting elements of the future development proposal, might essentially “pre-qualify” some components of the project.* For example, at this level, the SEPA review might show consistency with the local Comp Plan and SMP, the provision of adequate resource protection (by keeping the build-out area to a portion of the site) and the avoidance of historic or archaeological sites, potentially resulting in an MDNS. The project-specific SEPA review will reference the prior programmatic review and provide details regarding employment, traffic, and view corridors, also potentially resulting in an MDNS. This approach might be considered a *phased* SEPA review.

## **Port Management Agreements**

State law allows port districts to manage certain state-owned aquatic lands and improvements on behalf of the state. The legal specifics are laid out in a Port Management Agreement (PMA). A PMA places a port in the role of aquatic lands steward and holds a port responsible for meeting the state’s general aquatic management goals, which are to:

- Foster water-dependent uses.
- Ensure environmental protection.
- Encourage direct public use and access.
- Promote production on a continuing basis of renewable resources.
- Generate income from the use of aquatic lands in a manner consistent with the above goals.

*Lands that qualify for inclusion under a PMA are those abutting or “used in conjunction with and contiguous” to uplands controlled by the port* (RCW 79.90.475). These include uplands owned or leased by the port, as well as lands controlled by a formal management agreement between the port and a third party.

*The WPPA publishes a Port Management Agreement Handbook with detailed information regarding PMAs, and how they work.*

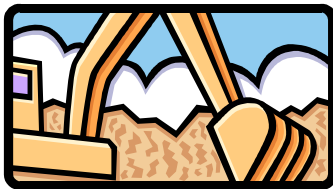
## 3. Development, Redevelopment and Construction

### Project-Specific Permitting: Getting Things Built

Because of the complex array of permits and approvals under federal, state, and local laws, keeping track of your project’s progress at multiple levels of government at once is a critical skill, and can be confusing and frustrating.

Different permits and approvals apply to different stages of development. For the purposes of this orientation handbook, a selection of potentially required permits and approvals are divided among the following three project stages:

- a. Project Conceptualization
- b. Project Design Development
- c. Project Construction



By organizing the selection of permits and approvals in this fashion, permit interrelationships, timing considerations, and regulatory themes can be highlighted. *However, although this chapter is organized by project stage, every project-specific action is unique and may be better served by applying for the permits and approvals at a different project stage than described.* Port Commissioners are encouraged to discuss the relative

timing of permit applications and implications of that timing on project schedule and design components with their responsible port staff or consultants. For the purposes of this document, we assume that your project has water and power.

### Conceptual Plan Approvals: Getting Started on the Right Foot

#### National and State Environmental Policy Acts

A project review under NEPA and / or SEPA is comprehensive and critical to the success of the project. Chapter 2 introduces NEPA and SEPA, and discusses their use in evaluating planning activities and projects relative to applicable land use plans. Project-specific NEPA and / or SEPA review involves a comprehensive analysis of the entire project, including such elements as: location, timing, other government or agency approvals, environmental conditions (vegetation, soil, water, air), erosion control, traffic impacts, water runoff, local land use / zoning designation, existing and adjacent uses, utilities, relationship to sensitive areas and / or endangered species habitat, historic landmarks, and employment or residential displacement or creation. Because a NEPA / SEPA review encompasses virtually all project elements, it is important that the project be described accurately to avoid a supplemental NEPA / SEPA review. Information regarding a phased SEPA review is found in Chapter 2.

Future permitting and approval actions look back to the NEPA / SEPA review for context and discussion of environmental impacts, proposed mitigation, potential alternatives, and other components of the project.

## Land Use Approvals

Chapter 2 describes how land use plans (i.e., Comp Plans, SMPs) get developed and implemented. At the project level, land use approvals are required to confirm that project actions are consistent with those long-term land use visions and goals.

***Project-specific land use approvals are done at the local (city or county) level and generally include a zoning consistency review, and Shoreline Substantial Development and / or Critical Areas permits, as applicable.*** Because these approvals are locally administered, some variation is expected, and ports are encouraged to discuss applicable permitting processes (applications, schedules, etc.) with their knowledgeable staff and the local jurisdiction.

A city or county conducts a review of the proposed project relative to the local zoning code, sometimes called a land use code. This typically entails a preapplication process (i.e., a form or conference) to determine what type of approval, if any, is required for your specific project. Some jurisdictions implement a Master Use permit program, requiring documentation regarding the project (floor, grading and landscape plans, access, utilities, etc.), a statement of financial responsibility, and public involvement procedures before a project land use approval can be made.

As mentioned in Chapter 2, a *Substantial Development* permit is required for projects within a shoreline boundary, unless the project is fully exempted. In some cases, a *Conditional Use* or *Variance* permit may be issued to allow flexibility and give consideration to special circumstances. ***Exempt developments include those under \$2,500 in value, normal maintenance or repair of existing developments, single-family residential construction, agricultural practices, habitat restoration projects, and certain emergency construction activities.*** If a federal permit from the U.S. Army Corps of Engineers (ACOE) is required for a project exempt from a Shoreline Substantial Development permit, the local jurisdiction must provide a letter of exemption. Additional details can be found in Chapter 173-27 WAC, *Shoreline Management Permit and Enforcement Procedures*. Ecology can appeal a Substantial Development permit to the Shorelines Hearings Board and must approve all Conditional Use and Variance permits.

Special permits or approvals are required for proposed developments in critical areas, as designated under the local Critical Area Ordinances (see Chapter 2). In general, development in a critical area, if allowed at all, must incorporate design features and construction practices that decrease impact to these areas.

## Coastal Zone Management Act Federal Consistency Determination

The Washington State coastal zone management plan, developed pursuant to the federal CZMA (see Chapter 2), relies on existing state environmental laws, including SEPA and the SMA. ***A federal decision regarding consistency of the project with the CZMA is required for 1) activities undertaken by a federal agency; 2) activities requiring federal approval; 3) activities which use federal funding.*** Ecology has been delegated authority to make a federal consistency determination, because the state's SMA is incorporated into the federal coastal zone management plan.

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## Design Approvals: Getting the Project Off the Ground

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Once a project is in the design stage, many design review, permitting and approval processes may be triggered. Most of these processes should be mentioned in some form in

the NEPA / SEPA documentation (i.e., the environmental checklist). See the NEPA and SEPA discussions in Chapters 2 and 3 for more information. Typically, approvals from multiple agencies are required before local building permits will be issued.

Depending on the scope and location of your project, the design level permits and / or approvals described below may be required.

### **Clean Water Act**

The Clean Water Act (CWA) is the nation’s primary water pollution control law. It is a 1977 amendment to the federal Water Pollution Control Act of 1972, which established the structure for regulating industrial discharges of toxic pollutants into U.S. waters. The CWA’s basic purpose is to make the nation’s waters “fishable and swimmable,” and it regulates all development in and near the water, as well as many port operations that affect water quality. In Washington State, the CWA is implemented by both federal and state governments.

#### **Water Quality Considerations: Sources, 303(d) List and TMDLs**

*Water pollution originates from both point and non-point sources.*

**Point sources** are known sources that can be identified and tracked, such as discharges from wastewater treatment plants, combined sewer overflow systems, and permitted industrial discharges. **Non-point sources** are those sources that are not easy to identify or track, such as surface water runoff from agricultural lands and forest lands and discharges from boats or other marine vessels.

*Reduction of the volume and impact of discharges of pollution can be defined as **source control**. Source control measures often include modification of project plans and utilization of Best Management Practices (BMPs) to eliminate or minimize the potential for contamination of water bodies from discharges. Implementation of **Section 303(d)** of the Clean Water Act, which requires listing of water quality-impaired or threatened water bodies, and development of **Total Maximum Daily Loads (TMDLs)** for each listed parameter, is delegated to Washington State by USEPA. Ecology, therefore, administers this program, publishing the 303(d) List every two years, and developing TMDLs for each parameter that caused the listing of the water body. USEPA still reserves the authority to approve or amend the list and the TMDLs.*

*TMDLs are a calculation of the maximum amount of a parameter that a water body can receive and still meet water quality standards, and an allocation of portions of that maximum to the sources of that parameter. Commonly regulated parameters include: fecal coliform, dissolved oxygen, temperature, pH, pesticides, metals and toxics, sediment load, and nutrients (phosphorus). USEPA requires that Ecology develop **Implementation Plans** for each TMDL that include a description of control actions and management measures, a schedule with milestones for implementing actions, an estimate of the time required to attain the applicable water quality standard, and a monitoring plan.*

***The CWA gives USEPA the authority to set water quality standards for all contaminants in surface waters.***

The CWA makes it unlawful for any person or entity to discharge any pollutant from a point source into navigable waters without a permit. A permit from the ACOE is also required for discharge or disposal of dredged materials. The CWA includes provisions allowing the USEPA to delegate aspects of the law to other federal, state, and local governments.

