

# Chapter 7.

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# Chapter 7.

## Shoreline Management Act (SMA)

### A. Overview

Public concern in the early 1970's focused on the future of Washington's shorelines in the face of increasing development. The Legislature responded with passage of the Shoreline Management Act (SMA)<sup>1</sup> in 1971, finding "a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the State's shorelines." Intended to protect and restore the valuable natural resources of the shoreline, the SMA fosters all "reasonable and appropriate uses."<sup>2</sup>

The SMA applies to over 230 cities and counties having "**shorelines of the state**"<sup>3</sup> within their jurisdictional boundaries. "Shorelines of the state" comprise "shorelines" and "shorelines of statewide significance."<sup>4</sup> These include all waters of the state (including marine waters) and their underlying lands, except streams with a mean annual flow of less than 20 cubic feet per second and lakes less than 20 acres in area,<sup>5</sup> together with their "shorelands"<sup>6</sup> which are those areas landward for 200 feet

from the ordinary high water mark (OHWM), floodways, and contiguous floodplains within 200 feet, and all associated wetlands.

**“Shorelines of statewide significance”** (SSWS) are specifically designated shorelines<sup>7</sup> that are major resources benefiting all people in the state. In their management of SSWS, local governments and the state are required to provide for “optimum implementation”<sup>8</sup> of the policies of the SMA, giving preference (in order) to shoreline uses which recognize and protect statewide interests over local, preserve the natural character of the shoreline, result in long term over short term benefit, protect the resources and ecology of the shoreline, and increase public access and recreational opportunities for the public in the shoreline.<sup>9</sup>

**The term “wetlands,” as used in the SMA, has a specific meaning. It includes:**

*areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas... Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.*<sup>10</sup>

The language “swamps, marshes, bogs, and similar areas” refers to true biological wetlands, considered a subcategory of the much broader SMA term “wetlands.”

To determine the extent of an upland area covered by the SMA (shoreline jurisdiction), the OHWM often needs to be located. The Department of Ecology (DOE) has developed guidelines for making OHWM determinations in different situations, and offers field assistance in identifying the mark. Specific criteria are to be used in determining shoreline jurisdiction,<sup>11</sup> and will prevail over any other lists, maps, or inventories.

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The SMA has three basic policy areas: 1) shoreline preferred uses, 2) environmental protection, and 3) public trust. The SMA places emphasis on providing a shoreline location for a defined set of shoreline preferred (i.e. water dependent) uses; on accommodating reasonable and appropriate uses; protecting shoreline ecology and natural resources; and, preserving the public's right of access to and use of the shorelines.<sup>12</sup>

A fourth policy element of the SMA, though not explicitly stated, is public involvement. The SMA specifically requires public notice and opportunities to comment on state and local actions under the Act.<sup>13</sup>

The SMA incorporates a planning and regulatory permit program to carry out its policies.<sup>14</sup> This program is initiated locally under state guidance.

In the first 25 years of its existence the SMA stood largely independent of other local planning and regulatory systems. In 1995, the passage of ESHB 1724 changed that, initiating the merger of shorelands and growth management planning and regulatory functions. ESHB 1724 for example, added a new fourteenth goal to the GMA.<sup>15</sup> The goals and policies of the SMA are now added to the existing 13 goals of the GMA.

The integration of the SMA and GMA involves melding of the GMA's emphasis on planning procedures with the SMA's specific policy mandates. While the GMA-based comprehensive plan is founded on a local communities' values and objectives, the SMA requires that local governments in managing shorelines address specific statewide goals, balancing statewide and local interests.

In 2003 the Department of Ecology adopted a new rule that provides a comprehensive update to state guidelines on how local governments manage shorelines.<sup>16</sup> One of the chief goals of the new rule is to bring state guidelines up-to-date with current science. The proposed rule is also intended to make it easier for local governments to integrate shoreline plans with local Growth Management plans and regulations. Finally, the rule seeks to find a workable balance of responsibility between state and local governments by setting performance criteria that local governments should achieve and then allowing local governments to decide how to meet those goals.

