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To: Grover Fugate and Austin Becker
From: Tom Murphy, RI Sea Grant Law Fellow
RE: Performance Standards in CT & WA; Designated Port Areas

There are many ways for states and local governments to protect water-dependent uses, such as zoning, tax policies, performance standards, and the public trust doctrine. The purpose of this memo is to explain policies that several states have used to protect water-dependent uses and how those policies might be beneficial to Rhode Island's goals for waterfront planning. Specifically, this memo will focus on how performance standards are applied in Connecticut and Washington, and how performance standards can be related to Rhode Island. Secondly, this memo will explore how Massachusetts has employed the public trust doctrine through a program called Designated Port Areas and how this program may be applied to Rhode Island.

I. Performance standards are an effective tool for protecting water-dependent uses and allowing flexibility for other uses, accordingly they should be incorporated in the Providence Harbor SAMP.

States employ performance standards in order to allow flexibility in land use decisions. Performance standards establish decisional criteria to guide state agencies and local governments in reviewing specific applications. This type of land use control is more flexible than others, notably zoning, because it is not a direct prohibition on what activities can be conducted in a specific location. Rather, it allows policy makers to encourage different types of activities while ensuring that water-dependent use policies are met. This section will explore how Connecticut and Washington apply the performance standards that have been created by their legislatures and state agencies. Next, the application of the performance standards used in Connecticut and Washington

will discussed in relation to how performance standards can be utilized in the Providence Harbor Special Area Management Plan (SAMP).

a. Connecticut and Washington are states that utilize performance standards to protect and encourage water-dependent uses.

Connecticut and Washington each employ performance standards with varying levels of protection for water dependent uses in order to accommodate particular circumstances within the state. There are a number of circumstances that lead states to protect water-dependent sources, and those conditions vary within each state. Connecticut, for example, puts more restrictions on new developments to protect water-dependent uses, while Washington allows more latitude in land use activities. It is useful to look at how other states use performance standards to protect water-dependent uses in order to see how they could be utilized in Rhode Island.

Connecticut is a coastal state that has a strong commitment to protecting water-dependent uses. The central component of the federally approved Connecticut Coastal Management Program is the Connecticut Coastal Management Act of 1978 (CCMA). The CCMA protects water dependent uses by establishing goals and policies for management of coastal lands and resources. The Department of Environmental Protection was given the responsibility of monitoring state and local compliance with the CCMA. While the act encourages local governments to conduct voluntary local planning, the statutory policies of the CCMA override any less restrictive state or local regulatory standards. Thus all local governments must adhere to the statutory policies enumerated in the CCMA.

The CCMA contains several complementary policies which require state and local regulatory programs to give highest priority and preference to water dependent uses,

especially in developed shorefront areas, ports, and harbors. Specifically policy #3 of the CCMA is “To give high priority and preference to uses and facilities which are dependent upon proximity to the water or the shorelands immediately adjacent to marine and tidal waters.” Conn. Gen. Stat. § 22a-92(a)(3) (West 2007). Another policy established to guide federal, state, and municipal agencies under the CCMA is to promote “the development, reuse or redevelopment of existing urban and commercial fishing ports giving highest priority and preference to water dependent uses” as well as disallowing “uses which unreasonably congest navigation channels, or unreasonably preclude boating support facilities elsewhere in a port or harbor.” Conn. Gen. Stat. § 22a-92(b)(1)(C) (West 2007). The CCMA also includes resource policies which are “to promote...the use of existing developed shorefront areas for marine-related uses, including but not limited to, commercial and recreational fishing, boating and other water-dependent commercial, industrial and recreational uses.” Conn. Gen. Stat. § 22a(92(b)(2)(G) (West 2007).