***The Clean Water Act is implemented through the following programs, approvals, and permits:***

- Section 404 permit from the ACOE
- Section 401 water quality certification from Ecology
- Section 303(d) List and Total Maximum Daily Loads (TMDL) program administered by Ecology (refer to Focus Box)
- NPDES permit program administered by Ecology



## Wetlands

Most **wetland definitions** include some reference to the presence of water, soil and vegetation. A **wetland delineation** method describes how a person determines if enough water, and the right types of soil and vegetation are present in a given site. In understanding wetland regulation it is important to distinguish between "biological," "jurisdictional," and "regulated" wetlands.

**Biological Wetland:** A biological wetland is one that is determined to have the physical, biological and chemical characteristics to be called a wetland.

**Jurisdictional Wetland:** A jurisdictional wetland is one that a particular law has determined should be regulated by the provisions of the law. It may be the same as a biological wetland or it may represent a subset of biological wetlands. For example, the Shoreline Management Act has defined wetlands under its jurisdiction as being all wetlands associated with tidal waters and certain lakes and streams. Most freshwater wetlands in the state are not within shoreline jurisdiction.

**Regulated Wetland:** While most jurisdictional wetlands are going to be regulated to some extent, there are always certain activities that are exempt from a given law. This results in some jurisdictional wetlands not being regulated. Thus, some people have been confused by the notion that an area may meet the jurisdictional definition of a wetland, are delineated as such, and still be exempt from any regulation because of the particular activity proposed.

Washington State has a **Wetland Rating System** (different versions for Eastern or Western Washington) that places wetlands into four different categories based on a combination of wetland functions and values (e.g., rarity, irreplaceability, sensitivity to disturbance, and habitat functions). The rating system was designed to be used with local development regulations to ascertain appropriate protective measures. For example, it is helpful in determining appropriate buffers for a site and in establishing mitigation, such as sequencing and replacement ratios.

## Section 404 Permit

**A CWA Section 404 permit, administered by the ACOE, is required for any work in water.**

The ACOE issues permits for activities near or in water or other special aquatic sites, including wetlands. These activities include construction or installation of marinas, piers, wharfs, etc., dredging in navigable waters, and discharge of dredged or fill material into navigable waters and wetlands. **Nationwide permits are issued for general categories of activities and individual permits are issued for project work that is not covered by one of the general permits.**

The ACOE has developed 44 different Nationwide Permits (NWP) for certain activities that are similar in nature, cause only minimal adverse environmental effects when performed separately, and have only minimal cumulative adverse effect on the aquatic environment. There are a variety of conditions that apply to NWPs, and it is important that a project proponent be familiar with all of them. If a fish species is listed under the ESA in the area where the NWP is proposed for use, most of the advantages of the NWP are lost.

If an activity is not covered under a NWP, an individual 404 permit is required. **During the individual 404 permitting process, the ACOE conducts a full public interest review, balancing the favorable impacts of a project against any detrimental impacts.** The purpose of and need for the project, and the extent to which the applicant has taken steps to avoid wetland impacts in the location and design of the project, are considered. In this way, the ACOE conducts an analysis of the alternatives to the proposal. **No discharge of material into waters is permitted if there is a practicable alternative to the proposed discharge that would have less adverse impact on the aquatic ecosystem.** Individual 404 permits often incorporate special conditions to ensure the protection of aquatic environments.

Individual permits require a 30-day public notice period, during which public hearings may be held, and public comment on the project is accepted and considered. If the ACOE deems the activity to be consistent with the protection of waters, an individual 404 permit will be issued. The public may appeal the issuance of an individual 404 permit.

**The ACOE also administers the Joint Aquatic Resource Permits Application (JARPA) program, a permit application process designed to coordinate the various federal, state, and local jurisdiction permits that are required for work within aquatic areas.**

The following permits and approvals are included in a JARPA: ACOE NWP or individual Section 404 permit; Hydraulic Project approval; Section 401 water quality certification; Services review under ESA; and approvals for the exceedance of Water Quality Standards.

JARPA applications must be accompanied by detailed drawings of the project vicinity, plan view, and cross-sectional view. *Although a project proponent submits the JARPA application to the ACOE, they must send additional copies of the application to all the agencies from whom they are seeking permits and approvals.* The ACOE assigns the application to a Project Manager who will review the project, coordinate with the appropriate agencies, and approve or deny the permit request. *ACOE 404 permits will not be issued until state permits and approvals are granted, as federal agencies do not want to be in the position of having approved work that is not in compliance with state water quality programs and regulations.*

### **Section 401 Water Quality Certification**

*In most areas of Washington State, Ecology must determine whether a project that requires a federal permit also complies with state water quality standards.* Under this 401 certification program, the project proponent applies for a certification from the state that a discharge, complies with federal and state water quality requirements. Before the ACOE will issue a Section 404 permit, they must receive a response decision from Ecology for the 401 certification.

*Sometimes the 401 certification contains conditions covering the design, construction and operation of the proposed project. These conditions can be controversial.* Conditions of the 401 certification then become conditions of the ACOE 404 permit.

Timing of a 401 certification is tied to the Section 404 permit process and the JARPA program discussed in the proceeding section. Project proponents are advised to coordinate with both the ACOE and Ecology for the issuance of these permits. Public notice for a 401 water quality certification may be piggy-backed with the ACOE 404 permit public notice. A 401 certification may be appealed.

#### **Dredged Material Management**

*The Dredged Material Management Office (DMMO) at the ACOE is the main point of contact for dredged material management programs in Washington State.*

*Dredged material must undergo extensive testing to determine if it is "clean" or "dirty" and, if it is "dirty," to what degree it is contaminated. Washington State has developed Sediment Management Standards (SMS) that regulate the testing and disposal of dredged material. Material deemed too contaminated for open-water disposal must be addressed under an applicable environmental cleanup regulation (see Chapter 4 for more information).*

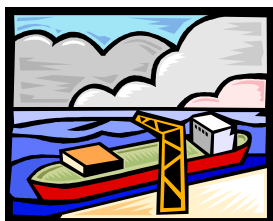
*If material is deemed clean enough for open-water disposal, the disposal effort is coordinated by the **Dredged Material Management Program (DMMP)**. The DMMP, created during the 1980's to address open-water disposal challenges, is a joint effort of the ACOE, USEPA, DNR, and Ecology. The DMMP developed the Puget Sound Dredged Disposal Analysis (PSDDA) in 1984, outlining evaluation guidelines and management requirements for open-water disposal sites. There are eight designated open-water disposal sites: five are non-dispersive sites and three are dispersive sites. The five non-dispersive sites are Commencement Bay, Elliot Bay, Port Gardner, Anderson-Ketron, and Bellingham Bay. The three dispersive sites are Rosario Strait, Port Angeles, and Port Townsend. The DMMP group meets monthly to discuss regulatory requirements, next steps for dredged material management, and new technologies, sometimes incorporating them into their management strategy. Each May, a Sediment Management Annual Review Meeting (SMARM) meeting is held to provide an opportunity for the public and other interested parties to comment on dredged material management efforts in Washington State.*

*DNR maintains the position of site manager for the disposal sites, issues the open-water disposal site use authorizations, and collects the fees for use of the sites. A project proponent must submit an **Application for a Permit to Utilize Open-Water Disposal Site** to DNR and coordinate with DNR regarding a pre-disposal conference meeting and notification of intent to commence disposal. DNR requires detailed disposal plans and coordination with the contractor performing the disposal to ensure compliance with disposal guidelines. Ultimately, the applicant and their contractor maintain responsibility for the disposal and will be held accountable if problems arise. Refer to Chapter 4 to learn more about cleanup and disposal of contaminated sediments.*

**Coastal Zone Management Act Federal Consistency Determination**

The federal CZMA (see Chapter 2) is implemented in Washington State by a Coastal Zone Management (CZM) program, and applies in counties that abut salt water. As described earlier in Chapter 3, the state coastal zone management plan relies on other existing state environmental laws. Ecology has been delegated authority to issue federal consistency determinations regarding a project’s consistency with the CZMA. ***A federal consistency determination is required for (1) activities undertaken by a federal agency; (2) activities requiring federal approval; (3) activities which use federal funding.***

Therefore, if a proposed activity requires federal approvals or permits under the Clean Water Act, a federal CZMA consistency determination is also needed.