## B. Shoreline Master Programs

As part of the state/local partnership which is the basis of the SMA, local governments must prepare a detailed shoreline inventory<sup>17</sup> and a shoreline master program<sup>18</sup> (SMP) for managing shoreline resources and development. Local SMPs must be prepared consistent with the policy of the SMA (RCW 90.58.020) and the applicable guidelines.<sup>19</sup> Based on this inventory, a system of categorizing various shoreline segments is created by applying shoreline environment designations. Goals, policy statements, and regulations are developed to establish appropriate uses and activities within each shoreline environment designation.

For local governments fully planning under the GMA, **SMP goals and policies are now considered an element of the local comprehensive plan. SMP use regulations are now considered a part of the local development regulations** required by growth management.<sup>20</sup>

The GMA requires that all local comprehensive plan policies be “internally consistent”,<sup>21</sup> which now include those policies contained in the local SMP. This also means that shoreline environment designations described and mapped in the local master program must be compatible with local comprehensive plan land use designations. Comprehensive plan land use designations should be reviewed to ensure they do not preclude reasonable and preferred (water-dependent) shoreline development and that allowed uses and densities are mutually compatible.

Local governments are responsible for maintaining and implementing local SMPs. The procedure for adopting or amending an SMP involves both a local and state review and approval process. Both processes emphasize public participation. Ecology is the lead agency in coordinating such actions, with 60-day notification required to Department of Commerce and other state agencies. A master program or amendment takes effect only when and in such form as it is ultimately approved by Ecology.<sup>22</sup>

A new option available to jurisdictions fully planning under the GMA involves “pre-designating” shorelines within adopted urban growth areas but outside existing city boundaries. Environment pre-designation is allowed after the local government secures public input and completes the SMP amendment process, ob-

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taining Ecology approval. Such pre-designations then take effect concurrent with annexation of the subject area.<sup>23</sup>

Recent changes to the SMA now allow any interested citizen to appeal a locally prepared SMP either on the basis of inconsistency with SMA policy or the local comprehensive plan. For jurisdictions fully planning under the GMA, master program appeals will be decided by the growth management hearings board with jurisdiction, no longer the shorelines hearings board. For jurisdictions not fully planning under the GMA, master programs will continue to be appealed to the state shorelines hearings board.

## C. Permits and Decisions

All “developments” and uses within the shorelines of the state must be consistent with SMA policies and local SMP requirements.<sup>24</sup> However, only “substantial developments” require a substantial development permit.<sup>25</sup> Although a proposed development may be exempt from substantial development permit requirements, it may still require a variance or conditional use permit and must comply with the local SMP.<sup>26</sup>

### 1. Substantial Development Permits

All developments with a fair market value in excess of \$5,000<sup>27</sup> (unless specifically exempted), or any development that materially interferes with normal public use of the water or shorelines of the state, requires a substantial development permit.<sup>28</sup>

### 2. Exemptions

Under the SMA, certain types of developments are exempt from substantial development permit requirements.<sup>29</sup> The exemption, however, is only from the permit requirement; an exempt development must still comply with all development standards, i.e., setbacks and other regulations. Many jurisdictions require a written exemption prior to construction. The local government can then assess whether the project proposal is consistent with SMA policy and the local SMP.