The CCMA clearly defines what adverse impacts on future water development opportunities are, and if a proposed development would have such an adverse impact it cannot be approved. Conn. Gen. Stat. § 22a-93(17) (West 2007). Impermissible adverse impacts are: (A) locating a non-water dependent use at a site that is physically suited for a water-dependent use for which there is a reasonable demand or has been identified for a water-dependent use in the plan of development of the municipality or zoning regulations; (B) replacement of a water dependent use with a non-water dependent use; and (C) siting of a non-water dependent use which would substantially reduce or inhibit existing public access to marine or tidal waters. *Id.*

The CCMA is enforced by integration of its policy standards into the local regulatory process. Under the CCMA every development must undergo a Coastal Site Plan Review (CSPR) to determine if the proposed development is consistent with the policy standards of the act. Conn. Gen. Stat. § 22a-109(a) (West 2007). The burden of proof is on the permit applicant to show that adverse impacts on future water dependent activities have been minimized, that remaining impacts are acceptable, and the proposed activity is consistent with all the goals and policies of the CCMA. The reviewing commission is empowered to condition the proposed activity to ensure that the potential adverse impacts of the proposed activity on future water-dependent development activities are acceptable. Conn. Gen. Stat. § 22a-105(e) (West 2007) The scope of conditions that may be imposed by the commission is limited by the requirement that they mitigate the adverse impacts of the proposed use. Conn. Gen. Stat. § 22a-106(e) (West 2007); DeBeradinis v. Zoning Commission of the City of Norwalk, 635 A.2d 1220 (Conn. 1994).

Connecticut's performance standards protect water dependent uses both by ensuring that developments do not adversely affect any water-dependent uses. The control method is to force federal, state, and local governmental agencies to think about how water dependent uses might be affected by a development or activity. If the agencies find that a water dependent use is adversely affected they must deny a permit or at least condition the proposed activity by mitigating the adverse effects. Thus, the Connecticut system protects water dependent uses strongly, but allows for some flexibility in land use decisions as long as there is adequate mitigation. Connecticut's

method of using performance standards shows a strong commitment to protecting water dependent uses.

While Connecticut merely encourages local governments to conduct waterfront management planning, Washington requires it under the Shoreline Management Act of 1971. The performance standards in Washington are guidelines that local governments must follow in developing shoreline programs. In contrast to Connecticut where the adverse impacts on water dependent uses must be recognized, Washington's policy says that water dependent uses are to be "preferred." Wash. Rev. Code Ann. § 90.58.020 (West 2007).

The Washington Legislature passed the Shoreline Management Act in 1971. This act "directs local governments to develop and administer local shoreline master programs for regulation of uses on shorelines of the state." Wash. Admin. Code. 173-26-010 (2007). The Department of Ecology (DEP) was tasked with establishing guidelines based on the policy goals of the act. Wash. Rev. Code Ann. § 90.58.050 (West 2007). The guidelines created by the DEP had to be incorporated in the shoreline master program created by the local government. *Id.* In order to ensure that the guidelines were encompassed in the shoreline master program, the DEP was also tasked with approving the programs. *Id.*

The policies of the Shoreline Management Act were set out by the legislature, and DEP had to incorporate the policies into the guidelines. Wash. Rev. Code Ann. § 90.58.020 (West 2007) In regards to water dependent uses the legislature explicitly stated that in implementing the policy the management programs were to give preference to uses that "are unique to or dependent upon the use of the state's shorelines." *Id.*

Moreover, the legislature also stated that uses are to be preferred which protect the statewide interest over local interest and result in the long term benefit. Id.

The guidelines created by the DEP for the shoreline master programs included two pertinent principles that must be implemented by the local governments in order to protect water dependent uses. Wash. Admin. Code 173-26-241(2)(a) (West 2007). The first principle that must be in all shoreline master programs is a system of use regulations that gives preference to uses that are unique to or dependent upon uses of the state's shoreline. Wash. Admin. Code 173-26-241(2)(a)(i) (West 2007). The second principle is that the programs must reduce use conflicts by including provisions to prohibit or apply special conditions to those uses which are not unique to or dependent upon use of the state's shoreline. Wash. Admin. Code 173-26-241(2)(a)(iii) (West 2007).