The CZM consistency determination must be made within 6 months of application, or it is considered waived and the permittee may proceed providing CWA Section 404 and 401 requirements are met.

***Because a project cannot proceed until Ecology grants both a 401 water quality certification and a CZM consistency determination, Ecology has assumed an enormous role in implementing the federal Clean Water Act that is tantamount to veto authority.***

**Endangered Species Act**

The federal Endangered Species Act (ESA) was enacted in 1973 when a number of high-profile animals, such as the Bald Eagle, faced such decimation that they were believed to be in danger of extinction. ***The ESA provides a means whereby ecosystems and the endangered and threatened species that depend upon them may be conserved.*** Since the law was passed, it has been applied to fish and wildlife icons (i.e., condors, panthers), obscure species (i.e., the Snail Darter), and to subspecies (i.e., particular runs of salmonids). While there is a great deal of argument over the scope of the ESA and the specific details of how to protect a species once it is declared threatened or endangered, most citizens expect that fish and wildlife species will receive protection under this law.

***The ESA contains requirements for federal agencies to consult with at least one of the two federal Services which are charged with implementing the ESA prior to funding, authorizing, or taking any action that might harm a listed species or result in degradation of a species’ habitat.*** These Services are the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS). ***Because so many port actions have a link to some federal action, and because several species of anadromous fish have been listed as threatened or endangered, this law has pervasive impacts on Washington Port operations.*** The most obvious impact is to slow the issuance of federal permits while the Services review whatever action is being proposed.

The ESA provides powerful authority to citizens under lawsuit provisions. The ESA allows citizens to sue any entity that harms a threatened or endangered species, and also to sue the agencies that permitted such an action. The potential for these lawsuits elicit caution from both ports and federal agencies.

***The term “federal nexus” refers to the conditions that trigger a Section 7 ESA review.*** The federal nexus conditions are 1) when a federal permit or approval is required, 2) when federal funds are used, and 3) activities taken directly by a federal agency. A project with a federal nexus is required to undergo a consultation process with the Services in order to determine whether or not the project is likely to adversely affect a listed species. For example, federal ESA concurrence must be obtained before the ACOE

will issue a Section 404 permit, and coordination between the ACOE and the Services is part of the JARPA process.

The information required for an ESA evaluation must be prepared in the form of a Biological Evaluation (BE) or Biological Assessment (BA), which are used to assess project impacts to listed species. Typically, the federal agency responsible for issuing the federal permit or providing the federal funding engages with the Services through either informal or formal consultation procedures.

The Services can make three types of determinations based on the submitted BE or BA.

- *No effect* on species and habitat
- *Not likely to adversely affect* species and habitat
- *Likely to adversely affect* species and habitat

### Habitat Conservation Plans

Section 10 of the ESA allows the Services to provide an Incidental Take permit to project proponents who develop an approved Habitat Conservation Plan (HCP). An HCP is a landscape-level plan to achieve long-term biological and regulatory goals over a wide area for a specified length of time (i.e., 25 to 50 years). HCPs must specify impacts likely to result from the proposed taking, measures that will be taken to minimize and mitigate for those impacts, implementation monitoring and funding, an alternatives analysis, and any other necessary and appropriate requirements specified by the Services. Although the timber industry has successfully developed a few HCPs, not many HCPs have made it through this lengthy and complex process.

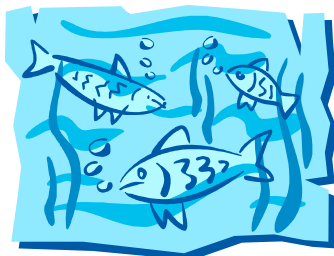
***If the project is determined likely to adversely affect species or habitat, the Services develop a Biological Opinion (BO) with an Incidental Take Statement. The BO may result in special conditions, project revisions, or project denial (e.g., a determination of jeopardy).*** Depending on the final consultation determination, the lead federal agency and the Services can deny the permit request or impose permit restrictions and conditions to mitigate the effects that the project will have on species and habitat.

***Section 4(d) of the ESA allows the Services to establish rules for threatened species that may or may not prohibit all forms of a take.*** In other words, the 4(d) Rule can limit the situations to which the take prohibitions apply. NMFS has approved 13 limits for Northwest listed fish species under the 4(d) Rule. One of these is for Municipal, Residential, Commercial and Industrial Development and Redevelopment (MRCI).

Under the MRCI limit, cities and counties have the opportunity to implement ESA compliance at a local level; however no jurisdiction in Washington has yet received a MRCI approval. Because of its potential flexibility for local governments, and ongoing state implementation of GMA and SMA, the MRCI limit is worth remembering.

### Washington Hydraulic Code

The State of Washington's main law for making sure that fish habitat remains healthy is the Hydraulic Project Approval (HPA), which is issued by the Washington Department of Fish and Wildlife (WDFW). ***This is a very old law that requires anyone who does work that uses, diverts, obstructs, or changes the natural flow or bed of any fresh water or salt water body to get an approval from the WDFW.*** The WDFW broadly interprets the law to apply to many activities, even those that occur out of the water, but these readings of the law are controversial.



For most development that occurs below the *ordinary high water line*, the WDFW will try to ensure that impacts to fish habitat are either minimized or mitigated. The WDFW also tries to make sure that anyone who makes an impact on fish habitat (such as a fill) mitigates this work in





the same general location and makes the new habitat of the same general type as the old habitat. This general policy is called *in-place and in-kind* mitigation.

A complete application package for an HPA must include general plans for the overall project, and complete plans and specifications of the work proposed within fresh or salt waters of the state. The application must also include complete plans and specifications for proposed measures to protect fish life. An HPA is typically required before a 404 permit or 401 water quality certification will be issued.

**Tribal Treaty Rights**

A unique and distinctive political relationship exists between the United States and the Native American Tribes that mandates that, *whenever actions may have the potential to significantly affect protected tribal resources, tribal rights, or Indian lands, the federal government must provide affected tribes an opportunity to participate in the decision-making process that will ensure these tribal interests are given due consideration in a manner consistent with tribal sovereign authority.*

All federal entities have a *trust responsibility* to protect, “to the highest degree of fiduciary standards,” trust lands (e.g., tribally owned lands held in trust by the federal government) and water and land habitats that support meaningful exercise of off-reservation “usual and accustomed” (U&A) hunting, fishing and gathering rights. Where *trust responsibility* applies, tribal interests cannot be subordinated to interests of the federal government absent overriding legal authority to do so.

A proposed action may affect *off-reservation treaty rights* – those use and occupancy rights reserved for Indians in a treaty, statute, judicial decision or executive order.

Consultation with Native American Tribes is conducted on a *government-to-government* basis, requiring a high degree of formality between federal entities and the individual tribes.

***It is extremely important to initiate dialogue regarding plans or projects with potentially affected tribes well before decisions affecting tribal interests are made.***

Meaningful consultation demands that the information obtained from tribes be given particular consideration. This can happen only if tribal input is solicited early enough in the planning process that it may genuinely influence the decisions to be made. Remember that all tribes have different ways of controlling property, harvesting natural resources, revering the environment and conducting consultations. Also remember that many tribes are small and have a very limited staff to work on the huge range of environmental, land use, natural resource and fisheries issues that face them.

**Habitat Protection, Restoration, Enhancement and Mitigation**

*The differences between habitat protection, restoration, enhancement and mitigation are important to understand because they fall under different regulatory authorities and qualify for different types of funding.*

**Habitat Protection** is generally the designation of a habitat area as “off limits” to development and occasionally recreational access.

**Habitat Restoration** generally refers to the complete restoration of a habitat to its undisturbed state. It can be used to refer to both quantity and quality of habitat.

**Habitat Enhancement** is typically an effort to improve the quality or function of an existing habitat. Enhancement projects are performed for the good of the environment and often have numerous funding sources that are potentially applicable depending upon the specifics of your project.

**Habitat Mitigation** is generally required when your project would result in habitat impacts. Any habitat work can be controversial, and specific definitions depend on who you ask and what their agendas are. It is not uncommon for any of the habitat improvement projects listed above to conflict with a different regulation or habitat project. For example, habitat is restricted near airports to prevent wildlife hazards, however habitat may be required for a variety of environmental approvals needed for airport expansion. In another situation, a project providing habitat mitigation for a fish species may try to inundate a former estuary that is now providing upland habitat for wildlife.

