



Local Shoreline Master Program Updates

A Manual for Ports

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The WPPA is solely responsible for the accuracy of the information contained in this handbook.

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Introduction

If your port includes waterfront facilities, then the future of these facilities is decided under your city or county Shoreline Master Program. Each of these plans will be updated between now and 2014. Your port’s adoption schedule is listed below.

This manual is designed to help your port through this process. If you use this manual, you will be able to:

- ❑ Understand why your city or county is updating its shoreline plan
- ❑ Understand what the law requires local governments to do
- ❑ Know what your port needs to do to participate effectively in this process
- ❑ Know what process your city or county will go through in amending its plan
- ❑ Understand what protections the law gives your port, and how you can use these protections to protect your port’s interests

Shoreline Master Program Update schedule:

Early adopters

- December 1, **2005**, for the city of Port Townsend, the city of Bellingham, the city of Everett, Snohomish county, and Whatcom county;
- December 1, **2009**, for King county and the cities within King county greater in population than ten thousand;

Synchronized with GMA amendment schedule

Except for the early adopters (*above*), and volunteers (*below*), updated SMPs are due on or before December 1 of the following years:

- **2011**, for Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties and the cities within those counties;

- **2012**, for Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and Skamania counties and the cities within those counties;
- **2013**, for Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and Yakima counties and the cities within those counties; and
- **2014**, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

Voluntary updates

Local governments may develop or amend master programs prior to the dates es-

tablished in the statute. Local jurisdictions may want to update SMPs before the required dates if:

- the SMP no longer applies to changed physical, economic or social circumstances;
- the SMP is not in tune with local or state wide environmental standards or procedures;
- new planning issues or civic objectives arise that can be addressed through shoreline management;
- the community desires to integrate shoreline master programs with GMA comprehensive plans and development regulations right away; or
- if the jurisdiction needs to encompass significant new annexed territory into SMA jurisdiction.

Source: Dept. of Ecology website

Most cities and all counties are embarking on a complete re-write of their "Shoreline Master Programs". These plans are required by state law, and they guide what types of shoreline development are allowed in what places, and under what conditions.

The purpose of this guidance document is to help ports participate effectively in the development of these revised local shoreline master programs. The Department of Ecology adopted new regulations in 2003 that will make many changes to "business as usual" on the shorelines, and every port with shoreline property or facilities will need to participate in the local discussions that will lead to new local shoreline land use planning programs.

The key state shorelines management laws and regulations discussed in this manual are:

Chapter 90.58 RCW - Shoreline Management Act of 1971

Chapter 173-26 WAC - Shoreline Master Program Guidelines

Get copies of state laws and rules at: <http://www1.leg.wa.gov/LawsAndAgencyRules/>

When the Shoreline Management Act was passed in the early 1970's, ports were included as a "preferred use" on the shorelines. This means that water-dependent port facilities and activities are allowed, and in some cases even encouraged, under the law. There are always conditions and case-specific issues, however, and this is why port staff must be involved in the Shoreline Plan amendments.

The goal of this manual is to assure that each shoreline community's SMP update unfolds in a manner that accounts for the local port's needs and mission. The port has an important role in articulating and preserving policies and regulations protecting the public navigation, economic development, and water-dependent transportation. These concerns need to be included in the new local updates.

A brief history of how we got here

The SMA of 1971

The Shoreline Management Act of 1971 (SMA) established a uniform set of rules governing the appropriate uses and development of shoreline areas throughout the state. The Act enunciates a state policy of "...management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses." (RCW 90.58.020)

The Act establishes three broad state policies for shorelines:

- Encouragement of water-dependent uses;
- Protection of shoreline resources;
- Promotion of public access

The SMA establishes a policy that preference be given to uses that are dependent on a shoreline location, with priority given to single family residences, ports, recreational uses, and water dependent commercial and industrial uses.

The Act creates a partnership between state and local governments in regulating shoreline areas, which include all shoreline areas and waters within 200 feet of the state's marine waters, streams and rivers of 20 cubic feet per second or more, lakes larger than 20 acres, and associated wetlands (see RCW 90. 58.030(2)).

The mandates and policies of the Act are implemented via state-mandated, locally administered shoreline master programs (SMPs), which define local policies for shoreline uses and development and establish the basis for local administration and enforcement of shoreline permitting programs. The Department of Ecology provides technical assistance, and reviews local shorelines programs and permit decisions.

Adoption of the new Ecology shoreline guidelines

Beginning in 1995, the Department of Ecology began working on major update of the state shoreline master program guidelines, which are the regulations that local governments must follow in writing their shoreline programs. In the midst of this effort, the Puget Sound Chinook salmon and coastal Bull Trout were listed as threatened under the federal Endangered Species Act. Draft shoreline master program rules were redirected to address salmon protection as part of an overall state government response to the listings. These salmon protection efforts resulted in substantial changes to the new guidelines including the "no net loss" of ecological functions policy. After a long and contentious adoption process, which included three sets of draft rules, extensive public comment, litigation, and mediation, Ecology adopted a new set of shoreline master program guidelines, WAC 173-26, in late 2003.