Also among the guidelines created by the DEP are standards for use regulation that form a minimum of what a shoreline master program must include to protect water dependent uses. Wash. Admin. Code 173-26-241(3) (West 2007). Master programs have to give preference to water-dependent industrial and commercial uses over nonwater-dependent uses. Wash. Admin. Code 173-26-241(3)(d) & (f) (West 2007). Secondly, the master programs must give preference to water-related and water-enjoyment commercial and industrial uses over nonwater oriented uses. Id. Moreover, nonwater-oriented commercial and industrial uses should be prohibited by master programs unless they meet either one of two conditions. Id. First a nonwater-oriented use is not prohibited if the use is part of a mixed-use project that includes water dependent uses and provides significant public benefit such as providing public access and ecological restoration. Id. Secondly, the nonwater-oriented use is not prohibited if navigability is severely limited at the

proposed site and the use provides a significant public benefit such as providing public access and ecological restoration. Id.

Washington's utilization of performance standards to protect water-dependent uses works on a different level than Connecticut's. This is because the performance standards created by the Washington legislature and DEP apply to the shoreline management plans that local governments must create, while Connecticut's performance standards apply to developments. This difference is important to keep in mind when using these states as models for creating performance standards.

b. The performance standards used by Connecticut and Washington can help guide the development of the Providence Harbor Special Area Management Plan

As previously stated, performance standards are an effective tool for enforcing policies designed to protect water dependent uses while allowing for flexibility in waterfront management. This makes performance standards the ideal tool for protecting water dependent uses in Providence Harbor. This is because the standards would put restrictions on other uses along the waterfront, yet still allow for development.

Washington's and Connecticut's use of performance standards each operate as different levels of protection for water dependent uses. Washington's standards are less restrictive than Connecticut's and offer more flexibility in land use decisions. Connecticut's performance standards, on the other hand, provide more protection to water dependent uses. These different levels of protection for water dependent uses take into a large amount of varying circumstances within each state.

The best performance standards for Rhode Island would not be derived solely from one state's model. Instead, the performance standards used in Rhode Island should

be tightly tailored to fit within the circumstances in this state. It is helpful when drawing the performance standards in Rhode Island to look to what other states have done to ensure water-dependent uses are protected. However, due to a variety of different economic, social, and geographic circumstances within each state, performance standards should be created for the individual needs of the state. Accordingly, the Providence Harbor SAMP should include performance standards that are tailored to the individual needs of the state. If other uses are going to be allowed on the waterfront of Providence Harbor, performance standards are the best tool to ensure that water dependent uses do not suffer because of it.

II. Designated Port Areas in Massachusetts are an effective tool at maintaining the industrial character of a waterfront.

Since 1978 the Massachusetts Coastal Zone Management Program (CZM) has identified Designated Port Areas (DPAs) as geographic areas of state, regional and nation significance in respect to the promotion of industrial activities reliant upon marine transportation. 301 Mass. Code Regs. 25.01(2) (2007). CZM determined that these water dependent industrial areas should be protected because environmental, economic, and social factors preclude further industrialized development. *Id.* Accordingly, CZM found that as a matter of state policy that the industrial waterfront areas that contributed to the marine economy should not be committed to other types of development. *Id.*

CZM says water-dependent industrial uses share three essential components: (1) a waterway and waterfront that has been developed for some form of commercial navigation or direct utilization of the water; (2) backland space that is conducive to the

siting of industrial facilities; (3) land based transportation and utility services appropriate for industrial purposes.. Id.