### 3. Conditional Use Permits

The SMA allows local governments to authorize uses and developments that may be permitted (under special circumstances or conditions) by conditional use permits. Conditional use permits allow greater flexibility to vary how SMP use regulations are applied. Granting of a conditional use permit must conform with SMA policies and cannot authorize a use that the local SMP specifically prohibits. Criteria for SMA conditional uses have been established.<sup>30</sup>

### 4. Variances

The SMA also authorizes deviation from specific bulk, dimensional, or performance standards in the SMP through the granting of shoreline variances. Variances can only be granted when there are “extraordinary or unique circumstances relating to the property such that the strict implementation of the master program will impose unnecessary hardships on the applicant or thwart the policies of the SMA...”<sup>31</sup> A variance cannot be granted for a use prohibited by the SMA or SMP; and the cumulative effects over time of granting additional permits for like actions in a given shoreline area must be considered. Criteria for SMA variances have been established.<sup>32</sup>

Shoreline substantial development permits, as well as conditional use permits and variances, are processed by local governments. All permit applications are sent to Ecology for review, following the local government’s decision. For conditional use permits and variances, Ecology must either approve, approve with conditions, or disapprove each permit.<sup>33</sup> Permit decisions can be appealed at the local level, and subsequently before the Shorelines Hearings Board and/or Superior Court.<sup>34</sup>

### 5. Appeals

A local government or Ecology decision on a shoreline permit may be appealed to the shorelines hearings board by any person aggrieved by the granting, denying or rescinding of a shoreline permit. This does not include decisions by local government to approve a permit exemption.

The shorelines hearings board conducts a “de novo” review of the permit and may uphold, reverse or modify the permit decision or remand the permit for further consideration at the local level.

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- Chapter 90.58 RCW.
- Nisqually Delta Ass'n v. DuPont, 103 Wn.2d 720, 726, 696 P.2d 1222 (1985) (“The SMA does not prohibit development of the State’s shorelines, but calls instead for “coordinated planning ... recognizing and protecting private property rights consistent with the public interest.”).
- See RCW 90.58.030(2).
- RCW 90.58.030(2)(c).
- RCW 90.58.030(2)(d).
- RCW 90.58.030(2)(f).
- RCW 90.58.030(2)(e).
- RCW 90.58.090(4).
- A county ordinance banning motorized personal watercraft use on all marine waters and one lake in the County is consistent with SMA because (1) SMA allows “limited reduction of rights;” and, (2) the ordinance favors “the resources and ecology of the shoreline” over recreational interests as required by RCW 90.58.020. Weden v. San Juan County, 135 Wn.2d 678, 696-97- 958 P.2d 273 (1998).
- RCW 90.58.030(2)(h).
- RCW 90.58.030 and Chapter 173-22 WAC (wetland designations).
- RCW 90.58.020.
- See, e.g., RCW 90.58.120; RCW 90.58.130; RCW 90.58.140.
- RCW 90.58.140.
- RCW 36.70A.480(1).
- WAC 173-26, Part III.
- Most local governments conducted inventories of their shorelines in the mid-1970’s, when they adopted their first master programs. Most of those inventories have never been updated.
- SMA provides that where appropriate, a master plan shall include an historic or cultural element for the protection and restoration of sites and areas having historic or cultural value. RCW 90.58.100(2)(g); Swinomish Indian Tribal Community v. Island County, 87 Wn.2d 552, 563 fn5, 942 P.2d 1034 (1997).
- RCW 90.58.080.
- RCW 36.70A.480(1).
- RCW 36.70A.070.
- RCW 90.58.090(6)
- WAC 173-26-150.
- RCW 90.58.140(1).
- RCW 90.58.140(2).
- WAC 173-27-040.
- The exemption from substantial development status for recreational docks in fresh water was expanded to \$10,000. See RCW 90.58.030(3)(e)(vii).
- RCW 90.58.030(e).
- RCW 90.58.030(3)(e)(vii); WAC 173-27-040.
- WAC 173-27-160.
- See, e.g., Buechel v. State Department of Ecology, 125 Wn.2d 196, 884 P.2d 910 (1994).
- WAC 173-27-170.
- RCW 90.58.140(12).
- See Overlake Fund v. Shoreline Hearings Bd., 90 Wn. App. 746, 954 P.2d 304 (1998) (the court overturned a superior court decision finding that the Shorelines Hearing Board acted in an arbitrary and capricious manner when it imposed conditions on a shoreline substantial development permit that were not supported by substantial evidence).