Some basic terminology related to SMPs:

Shoreline Master Program (SMP): The plan and related use regulations used by local governments to administer and enforce shoreline permits.

Shoreline jurisdiction: the term describing all of the geographic areas covered by the SMA, and regulated under the SMP. Generally speaking, these are the areas including and within 200' landward of waters of the state.

Shoreline environment designation: the categories of shorelines (e.g. "urban", "conservancy", "natural") defined within SMPs in order to provide a uniform basis for applying policies and regulations within different shoreline areas.

Shoreline uses: Specific categories for uses of the shoreline as defined in the SMA. These include agriculture, aquaculture, boating facilities, commercial development, forest practices, industry, in-stream structures, mining, recreational development, residential development, transportation and parking, and utilities.

Master program elements: Usually included in the goals sections, these establish the intent behind policies and regulations in the SMP. The SMA directs that SMPs should include elements addressing economic development, public access, recreation, circulation, "use" (to consider shoreline areas for housing, business, industry, transportation, agriculture, recreation, etc.), conservation, historical and cultural resources, flood damages, and any other element deemed appropriate or necessary under the policies of the SMA. See RCW 90.58.100 (2).

These new guidelines represent the first major revision of the master program guidelines in 28 years. They are lengthy and complex, and include many new policies and requirements, with an increased emphasis on protection and restoration of shoreline natural resources and functions.

While many elements of existing SMPs will be easily updated, there are extensive and detailed new requirements for inventories, restoration plans, and monitoring and enforcement of exempted activities.

What will be new and different about the SMP updates?

Many of the old parts of the SMP will remain in the updated shoreline master programs. However, most local governments will also make long overdue revisions to reflect changes in local conditions, and update environmental information, local policies, and relationships to zoning, comprehensive plans and critical areas ordinances.

The new shoreline guidelines establish several new governing principles. See WAC 173-26-186. The most controversial (and the most difficult to interpret and implement) change is a group of related principles intended to more effectively implement the SMA's goal of protection of the shoreline environment. Local governments must develop policies and regulations that:

- Achieve "no net loss" of ecological functions
- Provide for the *restoration* of impaired ecological functions;
- And, address adverse *cumulative impacts*.

The new rules require that, in addition to updating their shoreline environment designations, goals, policies, and regulations, local governments must include a substantial number of new provisions, most related to the new governing principles for environmental resource protection. These include:

- An *inventory* of existing shoreline data and materials;
- A *characterization* of shoreline ecosystems and processes;
- A *use analysis* that estimates future demand for shore-

Existing local SMPs developed under the former Ecology rules typically contained a basic framework:

- A statement of *goals* of the SMP;
- *General policies and regulations* covering the entire shoreline jurisdiction;
- Policies and regulations for
 - *specific environment designations,*
 - *shoreline uses, and*
 - *shoreline modification activities;*
- *Administrative procedures* (permit applications and process, appeals, enforcement, etc).

"No net loss of ecological functions" is established as a guiding policy in the new SMP guidelines. The intent is to assure that the environmental impacts of establishing shoreline uses or conducting development are identified and mitigated with a final result that is no worse than maintaining the current level of resource productivity. The shoreline inventory and characterization required in new SMPs establishes the base from which compliance with "no net loss" is to be measured.

For a more detailed discussion, see: "What Does No Net Loss Mean in the 2003 SMA Guidelines?" Ecology publication #04-06-020.

line space and identifies potential conflicts

- A *restoration plan* that identifies degraded areas and potential restoration projects, and establishes a timeline for implementation; and,
- A strategy to mitigate *cumulative impacts* to achieve the "no net loss" policy.

Why this won't be easy:

This debate will be about tradeoffs.

The SMA recognizes that there are competing uses and values for shorelines of the state. Shorelines are valuable both for their environmental resources and for their human and economic uses as industrial, commercial, navigation, and recreational areas. As stated in the new guidelines: "*The policy goals for the management of shoreline harbor potential for conflict.*" WAC 173-26-176 (2).

There has been a progressive loss of many types of shoreline habitat under existing SMPs. At the same time, SMP goals and policies must allow and accommodate all reasonable and appropriate shoreline uses as mandated by the SMA. Population growth and economic expansion mean that there are ever increasing pressures on shoreline areas for human uses.

This means that the Department of Ecology and local governments must find a balance that allows use and development that is appropriate and necessary to proceed, while assuring that ecological functions are preserved over time. The increased emphasis on preservation and restoration of shoreline ecological resources in the new guidelines intensifies the conflict in accommodating shoreline uses and activities.