Within the DPAs on tidelands subject to Massachusetts General Law Chapter 91, uses other than that are not water-dependent industrial uses are prohibited. Id. Ch. 91 is essentially the codification of the public trust doctrine and applies not only to submerged tidelands, but also to formerly filled tidelands. Mass. Gen. Laws Ann. Ch. 91 (2007). Because Ch. 91 gives CZM jurisdiction over formerly filled tidelands, DPAs act essentially like a zoning measure by prohibiting uses that are not industrial water-dependent. Telephone interview w/ Dennis Ducsik, MA CZM, 1/18/07. The focal point of DPAs is not the encouragement of water-dependent uses as much as it is the preservation of these industrial areas. Id. CZM found that industrial water-dependent uses had a strong historical, cultural, and economic value, as well as being precluded from further development, and consequently DPAs are used to ensure that these areas are not lost. Id.

DPAs would not be as effective a tool for protecting water dependent uses in Rhode Island as they are in Massachusetts. This is because CRMC does not have exclusive jurisdiction over formerly filled tidelands following the Rhode Island Supreme Court's decision in Greater Providence Chamber of Commerce v. State. 657 A.2d 1038 (R.I. 1995). CRMC does have exclusive jurisdiction over submerged tidelands, thus a DPA program could be attached to the submerged lands along a part of the waterfront. R.I. Gen. Laws § 26-23-6(2)(ii)(A) (West 2007). However, this jurisdiction would only regulate the building or filling over the submerged lands, and would not attach to the waterfront. Accordingly, without exclusive jurisdiction of the waterfront, a designation of a DPA would be no more than an ineffectual policy statement.

Appendix A
Connecticut Coastal Management Act of 1978

Connecticut General Statutes Annotated
Title 22A. Environmental Protection
Chapter 444. Coastal Management
§ 22a-91. Legislative findings

The general assembly finds that:

- (1) The waters of Long Island Sound and its coastal resources, including tidal rivers, streams and creeks, wetlands and marshes, intertidal mudflats, beaches and dunes, bluffs and headlands, islands, rocky shorefronts, and adjacent shorelands form an integrated natural estuarine ecosystem which is both unique and fragile;
- (2) Development of Connecticut's coastal area has been extensive and has had a significant impact on Long Island Sound and its coastal resources;
- (3) The coastal area represents an asset of great present and potential value to the economic well-being of the state, and there is a state interest in the effective management, beneficial use, protection and development of the coastal area;
- (4) The waterfront of Connecticut's major urban ports is underutilized and many existing urban waterfront uses are not directly dependent on proximity to coastal waters;
- (5) The coastal area is rich in a variety of natural, economic, recreational, cultural and aesthetic resources, but the full realization of their value can be achieved only by encouraging further development in suitable areas and by protecting those areas unsuited to development;
- (6) The key to improved public management of Connecticut's coastal area is coordination at all levels of government and consideration by municipalities of the impact of development on both coastal resources and future water-dependent development opportunities when preparing plans and regulations and reviewing municipal and private development proposals; and
- (7) Unplanned population growth and economic development in the coastal area have caused the loss of living marine resources, wildlife and nutrient-rich areas, and have endangered other vital ecological systems and scarce resources.

Connecticut General Statutes Annotated
Title 22A. Environmental Protection
Chapter 444. Coastal Management
§ 22a-92. Legislative goals and policies

(a) The following general goals and policies are established by this chapter:

(1) To insure that the development, preservation or use of the land and water resources of the coastal area proceeds in a manner consistent with the capability of the land and water resources to support development, preservation or use without significantly disrupting either the natural environment or sound economic growth;

(2) To preserve and enhance coastal resources in accordance with the policies established by chapters 439, [FN1] 440, [FN2] 446i, [FN3] 446k, [FN4] 447, [FN5] 474 [FN6] and 477; [FN7]

(3) To give high priority and preference to uses and facilities which are dependent upon proximity to the water or the shorelands immediately adjacent to marine and tidal waters;

(4) To resolve conflicts between competing uses on the shorelands adjacent to marine and tidal waters by giving preference to uses that minimize adverse impacts on natural coastal resources while providing long term and stable economic benefits;

(5) To consider in the planning process the potential impact of coastal flooding and erosion patterns on coastal development so as to minimize damage to and destruction of life and property and reduce the necessity of public expenditure to protect future development from such hazards;