### Construction Approvals: Getting Ready to Mobilize

#### **NPDES and Stormwater Management**

The discharge of pollutants into the state's waters is regulated through the National Pollutant Discharge Elimination System (NPDES) program. Permits typically place limits on the quantity and concentration of pollutants that may be discharged. Ecology, as delegated by the USEPA, administers the NPDES program in order to meet requirements under the CWA.

NPDES permits are required for:

- Wastewater discharges to surface water from industrial facilities or municipal sewage treatment plants.
- Stormwater discharges from industrial facilities and from construction sites of five or more acres.
- Stormwater discharges from municipal separate storm sewer systems that serve populations of 100,000 or more. Beginning in December of 2002, all municipalities in urbanized areas will also need to obtain this permit.

There are several types of permits that cover industrial facility wastewater and stormwater discharges, discharges from construction activities, and log sort yards. **General permits cover a group of dischargers that have similar discharges, pollution control technology, and regulatory requirements. Individual permits are usually issued to individual permittees for a specific facility.** In addition to industrial categories listed in a general permit, permit coverage can be required of any facility discharging stormwater, regardless of industry type, that Ecology determines to be a significant contributor of pollutants to state waters.

**The permit places conditions on the discharge of stormwater to protect the beneficial uses of the receiving water.** Permit conditions include requiring that a Stormwater Pollution Prevention Plan (SWPPP, pronounced "swip") and Best Management Practices (BMPs) be implemented to eliminate or minimize the potential to contaminate stormwater. Treatment of stormwater before discharge may also be required if source control and good housekeeping BMPs do not adequately protect stormwater from pollutants. In most cases, permits have a 5-year life span, at which time the permittee must apply for a renewal of their NPDES permit. There are no application fees but annual permit fees do apply and vary depending on permit category. NPDES permits are subject to 30-day public comment periods, and can be appealed by the public to the Pollution Control Hearings Board.

**Many local jurisdictions have drainage and erosion control requirements, and require BMPs to eliminate or minimize the potential for surface water contamination from stormwater discharges.** Many of these regulations are contained within the jurisdiction's grading and filling permit conditions. Ports are advised to coordinate with local jurisdictions to ensure their projects comply with local stormwater management programs, which are often linked to and coordinated with Ecology's Section 401 water quality certification process.



## **Local Jurisdiction Construction Permits**

Washington State's Uniform Building Code regulates the way in which structures are designed and built. Each county and city administers permit programs to ensure that construction activities are in compliance with the local building code. ***These permits are typically applied for after all other permits and approvals have been obtained, as most have stipulations requiring that a project proponent have all other permits and approvals in hand.***

Although every local jurisdiction's permit office differs in their procedures for obtaining permits, many require submittal of construction plans and participation at a permit application meeting with permit office staff. An inspection, or series of inspections, timed with the construction phases are also usually required. Port staff should coordinate with the local permitting agencies to determine requirements for local permit submittals, meetings, and inspections.

## 4. Environmental Cleanup

### Introduction to Environmental Cleanup Regulations

During the 1980s, there was a great deal of concern about how companies were disposing of hazardous waste products. Sensational stories from places like Love Canal, New York led to a federal law that said that the entity who generates, transports or had practically anything to do with a hazardous waste retains responsibility for cleaning it up forever. This entity also potentially has 100% liability for cleaning up the mess, even if they only had a minor responsibility for generating or releasing it. They may also be liable even if the action they took was permitted under the regulatory framework of the day. This is called “strict, joint and several liability,” and it is not supposed to be fair. It is supposed to identify the parties that need to clean up historical pollution and scare everyone else so badly that they take better responsibility for safely disposing of their waste products.

Most environmental contamination is due to historic industrial and waste management practices. ***Environmental cleanup, or remediation, refers to reducing or removing contamination from soil, sediment, surface water, groundwater, and / or structures in order to control risks of exposure and harm to human health and the environment.*** Controlling or eliminating sources of contamination (e.g., source control) may also be a part of cleanup.

Environmental cleanup is an important consideration for ports because it can be triggered by three types of activities.

#### **What are Brownfields?**

*Brownfields are properties with a history of industrial or commercial use that are now underutilized or abandoned due to the presence of contamination left on-site. The opposite term, “greenfields”, is given to properties that have not been disturbed and are in use as either an agricultural or open space / natural resource. A number of agencies, including the USEPA and Ecology, recognize the environmental benefit to encouraging and facilitating redevelopment of brownfields, through tools such as brownfield grants, special consideration during remedy selection, and industrial cleanup standards. Brownfield redevelopment presents special opportunities as well as constraints.*

- Property redevelopment can trigger a cleanup, either at the property transfer or design / construction phases.
- Channel or harbor dredging can trigger a cleanup, based on the quality of sediments to be dredged and the need for dredged sediment disposal.
- Additionally, the state or federal government can require a cleanup because of the risk of exposure posed by the contamination.

The two terms used to describe the entities held legally liable for site contamination are Potentially Responsible Party (PRP) and Potentially Liable Party (PLP).

#### **The Comprehensive Environmental Response, Compensation and Liability Act**

The federal cleanup law usually only applies to very badly polluted sites, and it is either called *Federal Superfund* or is referred to by its official acronym: CERCLA (the Comprehensive Environmental Response, Compensation and Liability Act, pronounced “sir-kla”). It is administered by the USEPA. The National Priorities List (NPL) consists of over 1200 sites located throughout the United States. Superfund sites are both upland properties and in-water sediment contamination areas. The terms “Superfund site,” “CERCLA site,” and “NPL site” are used interchangeably.

Federal Superfund does not regulate sites where the only contaminant is oil or gasoline. Superfund does deal with petroleum cleanup when it is mixed with other contamination. Pure petroleum contamination sites are regulated by the state.

### ***The Model Toxics Control Act***

Citizen activists in Washington State successfully created a state version of the federal law in the late 1980s. This law uses the same liability standard as the federal law, but applies to more types of sites because the threshold for triggering cleanup is lower, and because it regulates oil and gasoline pollution. This state law, administered by Ecology, is either called *State Superfund*, or is referred to by its official name: Model Toxics Control Act (MTCA, pronounced “maht-ka”). This law has become an important tool for ports to use in cleaning up industrial sites.

## **CERCLA and MTCA: A Process**

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The procedures described in CERCLA and MTCA are similar and generally consist of the following components:

- **Reporting Requirements:** describes the circumstances when a report must be made concerning found contamination or an accidental release of contaminants.
- **Remedial Investigation (RI):** a comprehensive testing of the hydrological, geological, biological, and chemical conditions of the site.
- **Feasibility Study (FS):** a study of alternative cleanup options. The best option, based on a list of criteria, is called the preferred option.
- **Record of Decision / Consent Decree:** The legal document that describes what the various parties to the cleanup must do. The federal document is called a Record of Decision (ROD). The state version of a ROD is called a Consent Decree and Cleanup Action Plan (CD / CAP).
- **Operations Maintenance and Monitoring Plan (OMMP):** a long-term monitoring program intended to ensure the long-term effectiveness and integrity of the remedy.

A site listed under MTCA will undergo an Ecology-directed remedial action, with the liable parties footing the bill for consultant costs and Ecology staff time. MTCA also includes other administrative options, such as the *Voluntary Cleanup Program*, which provides assistance to property owners conducting a cleanup themselves. The USEPA directs remedial actions for sites on the National Priorities List.

Both CERCLA and MTCA contain cleanup standards, measured both by chemical concentration (a cleanup level) and a geographic point of compliance at which the cleanup level must be met. Refer to the Focus Box *Cleanup Standards: How Clean is Clean?* for more information on cleanup standards.

### **Cleanup Standards: How Clean is Clean?**

Because cleanup standards under MTCA consist of both numeric chemical criteria and a point of compliance, cleanup standards can be negotiated with Ecology based on site-specific and area-wide conditions. The negotiation of cleanup standards on an area-wide basis is a useful tool for Washington's Ports, facilitating ongoing industrial or commercial uses over an area contaminated by the co-mingling of pollutants from numerous historic activities. An area-wide cleanup standard can be applied if all property owners in the area are notified and agree to actions that will protect humans and the environment from any remaining contamination in the area. Port's can therefore lead efforts to negotiate cleanup standards that will be applicable also to non-port owned neighboring properties. All cleanup standards address future use of the property and potential exposure to human health and the environment. Upland cleanup standards are typically developed to protect people at the site for different use scenarios. A residential scenario sets standards that are very clean – assuming long residence times on the property, from childhood to old age, and unrestricted access to the soil for gardening and digging. An industrial scenario can allow dirty material to remain on-site, as long as it is contained from exposure to workers on the site, and the property deed restricts future use of the property. Cleanup standards for sediments in lakes, rivers and marine areas are developed to protect the health of people who eat shellfish and fish. These cleanup standards are usually much more stringent than cleanup standards for upland soils, because the in-water contaminants tend to magnify in importance through food chain effects.