Local governments have significant discretion under the guidelines to tailor local SMPs to fit local conditions, policies, and government procedures. There is considerable uncertainty about how to write new policies and regulations that meet the requirements of the new guidelines. Depending on local conditions such as degree of urbanization and existing shoreline uses, opportunities to address restoration of ecological functions and mitigation of cumulative impacts may be very limited.

How SMPs are adopted:

Every local government with a shoreline master plan must update by 2012. The revised SMP is approved at the local level (including SEPA compliance) and then submitted to Ecology for a formal review for completeness under the new SMP guidelines and the SMA.

Ecology can adopt the SMP as is or return it to the local entity with suggestions for changes.

A 30-day public comment period and preparation of responses are part of the adoption process. **All master program amendments must be reviewed and adopted by Ecology in order to become effective.**

Check the Ecology website for the schedule of adoption for your jurisdiction, and for details about local SMP adoption requirements.

http://www.ecy.wa.gov/programs/sea/sma/st_guide/SMP/index.html

This adoption schedule is printed on page 1 of this manual.

Port participation in SMP updates

Local governments are required to involve the public and federal, state, and local agencies, including specifically local ports, as well as tribes and any other agencies with jurisdiction. In preparing their local inventory of shoreline conditions, they are also to gather all pertinent and available information from state agencies, tribes, watershed planning groups, port districts, and other appropriate sources.

How can you participate effectively in the development of your local SMP?

1. Dedicate resources: Local adoption of an SMP update will typically take six months to a year, and in some cases, longer. *Request that a port representative be assigned to the SMP review committee.* If possible, an executive or elected port official should consider volunteering to be on the review committee to communicate the importance of shoreline management issues to the local jurisdiction. You may need to dedicate staff and/or consultant resources for detailed review of proposed changes and participation in public meetings.
2. Be prepared: Review your facilities and conditions. Verify that the shoreline inventory and use analysis are correct.
3. Anticipate issues and develop allies. Facilitate communication of key issues to affected port constituents, qualified experts, and waterfront property owners, and encourage their participation as appropriate.
4. Share information with your local planners: Share information regarding your properties and planned projects, biological surveys and conditions, mitigation and restoration plans, and port comprehensive scheme.
5. Clearly state your waterfront vision: How do your plans fit with the SMP? How can you accommodate the SMP goals without taking on more than your fair share of local restoration and cumulative impact mitigation? Are future development and mitigation options preserved? How can you cooperate with the local government to accommodate mutual goals of economic development and environmental restoration?
6. Defend the unique characteristics of the urban waterfront. Educate advisory committee participants about requirements of operations, security, and navigation, as

Resources for ports participating in SMP updates:

- Ecology web pages guidance: Ecology has assembled a series of web pages with excellent information about the SMP adoption process, schedules and deadlines, policy guidance, checklists for SMP content, and more. See http://www.ecy.wa.gov/programs/sea/sma/st_guide/SMP/index.html
- WPPA staff, environmental committee, and conferences
- Washington sister ports: staff and experience; consultant referrals
- Local waterfront industrial and commercial operators
- Consultants
- Attorneys

well as port environmental stewardship, mitigation, and restoration within working commercial and recreational facilities.

7. Maintain good relationships with your local shoreline planning staff. You'll return soon requesting a permit approval from them. However, don't hesitate to ask lots of questions, require firm regulatory bases for proposed changes, demand science, and call for the reasoning behind suggested policies and regulations.

As part of the shoreline use analysis, local governments are required to work with the Department of Natural Resources and their local port to ensure consistency with harbor area statutes and regulations, and to address port plans. Use of special area plans, including port development master plans, is encouraged as a way to address complex shoreline issues.

Ports are special (but you knew that):

Ports are a *preferred use* of the shorelines within the SMA. As you comment and participate in development of the new SMP, don't be shy about pointing out that ports are not the same as private waterfront property owners or other typical project proponents.

As you begin the shoreline plan update, remember that ports have a special status for many of their facilities and properties. This is because:

They are publicly owned and operated municipal corporations authorized by state law to construct, operate, and maintain harbor improvements within their districts.

They have comprehensive planning powers for their facilities and improvements under RCW 53.20, and directly manage state aquatic lands under port management agreements under RCW 79.90.

In many communities, the public port is a substantial provider of economic renewal, development opportunity, and family wage jobs.

In recent years, ports have been leaders in implementing important environmental restoration, cleanup, and habitat restoration efforts in local harbors.

Port Management Agreements

Some ports manage portions of state-owned aquatic lands under a Port Management Agreement (or PMA). This agreement is a contract between the port and the Department of Natural Resources that allows the port to manage some properties on behalf of the state, with conditions. If you have a PMA, learn its boundaries before you begin the shoreline planning process. Refer to the *WPPA Port Management Agreement Handbook* for details on these unique properties.

Ports are recognized as a priority shoreline use in the SMA.