(6) To encourage public access to the waters of Long Island Sound by expansion, development and effective utilization of state-owned recreational facilities within the coastal area that are consistent with sound resource conservation procedures and constitutionally protected rights of private property owners;

(7) To conduct, sponsor and assist research in coastal matters to improve the data base upon which coastal land and water use decisions are made;

(8) To coordinate the activities of public agencies to insure that state expenditures enhance development while affording maximum protection to natural coastal resources and processes in a manner consistent with the state plan for conservation and development adopted pursuant to part I of chapter 297; [FN8]

(9) To coordinate planning and regulatory activities of public agencies at all levels of government to insure maximum protection of coastal resources while minimizing conflicts and disruption of economic development; and

(10) To insure that the state and the coastal municipalities provide adequate planning for

facilities and resources which are in the national interest as defined in section 22a-93 and to insure that any restrictions or exclusions of such facilities or uses are reasonable. Reasonable grounds for the restriction or exclusion of a facility or use in the national interest shall include a finding that such a facility or use: (A) May reasonably be sited outside the coastal boundary; (B) fails to meet any applicable federal and state environmental, health or safety standard or (C) unreasonably restricts physical or visual access to coastal waters. This policy does not exempt any nonfederal facility in use from any applicable state or local regulatory or permit program nor does it exempt any federal facility or use from the federal consistency requirements of Section 307 of the Federal Coastal Zone Management Act. [FN9]

(b) In addition to the policies stated in subsection (a), the following policies are established for federal, state and municipal agencies in carrying out their responsibilities under this chapter:

(1) Policies concerning development, facilities and uses within the coastal boundary are: (A) To manage uses in the coastal boundary through existing municipal planning, zoning and other local regulatory authorities and through existing state structures, dredging, wetlands, and other state siting and regulatory authorities, giving highest priority and preference to water-dependent uses and facilities in shorefront areas; (B) to locate and phase sewer and water lines so as to encourage concentrated development in areas which are suitable for development; and to disapprove extension of sewer and water services into developed and undeveloped beaches, barrier beaches and tidal wetlands except that, when necessary to abate existing sources of pollution, sewers that will accommodate existing uses with limited excess capacity may be used; (C) to promote, through existing state and local planning, development, promotional and regulatory authorities, the development, reuse or redevelopment of existing urban and commercial fishing ports giving highest priority and preference to water dependent uses, including but not limited to commercial and recreational fishing and boating uses; to disallow uses which unreasonably congest navigation channels, or unreasonably preclude boating support facilities elsewhere in a port or harbor; and to minimize the risk of oil and chemical spills at port facilities; (D) to require that structures in tidal wetlands and coastal waters be designed, constructed and maintained to minimize adverse impacts on coastal resources, circulation and sedimentation patterns, water quality, and flooding and erosion, to reduce to the maximum extent practicable the use of fill, and to reduce conflicts with the riparian rights of adjacent landowners; (E) to disallow the siting within the coastal boundary of new tank farms and other new fuel and chemical storage facilities which can reasonably be located inland and to require any new storage tanks which must be located within the coastal boundary to abut existing storage tanks or to be located in urban industrial areas and to be adequately protected against floods and spills; (F) to make use of rehabilitation, upgrading and improvement of existing transportation facilities as the primary means of meeting transportation needs in the coastal area; (G) to encourage increased recreational boating use of coastal waters, where feasible, by (i) providing additional berthing space in existing harbors, (ii) limiting non-water-dependent land uses that preclude boating support facilities, (iii) increasing state-owned launching facilities, and (iv) providing for new boating facilities in natural harbors, new protected water areas and in areas dredged