### **Sediment Management Concepts**

If the sediments in your harbor or channel are contaminated, a complicated array of regulations applies at multiple levels of government.

*The Washington State Sediment Management Standards (SMS) allow Ecology to promulgate regulations that set standards to protect the waters of the state and regulate discharges of polluting substances.* These standards set procedural requirements and criteria to identify, screen, rank, prioritize, and clean up contaminated marine sediment sites.

### **Disposal of "Dirty" Dredged Material**

One of the most controversial issues in the cleanup of contaminated sediments is what to do with the contaminated dredged material. By definition, the material does not qualify for open-water disposal. Engineered solutions include a Confined Aquatic Disposal facility (or CAD), a nearshore fill (where a nearshore environment or slip is filled to make upland property), or some form of treatment or suspension technology. Other alternatives include uplands disposal in an approved landfill or not undertaking the dredging project and instead capping the contaminated sediments in place. A variety of federal, Tribal, state and local entities can become involved in permitting whichever disposal alternative is preferred. There is no clear answer to this situation, and the ultimate result must take into account community concerns as well as conflicting government authorities and goals.

Sediment contamination complicates maintenance dredging activities in several ways. For example, dredging that results in exposing contaminated sediments may require over-dredging and capping the sediments with clean materials. You may find yourself dredging a greater volume of material than you had originally thought was necessary to maintain the appropriate depth for the applicable use. Sediment contamination will also reduce options and increase costs for dredged sediment disposal. If you have a project that will involve removal of contaminated sediments, it is important to get multiple agencies involved early in the project.

### Potentially Liable / Responsible Party Activities and Considerations

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As described above, *strict, joint and several liability* assigns responsibility for site cleanup to public or private facility operators, and old and new property owners alike. ***Typically, there are several potentially liable or responsible parties who may be able to negotiate a reasonable allocation of the total liability among themselves.*** The PLPs or PRPs on more complex sites will frequently form a “Group.” Usually this PLP / PRP Group will combine resources and site information in order to hire environmental professionals to complete the necessary studies. Often, a PLP / PRP will be able to seek cost recovery from an insurance company for the costs directly associated with the cleanup.

### Natural Resource Damage Assessment

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Congress authorized the Natural Resource Damage Assessment (NRDA, pronounced “nerd-ah”) and Restoration Program to restore natural resources that have been injured by either long-term or catastrophic contamination. ***The U.S. Department of Interior, along with individual Native American Tribes, state natural resource agencies and other federal partners, act as natural resource Trustees.***

A cleanup project under either CERCLA or MTCA may be associated with a NRDA process and potential settlement terms. The process involves a Natural Resource Damage Assessment, conducted by the Trustees (typically acting cooperatively as a group), a determination of the amount and type of restored habitat needed, and negotiations to arrive at a settlement. “Payments” associated with NRD settlements can be in the form of money, land for habitat restoration, habitat restoration projects, or a combination of elements. ***A settlement may or may not involve all federal and state natural resource Trustees, and it may not involve all PRPs / PLPs.***

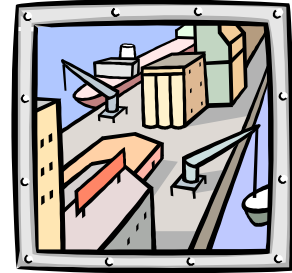
## 5. Operations

### Operational Permits: Keeping a Clean Shop

For operating facilities, compliance with environmental and land use laws and regulations requires:

- Making sure operations are in compliance with any requirements from earlier permit approvals.
- Receiving specific approvals and permits for operational activities.
- Auditing operations to ensure on-going compliance.

An overview of potentially applicable operational permits and issues is presented below. However, operational requirements vary substantially depending on the nature of the facility.



### Requirements from Project Approvals

*The most important environmental aspect of operations is ensuring that you meet the original requirements and conditions that were applied to your project during the planning, design, and construction phases.*

#### **Potential Troublespot**

Many port projects falter when they transition from the permit and design phase to construction and operations. The project moves from one group of staff to another, and with that transition the institutional knowledge of permit requirements and operational conditions is frequently lost. This is a significant troublespot for senior management. Almost all projects have routine reporting and community notification requirements to show the agencies and the community that you are fulfilling all the promises you made when you were out getting the permits and approvals. **It is extremely easy for port management to find themselves in trouble due to poor tracking and follow-through on permit requirements – careful attention here is critical!**

Every single one of the permits and approvals described in the previous chapters of this handbook have conditions and requirements that must be met during construction of the project. Some permits may have operational requirements, as well. Often there are Operations and Maintenance (O&M) Plans or monitoring and reporting requirements that define specific requirements that must be met on a monthly, quarterly, or annual basis during facility operations.

- SEPA / NEPA conditions often include operational requirements that address the environmental and community effects of traffic, noise, air emissions, light, and glare. Approval conditions can require monitoring of public accessibility, traffic conditions, etc.
- SEPA / NEPA and local land use permits often describe future actions that, when taken, would trigger additional requirements. Tracking of these actions and triggers can be extremely difficult.
- Many permits and approvals, from SEPA / NEPA through building permits and NPDES, place operational requirements on the management and monitoring of stormwater and stormwater effects.
- Permits requiring construction of habitat mitigation and planted areas require monitoring, caretaking, and repair of constructed features.
- Approvals for construction on brownfield sites or cleanup projects often require long-term inspection of constructed features, long-term (sometimes 30 years) monitoring of groundwater and surface water quality and timely reporting of results to agencies.



- This handbook does not provide details regarding air quality requirements. However, point-source air emissions, such as for a manufacturing facility, may operate under air quality permit conditions. Additionally, dust is sometimes regulated to control the spread of particulate pollution from operational and construction activities.

## Hazardous Materials Handling and Accidental Releases

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Many design phase permits have requirements and conditions that must be met during construction and operations. Additionally, there are environmental requirements for operations that govern hazardous materials handling and the problems that can arise from accidental releases. These primarily fall under the categories of stormwater management, hazardous materials handling regulations, and underground storage tank maintenance.

### **Stormwater Management**

*If something hazardous is spilled or leaks onto the ground, rainwater can carry it into the subsurface or off into adjacent drains, streams, and water bodies. This is why stormwater management is a key concern of operational facilities.*

Chapter 3 discusses the Ecology NPDES permitting program. There are operational requirements under the General Permit for Stormwater Associated with Industrial Activities. An engineer must prepare and update the SWPPP periodically to reflect results of inspections and / or changes in operations that affect stormwater.

Ports and port tenants develop in-house plans and programs with staff training in order to ensure that an immediate organized response can be made if a spill occurs or there is need to correct potential release situations. Detailed reporting and notification is required when spills enter a stormwater system or surface waters. All reporting agencies should be listed in the SWPPP. There can be heavy fines and penalties assessed for noncompliance and failure to notify the reporting agencies of a spill. NPDES permit requirements are often cross-referenced in local jurisdiction development permits.

In the event of an open-water spill or release, the Coast Guard must be notified. The Coast Guard is responsible for overseeing a marine cleanup and will work closely with the resource agencies regarding possible fisheries impacts and necessary restoration (possibly pursued under NRDA). There can be heavy fines and penalties assessed for noncompliance and failure to notify.

### **Hazardous Materials Handling**

#### **The Resource Conservation and Recovery Act (RCRA)**

*The Resource Conservation and Recovery Act (RCRA) is the cleanup regulation that applies to operating facilities.* RCRA, passed in 1974, gave USEPA the authority to control hazardous waste from the “cradle-to-grave.” This includes the generation, transportation, treatment, storage, and disposal of hazardous waste. RCRA also set forth a framework for the management of non-hazardous wastes. RCRA focuses only on active and future facilities.