The SMA's enunciation of state shoreline management policy, RCW 98.58.020, also provides "...for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses...while allowing for limited reduction of the rights of the public in the navigable waters."

Ports have considerable expertise and experience with shoreline development planning, permitting, and development, and have much to gain or lose from the comprehensive amendments now being required for local SMPs by Ecology.

Considering all this, as this shoreline planning process proceeds, it will help you to:

- Read your current comprehensive plan,
- Study the local jurisdiction's comp plan for areas of potential conflict with port plans and operations.
- Think about your port's future project development plans (including dredging needs),
- Consider potential habitat mitigation areas that the port might need,
- Think about potential cleanup areas,
- Develop plans for incorporating shoreline public access into the port's developments.

Things to Watch for:

- *A tendency for increased complexity in the rules:* The complexity of the requirements and the desire to use existing documents increases the risk for internal inconsistencies, particularly in development regulations.
- *Potential port development and project options that could be precluded by new regulatory language.* The devil is often in the details!
- *New or inconsistent terminology:* For example, use of ecological "value" (not defined in the WAC) instead of "function". Or use of alternative terms for "mitigation". Stick to the rules that have been adopted by the state.
- *Overly prescriptive policies and regulations* such as limits on dock dimensions, or requirements for use of certain construction materials and methods.
- *Incomplete, incorrect, and/or redundant incorporation of other regulatory programs* affecting port developments: Local planners may have an incomplete understanding of state and federal permit programs that apply to port projects and shoreline areas. Be aware of a tendency to try to duplicate specific requirements from other programs, such as dredged material testing or salmonid habitat impact analysis. Encourage your local planner to leave these in the hands of agencies with long-standing regulatory authority and expertise.

- *Use of draft SMPs from other cities or counties:* Because of the administrative burden placed on local governments by preparation of the new SMPs, some smaller jurisdictions may look for draft SMPs from other jurisdictions.
- *The SMP is not the CAO!* Local planners are often better versed in the requirements for critical areas planning under the state Growth Management Act than in the shoreline management rules. Beware a tendency to confuse SMP and CAO requirements, and to include CAO language related to best available science, buffers, or setbacks. This issue is described more on pages 13 and 14.

Helpful Sections of the Regulations

- *Public rights to navigation and corollary uses are protected:* WAC 173-26-176(2) and (3)
- *Harbor areas and other areas with "reasonable commercial navigational accessibility" within shorelines of statewide significance are reserved for water-dependent and associated water-related uses.* WAC 173-201-201(2)(d).
- *Ports are invited and encouraged to participate in local SMP planning.* WAC 173-26-201(3)(b)
- *Local governments must work with ports to ensure consistency with harbor area statutes and regulations, address port plans, and identify measures and strategies to encourage appropriate uses of these areas.* WAC 173-26-201(3)(d)(ii)
- *Special area planning, including port development master planning, is encouraged.* WAC 173-26-201(d)(ix)
- *First priority within "high intensity" shoreline environment designations should be given to water-dependent uses.* WAC 173-26-211(5)(d)
- *Port public access plans may be incorporated into SMPs, and can justify more flexible off-site or special area public access provisions.* WAC 173-26-221(4)(c) and (d)(ii)
- *Dredging should be allowed "where necessary for assuring safe and efficient accommodation for existing navigational uses" and when impacts are mitigated. Provisions for beneficial reuse of dredged materials should be included in SMPs. SMPs must provide for implementation of regional dredged material management plans (such as the Puget Sound DMMP).* WAC 173-26-231(3)(f)
- *Water-dependent and water-related commercial and industrial uses are given priority over non-water dependent uses of the shoreline.* WAC 173-26-241(3)(d) and (f)

Nuts & Bolts of New SMPs

The following is a brief summary of requirements and the issues ports may typically encounter among the new SMP guidelines.

Inventory of local shorelines and resources

As an initial step to updating their SMPs, local governments are directed to prepare a detailed inventory of local shoreline resources. The inventory is to include existing land use patterns, critical areas, degraded areas with potential for restoration, priority habitats, developing or redeveloping harbors and waterfronts, known cleanup sites, dredged material disposal sites, public access areas, channel migrations zones and so on. The shoreline inventory provides the base from which “no net loss” in ecological functions is to be measured, as well as assessing the cumulative impact of foreseeable future development.

Tips for ports: Make sure you agree with how shorelines at and adjacent to your facilities are characterized. Are maps and records accurate and do they reflect current conditions? Pay close attention to how and where boundary lines for all areas (including for shoreline environment designations) are assigned or changed. Are they based on recent accurate information? Do they follow physical features or property lines? Remind local planners that harbors and urban waterfronts are part of the inventory. Share information.

See: WAC 173-26-201(3)(c)

Shoreline analysis

“Shorelines of statewide significance” are a special category of shoreline areas identified in the SMA, where special protection policies apply. The ocean coastlines of the state, many areas of Puget Sound, and certain lakes and rivers are included. See RCW 90.38.030 (2)(e).