from dry land; (H) to protect coastal resources by requiring, where feasible, that such boating uses and facilities (i) minimize disruption or degradation of natural coastal resources, (ii) utilize existing altered, developed or redevelopment areas, (iii) are located to assure optimal distribution of state-owned facilities to the state-wide boating public and (iv) utilize ramps and dry storage rather than slips in environmentally sensitive areas; (I) to protect and where feasible, upgrade facilities serving the commercial fishing and recreational boating industries; to maintain existing authorized commercial fishing and recreational boating harbor space unless the demand for these facilities no longer exists or adequate space has been provided; to design and locate, where feasible, proposed recreational boating facilities in a manner which does not interfere with the needs of the commercial fishing industry; and (J) to require reasonable mitigation measures where development would adversely impact historical, archaeological, or paleontological resources that have been designated by the state historic preservation officer.

(2) Policies concerning coastal land and water resources within the coastal boundary are: (A) To manage coastal bluffs and escarpments so as to preserve their slope and toe; to discourage uses which do not permit continued natural rates of erosion and to disapprove uses that accelerate slope erosion and alter essential patterns and supply of sediments to the littoral transport system; (B) to manage rocky shorefronts so as to insure that development proceeds in a manner which does not irreparably reduce the capability of the system to support a healthy intertidal biological community; to provide feeding grounds and refuge for shorebirds and finfish, and to dissipate and absorb storm and wave energies; (C) to preserve the dynamic form and integrity of natural beach systems in order to provide critical wildlife habitats, a reservoir for sand supply, a buffer for coastal flooding and erosion, and valuable recreational opportunities; to insure that coastal uses are compatible with the capabilities of the system and do not unreasonably interfere with natural processes of erosion and sedimentation, and to encourage the restoration and enhancement of disturbed or modified beach systems; (D) to manage intertidal flats so as to preserve their value as a nutrient source and reservoir, a healthy shellfish habitat and a valuable feeding area for invertebrates, fish and shorebirds; to encourage the restoration and enhancement of degraded intertidal flats; to allow coastal uses that minimize change in the natural current flows, depth, slope, sedimentation, and nutrient storage functions and to disallow uses that substantially accelerate erosion or lead to significant despoliation of tidal flats; (E) to preserve tidal wetlands and to prevent the despoliation and destruction thereof in order to maintain their vital natural functions; to encourage the rehabilitation and restoration of degraded tidal wetlands and where feasible and environmentally acceptable, to encourage the creation of wetlands for the purposes of shellfish and finfish management, habitat creation and dredge spoil disposal; (F) to manage coastal hazard areas so as to insure that development proceeds in such a manner that hazards to life and property are minimized and to promote nonstructural solutions to flood and erosion problems except in those instances where structural alternatives prove unavoidable and necessary to protect existing inhabited structures, infrastructural facilities or water dependent uses; (G) to promote, through existing state and local planning, development, promotional and regulatory programs, the use of existing developed shorefront areas for marine-related uses, including but not limited to, commercial and recreational fishing, boating and other water-dependent commercial,

industrial and recreational uses; (H) to manage undeveloped islands in order to promote their use as critical habitats for those bird, plant and animal species which are indigenous to such islands or which are increasingly rare on the mainland; to maintain the value of undeveloped islands as a major source of recreational open space; and to disallow uses which will have significant adverse impacts on islands or their resource components; (I) to regulate shoreland use and development in a manner which minimizes adverse impacts upon adjacent coastal systems and resources; and (J) to maintain the natural relationship between eroding and depositional coastal landforms and to minimize the adverse impacts of erosion and sedimentation on coastal land uses through the promotion of nonstructural mitigation measures. Structural solutions are permissible when necessary and unavoidable for the protection of infrastructural facilities, water-dependent uses, or existing inhabited structures, and where there is no feasible, less environmentally damaging alternative and where all reasonable mitigation measures and techniques have been provided to minimize adverse environmental impacts.