To assist in tracking shipments of waste, USEPA requires Large Quantity Generators (LQGs), Small Quantity Generators (SQGs), transporters, and Treatment, Storage, and Disposal Facilities (TSDFs) to obtain USEPA identification numbers. LQGs and SQGs

must also prepare Uniform Hazardous Waste Manifests for each shipment of hazardous waste. These manifests are used to track movements of all regulated waste products. *RCRA also defines stringent requirements for owners and operators TSDFs, requiring tight security, recordkeeping, emergency planning, financial assurance, closure, and post closure care.*

### **Toxics Release Inventory / Community-Right-to-Know**

The Toxics Release Inventory (TRI), published by the USEPA, is a valuable source of information regarding toxic chemicals that are being used, manufactured, treated, transported, or released into the environment. *Businesses must report storage and use of certain extremely hazardous chemicals when in possession of those substances above certain established quantities.* Many port tenants might be subject to these reporting requirements, as well as requirements to post information about the properties of chemicals used on site. These postings are called Material Safety Data Sheets.

### **Underground Storage Tanks**

Underground Storage Tank (UST) Operational Management, part of RCRA, is regulated by Ecology in their UST program. Installing a tank or having a tank on-site triggers UST requirements. Ecology administers a tracking and permit program for USTs. *Ecology's UST regulations set performance standards, as well as requirements for notification, record keeping, and documentation of financial responsibility.*

The owner / operator of a UST must report suspected or confirmed release, spill and overflow, perform investigations, and report corrective action and findings. Although geared to groundwater protection, the UST program has controlled a common historical source of surface water and sediment contamination as well. A Spill Prevention, Control and Countermeasure Plan (SPCC Plan) is required for operation of a UST. There can be heavy fines and penalties assessed for noncompliance and failure to notify.

## **Requirements in Aquatic Leases and Port Management Agreements**

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In Washington State, many aquatic lands are owned by the state and managed by the State Department of Natural Resources (DNR). *State-owned aquatic lands include much of the Puget Sound and coastal shorelands as well as the beds and shores of lakes and rivers.* DNR manages the aquatic lands through harbor area designations and direct aquatic lands leasing. A lease with DNR may include restrictions and requirements that must be met throughout operations and the duration of the lease.

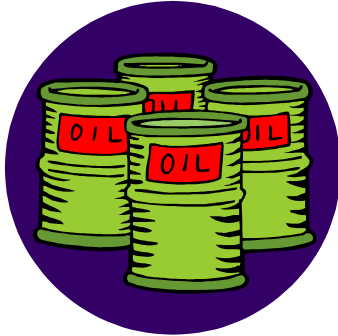
Port Management Agreements, described in Chapter 2, are agreements between DNR and a port district that authorize the port to manage some state-owned aquatic land consistent with state goals. PMAs may also contain requirements that must be met throughout the duration of the agreement. *The WPPA publishes a Port Management Agreement Handbook with detailed information regarding PMAs.*

## **Controlling Tenant Operations**

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Recall that environmental liability is assigned to property owners (including ports), regardless of direct responsibility for facility operations. Therefore, it is in a port's best interest to develop and implement programs for managing tenant operations. This can

involve compliance monitoring and environmental compliance programs for both tenant operations / facilities and for port operations / facilities.



***A simple, annual tenant audit program is one of the best environmental management tools that a port can implement. An audit program does not need to be fancy. Most good audit programs are just common sense combined with diligence.*** In many cases, a simple annual checklist and walk-through will be sufficient. A program might require BMPs for facility maintenance, equipment stockpiling, stormwater management, or other activities with the potential to contribute to big messes later. A program designed to monitor tenant compliance with environmental and land use laws might also require that the port be notified of spills or releases, or that copies of operational permits be filed with the port office.

***The worst thing a port can do is perform an audit and ignore the results.*** So, the first step of an audit, before you begin the audit, is to make a decision to follow-through on any findings. Otherwise you'll have an audit document filed that shows you knew about a problem and did nothing in response.

There are many audit and checklist models around, and they need to be tailored to the types of operations a port has. No one model works well for all ports. You might wish to review an audit program from a port with similar tenants and environmental setting.

### Glossary

**Alternatives Analysis:** This analysis, part of an Environmental Impact Statement or a Feasibility Study, describes and evaluates several alternatives for project design and/or environmental mitigation.

**Area-wide Cleanup Standards:** This term refers to cleanup standards negotiated with the applicable regulatory agency on an area-wide basis, facilitating ongoing industrial or commercial uses over an area contaminated by the co-mingling of pollutants from numerous historic activities.

**Beneficial Uses:** Beneficial uses of surface water or groundwater are defined in order to regulate water quality criteria for cleanup or discharge. Potential beneficial uses include: drinking; protection of shellfish; marine life; recreation; etc.

**Best Available Science:** The procedure for determining whether scientific information constitutes BAS is described in a role developed by the Washington State Department of Community, Trade, & Economic Development (Chapter 365-195 WAC).

**Categorically Exempt:** This term applies to categories of project actions that are exempted from NEPA / SEPA review.

**Clean Water Act:** This 1977 Act is the nation's primary water pollution control law.

**Commerce Clause:** This federal regulation controls commerce between states.

**Community Stakeholders:** Members of the community who have a vested interest in the process and outcome of project actions.

**Comp Plans:** County and city governments are required under the GMA to develop Comprehensive Land Use Plans, which identify how, where, and when growth is to be directed. Components of a Comp Plan include: critical areas designation, land use, housing, capital facilities, utilities, rural element, and transportation.

**Consultation:** Under the ESA, a project with a federal nexus (federal permit, federal funding) is required to undergo a consultation process with the US Fish & Wildlife Service and the National Marine Fisheries Service in order to determine whether or not the project is likely to adversely affect a listed species or its habitat.

**Critical Areas:** Land areas such as wetlands, aquifers, fish and wildlife habitat areas, aquifer recharge zones, geological hazards (i.e., steep slopes, seismically active zones), and frequently flooded areas.

**Delegated Authority:** State agencies enter into a contract with the federal government to implement a federal program on behalf of the federal government.

**Determination of Jeopardy:** Under ESA consultation, the Services will issue a determination of jeopardy for a project action that is deemed likely to adversely affect a listed species, resulting in project denial.

**Federal Consistency Determination:** Projects with a federal nexus must be evaluated for consistency with the federal Coastal Zone Management Act (CZMA). Ecology has been delegated authority to issue these determinations.

**Federal Nexus:** This term refers to the following conditions of a project action: 1) activities undertaken by a federal agency; 2) activities requiring federal approval; 3) activities which use federal funding.

**Growth Management Act:** The 1990 Washington State GMA established a state-wide planning framework and required many county and city governments to develop Comp Plans for managing growth.

**In-place and In-kind:** This type of habitat mitigation is created in the same general location and is of the same general type as the habitat that has been lost due to a project action.

**In-stream Flows:** This term describes seasonal water level variations in stream flow. In-stream flows are frequently a permitting issue related to habitat protection.

**Joint Aquatic Resource Permits Application:** Abbreviated "JARPA", a permit application process administered by the ACOE designed to coordinate the various federal, state, and local jurisdiction permits that are required for work within aquatic areas.

**Lead Agency:** This term describes the agency or local government that performs the NEPA or SEPA environmental impact review.

**Likely to Adversely Affect:** A type of consultation determination the Services may give a project action under ESA review, which deems the action likely to adversely affect a listed species or its habitat.

**National Environmental Policy Act:** The federal NEPA says that all levels of government must think about the environmental consequences of their actions before they take them, should avoid environmental consequences if they can, mitigate them if they can't, document all of their thinking, and let others comment on it.

**Natural Resource Damage Assessment:** Abbreviated "NRDA", Congress authorized this regulation to restore natural resources that have been injured by either long-term or catastrophic contamination.

**No Effect:** A type of consultation determination the Services may give a project action under ESA review, which deems that the action has no effect on a listed species or its habitat.

**Non-Point Source:** This term refers to pollution that is not associated with a specific discharge, such as surface water runoff from agricultural lands and forest lands and discharges from boats or other marine vessels.

**Not Likely to Adversely Affect:** A type of consultation determination the Services may give a project action under ESA review, which deems that the action is not likely to adversely affect a listed species or its habitat.

**Ordinary High Water Line:** This term refers to the water mark that WDFW uses to designate its geographical authority for the issuance of HPAs.

**Phased SEPA Review:** This term refers to performing SEPA review in phases (e.g., programmatic SEPA review for the master plan for the site, facility, or regional area and SEPA checklist or EIS for later project-specific design phases).