Local governments must prepare a detailed characterization of ecological functions related to shoreline natural resources. This is to include identification of shoreline ecosystems and ecological functions, an assessment of ecosystem-wide processes, and an identification of specific measures to protect and restore these systems and processes.

Next, the SMP update must include a use analysis, which estimates future demand for shoreline space and potential

Q. What’s the difference between a policy and a regulation?

A. A policy is a statement of intent directing or authorizing a course of action or specifying criteria. A regulation sets a specific development or use standard. See WAC 173-26-191(2)(a). Regulations implement policies and generally speaking, a policy “should” and a regulation “shall”.

use conflicts. The local government must provide evidence that adequate shoreline space for preferred uses has been provided. There are additional requirements for “shorelines of statewide significance” including preservation of sufficient shorelands and submerged lands to accommodate current and projected demands for economic resources of statewide significance such as commercial shellfish beds and navigable harbors.

Tips for ports: Here’s where it may be important to review and share your development, cleanup, dredging, and mitigation plans. Make sure that the analysis of future demand is consistent with port planning and comprehensive scheme. You may need to hire an experienced consultant to help the port review the city or county’s analysis.

See: WAC 173-26-201(3)(d)(ii)

Cumulative impact Analysis

The SMP update must include an analysis of how proposed policies and regulations mitigate cumulative impacts from future foreseeable development. The analysis is to address how master program policies and regulations will use permitting and conditional use permitting processes to ensure that all impacts are addressed and that there is no net loss to ecological function of the shoreline *after mitigation*. The guidelines note that unregulated activities and developments exempt from permitting (such as residential bulkheads and piers) must be addressed in the cumulative impact analysis. Beneficial impacts of any established regulatory programs under other local, state, and federal laws are also to be included. The guidelines direct that SMP policies and regulations should be designed without reliance on individualized impacts, and that the burden of addressing cumulative impacts should be allocated fairly.

Tips for ports: Beware an overemphasis on cumulative impacts of port projects, and/or a perception that port projects have a greater impact than others. The emphasis should be on future impacts not existing conditions. Avoid pressures to accommodate cumulative impacts of private development on port or public lands.

See: WAC 173-26-201(d)(iii)

Restoration Planning

Local governments are required to develop a “real and meaningful” strategy to address restoration of shorelines. The inventory and characterization of local shorelines is to be used to direct the policies of the SMP to protect ecological functions of the shorelines and to identify where restoration projects should focus. The guidelines are specific: the SMP is to identify potential restoration sites, establish restoration goals and priorities, identify projects and programs needed to achieve restoration, and set timelines and benchmarks and implementation. The goal is to “...include planning elements, that, when implemented, serve to improve the overall condition of habitat and resources within the shoreline area of each city and county.” WAC 173-26-201 (2)(c).

Tips for ports: Many redevelopment, cleanup, and mitigation projects contribute to overall restoration of ecological functions. Share your plans but resist efforts for the port to accommodate all restoration. Public shorelines with navigational access are a limited public commodity whose unique economic role cannot be replaced. With limited opportunities for restoration on private lands, public shorelands may be the only areas available to provide the long term ecological restoration mandated by the rules.

See: WAC 173-26-201(f); also “Restoration Planning and the 2003 Shoreline Management Guidelines”, Ecology publication #04-06-022.

Environment designations

The guidelines recommend a system of classifying local shoreline areas using six basic environment designations: “high-intensity”, “shoreline residential”, “urban conservancy”, “rural conservancy”, “natural” and “aquatic”. Many local entities may take this opportunity to delete or add environment designations, and to modify where these designations apply within the city or county.

Tips for ports: Review the proposed designation maps prepared for the SMP update in relation to your plans, projects, and activities. Pay careful attention to areas designated as “aquatic” and “conservancy” since uses and struc-

tures within these designations are more highly regulated under the new guidelines. Be sure the environment designations and related regulations agree with port plans and align with underlying zoning. Note that even within areas designated as "high-intensity", new development may not cause a net loss of ecological functions. Also, check to see what designation any dredged material disposal sites, potential mitigation sites, and potential cleanup sites receive.

See: WAC 173-26-211

General Master Program Provisions

These provisions apply to all shoreline areas within a city or county. Policies and regulations are to address: archeological and historic resources, critical areas, wetlands, geologically hazardous areas, critical habitats, flood hazard reduction, public access, vegetation conservation, and water quality. A selection of these most typically of interest to ports is discussed below:

Critical areas:

Critical areas are areas and ecosystems defined by the Growth Management Act to include: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas. Revised SMPs are to provide areas designated as critical areas under the Growth Management Act with a level of protection at least equal to that provided by the Growth Management Act. This level of protection is no-net-loss of resource functions. The challenge for Ports is to make sure that local governments that typically protect many critical areas with no-build buffers, do not impose those buffers in shorelines where Ports must be able to build to carry out Port functions. There has been much confusion about the relationship between the GMA and the SMA in regulating critical areas that lie within the shoreline jurisdiction.