(c) In addition to the policies stated in subsections (a) and (b), the following policies are established for federal and state agencies in carrying out their responsibilities under this chapter:

(1) Policies concerning development, facilities and uses within the coastal boundary are:
(A) To minimize the risk of spillage of petroleum products and hazardous substances, to provide effective containment and cleanup facilities for accidental spills and to disallow offshore oil receiving systems that have the potential to cause catastrophic oil spills in the Long Island Sound estuary; (B) to disallow any filling of tidal wetlands and nearshore, offshore and intertidal waters for the purpose of creating new land from existing wetlands and coastal waters which would otherwise be undevelopable, unless it is found that the adverse impacts on coastal resources are minimal; (C) to initiate in cooperation with the federal government and the continuing legislative committee on state planning and development a long-range planning program for the continued maintenance and enhancement of federally-maintained navigation facilities in order to effectively and efficiently plan and provide for environmentally sound dredging and disposal of dredged materials; to encourage, through the state permitting program for dredging activities, the maintenance and enhancement of existing federally-maintained navigation channels, basins and anchorages and to discourage the dredging of new federally-maintained navigation channels, basins and anchorages; (D) to reduce the need for future dredging by requiring that new or expanded navigation channels, basins and anchorages take advantage of existing or authorized water depths, circulation and siltation patterns and the best available technologies for reducing controllable sedimentation; (E) to disallow new dredging in tidal wetlands except where no feasible alternative exists and where adverse impacts to coastal resources are minimal; (F) to require that new or improved shoreline rail corridors be designed and constructed so as (i) to prevent tidal and circulation restrictions and, when practicable, to eliminate any such existing restrictions, (ii) to improve or have a negligible adverse effect on coastal access and recreation and (iii) to enhance or not unreasonably impair the visual quality of the shoreline; (G) to require that coastal highways and highway improvements, including bridges, be designed and constructed so as to minimize adverse impacts on coastal resources; to require that

coastal highway and highway improvements give full consideration to mass transportation alternatives and to require that coastal highways and highway improvements where possible enhance, but in no case decrease coastal access and recreational opportunities; (H) to disallow the construction of major new airports and to discourage the substantial expansion of existing airports within the coastal boundary; to require that any expansion or improvement of existing airports minimize adverse impacts on coastal resources, recreation or access; (I) to manage the state's fisheries in order to promote the economic benefits of commercial and recreational fishing, enhance recreational fishing opportunities, optimize the yield of all species, prevent the depletion or extinction of indigenous species, maintain and enhance the productivity of natural estuarine resources and preserve healthy fisheries resources for future generations; (J) to make effective use of state-owned coastal recreational facilities in order to expand coastal recreational opportunities including the development or redevelopment of existing state-owned facilities where feasible; (K) to require as a condition in permitting new coastal structures, including but not limited to, groins, jetties or breakwaters, that access to, or along, the public beach below mean high water must not be unreasonably impaired by such structures and to encourage the removal of illegal structures below mean high water which unreasonably obstruct passage along the public beach; and (L) to promote the revitalization of inner city urban harbors and waterfronts by encouraging appropriate reuse of historically developed shorefronts, which may include minimized alteration of an existing shorefront in order to achieve a significant net public benefit, provided (i) such shorefront site is permanently devoted to a water dependent use or a water dependent public use such as public access or recreation for the general public and the ownership of any filled lands remain with the state or an instrumentality thereof in order to secure public use and benefit in perpetuity, (ii) landward development of the site is constrained by highways, railroads or other significant infrastructure facilities, (iii) no other feasible, less environmentally damaging alternatives exist, (iv) the adverse impacts to coastal resources of any shorefront alteration are minimized and compensation in the form of resource restoration is provided to mitigate any remaining adverse impacts, and (v) such reuse is consistent with the appropriate municipal coastal program or municipal plan of development.