**Piecemealing:** This term refers to performing SEPA review in increments that do not allow for the evaluation of the cumulative impacts of a project. If a project is developed in phases, and one phase relies on a previous phase in order to be functional, a SEPA review must be conducted for all connected phases of the project. Piecemealing is not allowed.

**Point Source:** This term refers to pollution from known sources that can be identified and tracked at specific discharge points, such as discharges from wastewater treatment plants, combined sewer overflow systems, and permitted industrial discharges.

**Programmatic SEPA Review:** This term refers to performing SEPA review for a conceptual plan or master plan for a site, facility, or regional area.

**Public Involvement:** This term describes community outreach and involves soliciting and incorporating citizen input at the conceptual or early design stages of a project and maintaining community updates through implementation.

**Remediation:** This term describes environmental cleanup that reduces or removes contamination or threat associated with contamination from soil, sediment, surface water, groundwater, and / or structures in order to control risks of exposure and harm to human health and the environment.

**Services:** Shorthand term for US Fish & Wildlife Service and National Marine Fisheries Service.

**Shoreline Management Act:** The goal of the 1971 Washington State SMA is "to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines." Local governments with shorelines are required to develop a shoreline master program.

**Site-Specific Cleanup Standards:** This term refers to cleanup standards negotiated with the applicable regulatory agency for a specific facility or site.

**Source Control:** This term can be defined as the reduction of the volume and impact of discharges of pollution. Source control is a required component of site cleanup.

**State Environmental Policy Act:** The Washington State SEPA says that local governments must think about the environmental consequences of their actions before they take them, should avoid environmental consequences if they can, mitigate them if they can't, and document all of their thinking and let others comment on it.

**Stormwater Management:** This term refers to design and operational techniques designed to eliminate or minimize the adverse effects of added stormwater volume, and potential for surface water contamination from stormwater discharges.

**Strict, Joint and Several Liability:** This legal term means that all entities with partial responsibility for an action can be held liable for 100% of associated costs. Strict, joint and several liability is applicable to cleanup costs at multi-party contaminated sites.

**Take:** Under the ESA, this term means to harm, kill, destroy, or otherwise adversely affect a listed endangered or threatened species or its habitat.

**Threshold Determination:** Under NEPA / SEPA review, the lead agency will issue one of several types of determinations regarding the project's likelihood of causing adverse environmental impact.

**Usual and Accustomed:** Native American tribal treaty rights include exercise of off-reservation hunting, fishing and gathering privileges in geographical areas that have been historically utilized as such - their "usual and accustomed fishing grounds."

**Water-dependent Uses:** Land uses that depend on proximity to the water's edge.

**Water Resource Inventory Area:** Washington State has been divided into 62 watersheds. WRIA planning groups develop watershed management plans to address basin-wide water quantity, water quality, fish habitat, and in-stream flows.

**Water Rights:** This term refers to assigning the available water supply in a particular basin to the conflicting water needs. Washington's system is based on seniority.

**Wetland:** A geographical area that contains certain types and quantities of water, soil and vegetation. Designation of wetland areas is strictly regulated by both federal and state rules.



Index

303(d) List ..... 15
4(d) Rule..... 19
401 Certification..... 17, 21
404 Permit ..... 15, 16, 17, 19, 20
ACOE ..... 14, 15, 16, 17, 18, 32, 39, 45
Alternatives Analysis..... 8, 31
Application for a Permit to Utilize Open-Water Disposal Site..... 17
Area-wide ..... 25, 31
BA ..... 19, 39
BAS ..... 10, 39
BE..... 19, 39
Beneficial Use ..... 10, 31
Best Available Science ..... 10, 31, 39
Best Management Practices..... 21, 39
Biological Assessment..... 19, 39
Biological Evaluation ..... 19, 39
Biological Opinion ..... 19, 39
Biological Wetland..... 16
BMPs ..... 21, 30, 33, 39
BO ..... 19, 39
Brownfields ..... 23
CAP ..... 24, 39
Categorically Exempt..... 7, 31
CD ..... 24, 39
CERCLA ..... 23, 24, 26, 39
Clean Water Act..... 15, 18, 31, 39, 43
Cleanup Action Plan..... 24, 39
Cleanup Standards..... 25
Coastal Zone Management Act ..... 6, 7, 14, 18, 39, 43
Commerce Clause..... 2, 31
Community Stakeholders ..... 5, 31
Comp Plans..... 6, 9, 12, 14, 31, 32
Comprehensive Environmental Response, Compensation and Liability Act..... 23, 39, 43
Comprehensive Scheme ..... 7
Conditional Use..... 14
Consent Decree ..... 24, 39
Consultation ..... 18, 19, 20, 31
Critical Areas ..... 6, 10, 14, 31
Critical Areas Ordinances ..... 9, 10
CWA ..... 15, 16, 18, 21, 39
CZMA ..... 7, 14, 18, 39
Delegated Authority ..... 3, 14, 18, 31, 32
Determination of Jeopardy ..... 19, 31
Determination of Nonsignificance ..... 8, 39
Determination of Significance ..... 8, 39
DMMO..... 17, 39, 45
DMMP ..... 17, 39
DNR ..... 17, 29, 39, 45
DNS..... 8, 39
Dredged Materials Management Office.... 17, 39
Dredged Materials Management Program ..... 17, 39
DS..... 8, 39
EA ..... 7
Ecology ...6, 9, 10, 14, 15, 17, 18, 21, 24, 25, 28, 29, 32, 45
EIS..... 7, 8, 11, 33, 39
Endangered Species Act..... 11, 18, 39, 43
Environmental Assessment ..... 7
Environmental Checklist..... 8
Environmental Impact Statement ..... 7, 8, 39
ESA ..... 11, 16, 18, 19, 39
Facility Master Planning ..... 9, 12
Feasibility Study..... 24, 39
Federal Consistency Determination .... 14, 18, 32
Federal Nexus..... 18, 32
Finding of No Significant Impact..... 7, 39
FONSI ..... 7, 39
FS ..... 24, 39
GMA ..... 3, 6, 9, 19, 32, 39
Growth Management Act..... 3, 6, 9, 32, 39, 43
Growth Management Hearings Boards..... 10
Habitat Conservation Plan..... 19





Habitat Enhancement.....	20	Not Likely to Adversely Affect.....	19, 32
Habitat Mitigation .....	20	NPDES .....	11, 15, 21, 27, 28, 40
Habitat Protection.....	20	NPL .....	23, 40
Habitat Restoration.....	20	NRDA .....	26, 28, 40
Hazardous Waste.....	23, 28, 29	NWP.....	16, 40
HPA.....	19, 20, 39	O&M.....	27
Hydraulic Project Approval.....	16, 19, 39	OMMP .....	24, 40
Incidental Take .....	19	Operations and Maintenance.....	27
In-place and In-kind .....	20, 32	Operations Maintenance and Monitoring Plan.....	24, 40
In-stream Flows.....	10, 11, 32, 34	Ordinary High Water Line .....	19, 32
JARPA.....	16, 17, 19, 39	Phased SEPA Review .....	8, 12, 13, 33
Joint Aquatic Resource Permits		Piecemealing .....	8, 33
Application .....	16, 32, 39	PLP.....	23, 26, 40
Jurisdictional Wetland .....	16	PMA.....	12, 40
Large Quantity Generators .....	28, 39	Point Source .....	15, 33
Lead Agency.....	7, 8, 32	Pollution Control Hearings Board.....	21
Likely to Adversely Affect.....	19, 32	Port Comprehensive Planning.....	7, 11, 43
Master Planning.....	5	Port Management Agreement.....	12, 29, 40, 43
Material Safety Data Sheets .....	29	Potentially Liable Party.....	23, 40
MDNS .....	8, 12, 39	Potentially Responsible Party.....	23, 40
Mitigation .....	8, 11, 13, 20, 27	Practicable Alternative .....	16
Model Toxics Control Act.....	24, 40, 43	Preferred Option.....	24
MRCI.....	19, 39	Programmatic SEPA Review .....	8, 33
MTCA .....	24, 26, 40	PRP.....	23, 26, 40
Municipal, Residential, Commercial and Industrial Development and Redevelopment.....	19, 39	PSDDA.....	17, 40
National Environmental Policy Act.....	5, 32, 40, 43	Public Interest Review .....	16
National Marine Fisheries Service .....	18, 40	Public Involvement .....	3, 6, 7, 9, 14, 33
National Pollution Discharge Elimination System .....	11, 40	Puget Sound Dredged Disposal Analysis..	17, 40
National Priority List.....	23, 24, 40	RCRA.....	28, 29, 40
Nationwide Permit.....	16, 40	Record of Decision.....	24, 40
Natural Resource Damage Assessment .....	26, 32, 40	Regulated Wetland .....	16
Natural Resource Trustees.....	26	Remedial Investigation.....	24, 40
NEPA.....	5, 6, 7, 8, 13, 15, 27, 32, 40	Remediation .....	23, 33
NMFS .....	18, 19, 40, 45	Resource Conservation and Recovery Act.....	28, 40, 43
No Effect .....	19, 32	RI.....	24, 40
Non-Point Source .....	15, 32	ROD .....	24, 40
		Scheme of Harbor Area Improvements.....	11
		Section 4(d).....	19