The legislature attempted to clarify the relationship between the two laws in 2003, but there is still confusion. Simply put, shorelines of statewide significance may include critical areas, but are not critical areas as defined under GMA. Science standards ("best available science") un-

der the GMA do not apply to critical areas within the shoreline jurisdiction. Recent court and board decisions have caused additional confusion about how and whether amended SMPs under the new guidelines will provide equivalent protection of critical areas, whether buffers mandated by CAOs are required along shorelines, and so on. Because of certain ruling, procedures and standards may apply in Puget Sound and other parts of the state Local governments must provide additional standards within the SMP for wetlands, geologically hazardous areas, saltwater habitats, and freshwater habitats.

Tips for ports: Expect additional confusion for Ecology and local planners alike as this issue evolves. Ports should focus on working with the local governments so that standard buffers that apply to critical areas outside of the shoreline do not apply to Port activities that require location adjacent to the water. Most local governments will likely incorporate their CAO into their amended SMP so that the CAO applies to portions of critical areas within the shoreline jurisdiction.

See: WAC 173-26-221(2)

Wetlands

Wetlands provisions of SMPs have been updated to be consistent with other state and federal wetlands regulating development in wetlands. These include provisions for delineation methods, prevention of loss of function, use of the Ecology wetlands rating system, buffer requirements, and mitigation requirements. SMP regulations cover wetlands within the shoreline jurisdiction. Other wetlands would be regulated by the CAO.

Tips for ports: Make sure wetlands regulations are consistent with other local, state, and federal provisions. If you have wetlands regulated by the SMP on your properties, check the SMP maps and environment designations to assure accuracy of delineations and classifications.

See: WAC 172-26-221(2)(c)(i)

Saltwater habitats

Within saltwater critical habitats, human-made structures (docks, bulkheads, bridges, fill, floats, jetties, utility cross-

ings) are prohibited except where a public need is clearly demonstrated, avoidance of impacts is not feasible, and the project is consistent with resource protection and species recovery. For freshwater critical habitats, new development may not cause a net loss of ecological function. Local governments are required to incorporate state resource agencies, port districts, and tribes' resource management and management plans.

Tips for ports: Most local governments, lacking staffing and resources for detailed habitat management and planning, will look to existing state and federal programs regulating activities within critical habitats, and they should be encouraged to do so. Ports may have important data to contribute to the evaluation of habitat areas, and plans for protection and enhancement.

See WAC 173-26-221(2)(c)(iii) and (iv)

Public access

Providing and enhancing public access to the shorelines of the state is a major policy mandate of the SMA. The guidelines raise standards for protection and enhancement of public access. Master programs are to include plans for an integrated shoreline area public access system that identifies specific public needs and opportunities.

Port public access plans are encouraged to be incorporated as a portion of the local government's public access plan. Shoreline developments by public entities are to include public access measures "...as a part of each development unless such access is shown to be incompatible due to reasons of safety, security or impact to the shoreline environment." However, where there is public access planning has occurred as part of a port master plan, public access can be directed to the most desirable locations.

Tips for ports: If you don't have a comprehensive public access plan for your facilities, consider preparing one and requesting that it be incorporated in the SMP update. Most ports are good at providing public access, and there are many good models to borrow from other ports. In theory, new public access could be a condition of every shoreline permit, and the local government could decide where they think this access should be located. A pre-negotiated com-

prehensive port public access plan gives the port better control over directing public access to appropriate locations.

See WAC 173-26-221(4)

Vegetation conservation

Local jurisdictions are required to include provisions for vegetation conservation. These provisions are "...to apply even to those shoreline uses and developments that are exempt from the requirement to obtain a permit." Master programs are to include rules that address vegetation conservation as necessary to assure no net loss of ecological functions and ecosystem-wide processes, such as setback or buffer requirements, clearing and grading standards, or other measures. The guidelines further clarify that "Like other master program provisions, vegetation conservation standards do not apply retroactively to existing uses and structures." Vegetation conservation areas are not necessarily closed to use and development.

Tips for ports: Note that vegetation conservation is intended to conserve existing shoreline vegetation, and is not the same as a critical areas buffer, although buffers may be one way of conserving existing vegetation. Given that most local planners are more familiar with GMA and CAO language, it may be important to keep this distinction in mind for these revisions.

See: WAC 173-26-220(5).

Water quality, storm water and nonpoint pollution

Shoreline master programs are required to address water quality, storm water and nonpoint source pollution and ensure mutual consistency with other regulations that address water quality and stormwater.

Tips for ports: This provision could produce some interesting and possibly confusing cross linkages to other programs, including the pending requirement for many smaller cities to comply with phase II of the NPDES municipal stormwater program. Avoid duplication of other regulatory programs.

See: WAC 173-25-221(6).

Shoreline modifications

The guidelines draw a distinction between shoreline uses and shoreline modifications. Shoreline modifications are structures (bulkheads, piers, fill, etc) that support a use (boating, industry, transportation). Shoreline uses are discussed in the next section.

Shoreline stabilization: Structural shoreline modifications are to be allowed "...only where they are demonstrated to be necessary to support or protect an allowed principal structure or legally existing shoreline use that is in danger of loss or substantial damage." Preference is given to "soft" (e.g. vegetation, beach enhancement) over "hard" (e.g. bulkheads) structural stabilization.

Piers and docks are allowed only for water-dependent uses or public access, and where a specific need is demonstrated. Construction is to be limited to the minimum size necessary to meet the need of the water-dependent use. Ports may use a needs analysis or comprehensive master plan to justify proposed new piers and docks, but only "...if the plan or analysis is approved by the local government and consistent with these guidelines..."

Fill waterward of the ordinary high water mark will be allowed only by conditional use permit, and only for water-dependent uses, public access, disposal of dredged material, expansion or alteration of transportation facilities, or for mitigation or enhancement projects.

Breakwaters, jetties, and fills likewise are allowed only as a conditional use (unless supporting protection or restoration of an ecological resource), and only in support of water-dependent uses, public access, shoreline stabilization, or other public purposes.

Dredging and dredged material disposal is to avoid significant ecological impacts. New facilities are to be sited to avoid new and maintenance dredging. Dredging for obtaining fill is not allowed unless it is for restoration of ecological function (e.g. contaminated site remediation). Maintenance dredging is confined to established channels and basins, and only to maintain the existing or previously authorized

Note: The Ecology rules also contain use guidelines for agriculture, forest practices, in-stream structures, mining, aquaculture, flood hazards, dune management and recreational and residential developments. These were not discussed here as they are less typical port uses or developments, or because the SMP guidelines do not require substantial changes. See the Ecology guidelines and web pages for more details.

location, depth, and width. Beneficial use of dredged materials is to be allowed, and master programs should provide for implementation of regional dredged material management plans and watershed planning.

Tips for ports: Watch carefully for how maintenance of shoreline modifications is defined throughout these sections. In-water and shoreline stabilization structures need regular maintenance, and these rules could make maintenance more difficult. Even though maintenance of existing structures is still exempt, the guidelines set conditions for replacing an existing shoreline stabilization structure, including a demonstration of need, and a geotechnical report to prove such).

Policies and regulations affecting shoreline modifications is an area where prescriptive standards (e.g. specification of design or construction materials, dimensions of bulkheads, etc.) are to be avoided, so that these structures can be designed and constructed appropriately for the individual project setting, including to minimize environmental impacts. Likewise, avoid duplication of all or part of other regulatory programs such the regional dredged material characterization protocols.

Note that the requirements to demonstrate a "need" for most new structures could put ports in the interesting position of having cargo projections, needs analyses, and/or port comprehensive plans approved by the local government, and possibly, incorporated into the shoreline master program.

See: WAC 173-26-231

Shoreline Uses

SMPs must contain policies and regulations governing specific common uses and developments in the shoreline. The guidelines require that preference be given throughout to water-dependent and water-related uses. For all uses, the design, location and maintenance of associated facilities must assure no net loss of ecological functions.

Boating facilities: SMPs must contain provisions to ensure suitable location, protect health and safety, mitigate aesthetic impacts, require public access at new facilities, limit

of live-aboard impacts, protect the rights of navigation, and restrict extended mooring without leases or permission from the state.

Commercial development: Preference is to be given to water dependent commercial uses. Non-water dependent shoreline commercial uses may be allowed in some circumstances. Non-water dependent commercial uses are prohibited over water except in existing structures, and where necessary to support water-dependent uses.

Industry: Preference is given first to water dependent industries, then to water related industrial uses. Regional and statewide needs for water dependent and water related industrial facilities are to be considered while establishing environment designations, use provisions, and space allocations in the SMP. Public access should be required unless there is "significant interference with operations or hazards to life and property." New non-water dependent industries are prohibited unless part of a mixed use project, navigation is limited, or the use provide a public benefit consistent with the policies of the SMA.

Transportation: Proposed transportation and parking facilities must be designed and located to avoid unique or fragile shoreline, and may not adversely impact existing or planned water dependent uses.

Utilities are to be located within existing rights of way whenever possible. Utility production, processing and transmission facilities are to located outside the shoreline jurisdiction unless no feasible alternative exists.