## WPPA Environmental & Land Use Handbook

Section 7 .....	18	Treatment, Storage, and Disposal	
Sediment Management Standards .....	17, 25, 40	Facilities .....	28, 40
SEPA .....	5, 6, 7, 8, 11, 12, 13, 14, 15, 27, 32, 40	Tribal Rights.....	20
Services .....	16, 18, 19, 31, 32, 33	U&A.....	20
Shoreline Management Act.....	3, 6, 9, 33, 40, 43	U.S. Army Corps of Engineers .....	14
Shoreline Master Program.....	9, 33, 40	U.S. Fish and Wildlife Service.....	18
Shorelines Hearings Board.....	10, 14	Underground Storage Tank.....	29, 40
Site-Specific .....	25, 33	Uniform Building Code.....	22
SMA .....	3, 6, 7, 9, 14, 19, 33, 40	USEPA .....	15, 21, 23, 24, 28, 29, 40, 45
Small Quantity Generators .....	28, 40	USFWS .....	18, 40, 45
SMP .....	9, 12, 40	UST .....	29, 40
SMS .....	17, 25, 40	Usual and Accustomed.....	20, 34
Source Control.....	15, 33	Variance .....	14
Spill Prevention, Control and Countermeasure Plan .....	29, 40	Voluntary Cleanup Program.....	24
State Environmental Policy Act .....	5, 33, 40, 43	Washington Department of Fish and Wildlife .....	19, 41
Stormwater .....	11, 21, 27, 28, 30, 33, 40	Washington Hydraulic Code .....	3, 19, 43
Stormwater Management.....	28, 33	Washington Public Ports Association ...	1, 41, 45
Stormwater Pollution Prevention Plan .....	21, 40	Water Quality .....	11
Strict, Joint and Several Liability .....	23, 26, 33	Water Resource Inventory Area.....	10, 34, 41
Substantial Development.....	9, 14	Water Rights.....	10, 11, 34
Superfund .....	23, 24	Water-dependent Uses .....	6, 9, 12, 34
SWPPP .....	21, 28, 40	Watershed Management Act .....	10, 43
Take .....	19, 34	WDFW .....	19, 32, 41, 45
Tenant Audit.....	30	Wetland .....	6, 9, 10, 16, 31, 34
Threshold Determination.....	8, 34	Wetland Delineation.....	16
TMDL.....	11, 15, 40	Wetland Rating System.....	16
Total Maximum Daily Load.....	11, 15, 40	WPPA.....	1, 12, 29, 41, 45
Toxics Release Inventory .....	29, 40	WRIA .....	10, 11, 34, 41, 45



**Appendix A  
List of Abbreviations**

<b>Abbreviation</b>	<b>Definition</b>
ACOE	United States Army Corps of Engineers
BA	Biological Assessment
BAS	Best Available Science
BE	Biological Evaluation
BMPs	Best Management Practices
BO	Biological Opinion
CAD	Confined Aquatic Disposal
CAP	Cleanup Action Plan
CD	Consent Decree
CERCLA	Comprehensive Environmental Response, Compensation and Liability Act
CWA	Clean Water Act
CZM	Coast Zone Management
CZMA	Coastal Zone Management Act
DMMO	Dredged Materials Management Office
DMMP	Dredged Materials Management Program
DNR	Department of Natural Resources
DNS	Determination of Nonsignificance
DS	Determination of Significance
EIS	Environmental Impact Statement
ESA	Endangered Species Act
FONSI	Finding of No Significant Impact
FS	Feasibility Study
GMA	Growth Management Act
HPA	Hydraulic Project Approval
JARPA	Joint Aquatic Resource Permits Application
LQGs	Large Quantity Generators
MDNS	Mitigated Determination of Nonsignificance
MRCI	Municipal, Residential, Commercial and Industrial Development and Redevelopment



<b>Abbreviation</b>	<b>Definition</b>
MTCA	Model Toxics Control Act
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
NOAA	National Oceanic Atmospheric Administration
NPDES	National Pollution Discharge Elimination System
NPL	National Priority List
NRDA	Natural Resource Damage Assessment
NWP	Nationwide Permit
OMMP	Operations Maintenance and Monitoring Plan
PLP	Potentially Liable Party
PMA	Port Management Agreement
PRP	Potentially Responsible Party
PSDDA	Puget Sound Dredged Disposal Analysis
RCRA	Resource Conservation and Recovery Act
RCW	Revised Code of Washington
RI	Remedial Investigation
ROD	Record of Decision
SEPA	State Environmental Policy Act
SMA	Shoreline Management Act
SMARM	Sediment Management Annual Review Meeting
SMP	Shoreline Master Program
SMS	Sediment Management Standards
SPCC Plan	Spill Prevention, Control and Countermeasure Plan
SQGs	Small Quantity Generators
SWPPP	Stormwater Pollution Prevention Plan
TMDL	Total Maximum Daily Load
TRI	Toxics Release Inventory
TSDFs	Treatment, Storage and Disposal Facilities
USEPA	United States Environmental Protection Agency
USFWS	United States Fisheries and Wildlife Service
UST	Underground Storage Tank



## *WPPA Environmental & Land Use Handbook*

<b>Abbreviation</b>	<b>Definition</b>
WAC	Washington Administrative Code
WDFW	Washington Department of Fish and Wildlife
WPPA	Washington Public Ports Association
WRIA	Water Resource Inventory Area





## **Appendix B List of Federal and State Laws**

Primary references to federal and state laws discussed in this handbook are listed below. Note that more than one WAC chapter may relate to any RCW.

Growth Management Act, Chapter 365-195 WAC, Chapter 36.70A RCW

Shoreline Management Act, Chapter 90.58 RCW, Chapters 173-18 and 173-26 WAC

Coastal Zone Management Act, 33 U.S.C. 1451-1465, Chapters 173-18 and 173-26 WAC, Chapter 90.58.195 RCW

Watershed Management Act, Chapter 90.82 RCW, Chapter 173-500 WAC

Port Comprehensive Planning, Chapter 53.20 RCW, Chapter 173-500 WAC

National Environmental Policy Act, 42 U.S.C. 4321-4347

State Environmental Policy Act, Chapter 43.21C RCW, Chapter 197-11 WAC

State Aquatic Lease or Port Management Agreement, Chapters 79.90 and 79.92 RCW, Chapter 332-30 WAC

Clean Water Act, 33 U.S.C. ss/1251 et seq. (1977)

Endangered Species Act, 7 U.S.C. 136;16 U.S.C. 460 et seq. (1973)

Washington Hydraulic Code, Chapter 75.20 RCW, Chapter 220-110 WAC

Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. s/s 9601 et seq. (1980)

Model Toxics Control Act, Chapter 70.105D RCW, Chapter 173-340 WAC

Resource Conservation and Recovery Act, 42 U.S.C. s/s 321 et seq. (1976)







### Appendix C List of Resources for Additional Information

Comprehensive Plan Guidelines for Washington Public Ports, Washington Public Ports Association  
Port Management Agreement Handbook, Washington Public Ports Association

ACOE website: <http://www.usace.army.mil/>

ACOE DMMO website: <http://www.nws.usace.army.mil/dmмо/homepage.htm>

DNR website: <http://www.wa.gov/dnr/>

Ecology website: <http://www.ecy.wa.gov/>

Washington State Native American Tribes website: <http://www.kstrom.net/isk/maps/wa/wamap.html#Top>

NMFS website: <http://www.nmfs.noaa.gov/index.html>

USEPA website: <http://www.epa.gov/>

USFWS website: <http://www.fws.gov/>

WPPA website: <http://www.washingtonports.org/>

WDFW website: <http://www.wa.gov/wdfw/>

WRIA planning website: [www.ecy.wa.gov/programs/eap/wrias/index.html](http://www.ecy.wa.gov/programs/eap/wrias/index.html)