Tips for ports: Read the draft SMP language carefully to assure that distinctions between existing developments and new projects are clear. As with the shoreline modifications sections, avoid prescriptive standards (setbacks, building and dock dimensions, over-water coverage, and so on). Watch the utilities sections for language that could unintentionally prohibit normal operations of utilities supporting commercial, industrial, and fuel docks and over-water structures. Compare and cross check the provisions in this section for consistency with the underlying zoning, and with shoreline environment designations (the SMA equivalent of zoning). Are your existing operations and future plans consistent with the allowed uses in the SMP?

See: WAC 173-26-241

Administrative procedures

Local governments are to update the administrative procedures in their SMPs. Conditional uses and variances are to be provided for. Master programs must include mechanisms for documenting all project review and periodically evaluating the cumulative effects of authorized projects.

Tips for ports: Although normal maintenance or existing structures and developments continues to be exempt under the SMA, there is an emphasis throughout the new guidelines on narrowing this exemption. The proposed rules require local governments to substantially expand the regulation and enforcement of activities that are exempt from the permitting requirements of the SMA. In some cases, ports could be required to justify maintenance needs to the local jurisdiction. This creates a de facto permitting and enforcement program for routine maintenance activities that are specifically exempted from SMA and SEPA, and may be a burdensome requirement of both applicants and local governments. One option: propose that locals provide for a "shoreline general exemption" for routine maintenance activities, and a "general permit" to allow for many individual small projects within a discrete area, or for routine construction activities.

Local entities have always had the ability to place conditions on shoreline exemptions under their SEPA powers as grantors of permits. Expect an increased focus on exempt projects and a tendency in some jurisdictions to add substantial environmental conditions in order to address cumulative impacts or restoration goals. Resist additional administrative procedures for letters of exemption, and watch for setting expirations on exemptions, or reducing the standard shoreline permit life of five years.

There is often local confusion over how shoreline development permits and exemptions fit into the overall regulatory picture for port waterfront projects. Local government staffs may not be familiar with the state hydraulic code or the federal section 10/404 permits, and may feel the need to impose their own separate and possibly inconsistent per-

mit requirements. In the areas of aquatic habitat assessment and mitigation, advocate for deferral to federal agencies with endangered species oversight, so that local staffs, often less experienced with such issues, do not further complicate the picture.

Recommended, But Optional: Going Above and Beyond Basic Participation in SMP Updates

By now it's probably very clear that the SMP update process will be complex and sometimes difficult. Both ports and local jurisdictions will be living with and operating within the results for the foreseeable future. During the process there may be multiple opportunities to provide education about port operations, develop joint agency initiatives for public access and restoration planning, incorporate credits and incentive programs for habitat mitigation, and more. Where feasible in terms of funds and staff resources, consider taking a more proactive approach to participation and going above and beyond simply showing up for SMP review meetings with your comments to existing (and perhaps undesirable) SMP language. These efforts are likely to be well worth it in the long term.

Port Education Initiative:

Consider engaging elected officials (mayor, port commissioners), elected councils (city and/or county), planning and design commissions, city or county planning and permit review staff members, community and environmental groups, and interested citizens in one or more meetings about port missions and operations. This is an opportunity to present the port's special district form of government; powers, missions and responsibilities; the comprehensive scheme or plan; upcoming projects and needs, and PMAs or other agreements with state agencies. Items for discussion could include general problems and successes of the current SMP and how the SMP and local comprehensive plan goals and recommendations could facilitate port goals, projects, and operations. The benefits of these efforts, whether one-time or ongoing, will likely extend beyond SMP issues into many other areas of port-local government relations.

Proactive policy and rule development strategies:

Local governments will have considerable discretion in developing new language for the many new provisions such

as restoration plans, cumulative impacts, public access requirements, as well as sections related to maintenance, uses and mitigation. Ports can take advantage of this local discretion by developing and offering draft SMP language in areas important to the port rather than reacting to sections already drafted by the local government staff. It is important for a Port to establish positions early in the process in these areas or better yet, to develop proactive and jointly implemented programs. This approach changes the dynamics of the process and programs considerably.

- Encourage Port staff to internally identify potential issues and conflicts;
- Develop internal draft position and policy statements in these areas.;
- Educate and develop a consensus on these positions with the Port Commission - either individually or in work sessions.

Joint Port/Local Planning for Public Access, Habitat, and Restoration:

There are major SMP directives related to these key issues, and considerable lack of clarity about how they will be implemented. Meeting these challenges ahead of time through joint local planning could prevent ports being placed in the position of providing the planning, siting, and construction of such areas as part of port developments. Specifically, ports should:

- Consider the pros and cons of jointly adopted plans to meet these objectives;
- Take a leadership role in identifying appropriate sites and implementation strategies (e.g. joint grant applications or property acquisition):
- Recommend SMP language that limits individual permit conditioning to the soles means to achieve public access and restoration goals;
- Propose SMP rules and policies that establish formal systems for mitigation banking, credits, and/or incentive programs, and that provide for implementation of off-site and regional mitigation;