(2) Policies concerning coastal land and other resources within the coastal boundary are:
(A) To manage estuarine embayments so as to insure that coastal uses proceed in a manner that assures sustained biological productivity, the maintenance of healthy marine populations and the maintenance of essential patterns of circulation, drainage and basin configuration; to protect, enhance and allow natural restoration of eelgrass flats except in special limited cases, notably shellfish management, where the benefits accrued through alteration of the flat may outweigh the long-term benefits to marine biota, waterfowl, and commercial and recreational finfisheries and (B) to maintain, enhance, or, where feasible, restore natural patterns of water circulation and fresh and saltwater exchange in the placement or replacement of culverts, tide gates or other drainage or flood control structures.

(d) In addition to the policies in this section, the policies of the state plan of conservation and development adopted pursuant to part I of chapter 297 shall be applied to the area

within the coastal boundary in accordance with the requirements of section 16a-31.

Connecticut General Statutes Annotated Currentness

Title 22A. Environmental Protection (Refs & Annos)

Chapter 444. Coastal Management (Refs & Annos)

➡§ 22a-93. Definitions

(14) "Facilities and resources which are in the national interest" means: (A) Adequate protection of tidal wetlands and related estuarine resources; (B) restoration and enhancement of Connecticut's shellfish industry; (C) restoration, preservation and enhancement of the state's recreational and commercial fisheries, including anadromous species; (D) water pollution control measures and facilities consistent with the requirements of the Federal Clean Water Act, as amended; [FN3] (E) air pollution control measures and facilities consistent with the requirements of the Federal Clean Air Act, as amended; [FN4] (F) continued operations of existing federally-funded dredged and maintained navigation channels and basins; (G) energy facilities serving state-wide and interstate markets, including electric generating facilities and facilities for storage, receiving or processing petroleum products and other fuels; (H) improvements to the existing interstate rail, highway and water-borne transportation system; (I) provision of adequate state or federally-owned marine-related recreational facilities, including natural areas and wildlife sanctuaries; and (J) essential maintenance and improvement of existing water-dependent military, navigational, resource management and research facilities;

(16) "Water-dependent uses" means those uses and facilities which require direct access to, or location in, marine or tidal waters and which therefore cannot be located inland, including but not limited to: Marinas, recreational and commercial fishing and boating facilities, finfish and shellfish processing plants, waterfront dock and port facilities, shipyards and boat building facilities, water-based recreational uses, navigation aides, basins and channels, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or process water which cannot reasonably be located or operated at an inland site and uses which provide general public access to marine or tidal waters;

(17) "Adverse impacts on future water-dependent development opportunities" and "adverse impacts on future water-dependent development activities" include but are not limited to (A) locating a non-water-dependent use at a site that (i) is physically suited for a water-dependent use for which there is a reasonable demand or (ii) has been identified for a water-dependent use in the plan of development of the municipality or the zoning regulations; (B) replacement of a water-dependent use with a non-water-dependent use, and (C) siting of a non-water-dependent use which would substantially reduce or inhibit existing public access to marine or tidal waters;

Connecticut General Statutes Annotated

Title 22A. Environmental Protection

~~Chapter 444.~~ Coastal Management

§ 22a-95. Duties of commissioner. Model municipal coastal program

- (a) The commissioner shall, on a continuing basis, assist coastal municipalities in carrying out their responsibilities under this chapter.
- (b) The commissioner shall provide each coastal municipality with resource factor maps and other information concerning the location and condition of its coastal resources and shall also provide general technical background information on the beneficial and adverse impacts of various types of development on coastal resources.
- (c) The commissioner shall respond to questions regarding the requirements of this chapter, shall respond to requests by coastal municipalities for background technical information and shall meet reasonable requests by such municipalities for technical staff assistance in developing and implementing municipal coastal programs and coastal site plan reviews.
- (d) The commissioner shall consult regularly with officials of coastal municipalities regarding implementation of this chapter and shall periodically hold workshops with municipal officials responsible for making decisions under this chapter.
- (e) The commissioner shall prepare a model municipal coastal program which shall include, but not be limited to: (1) Model municipal coastal plans and regulations; (2) suggested planning methodologies useful in revising municipal coastal plans; (3) suggested regulatory methods useful in revising municipal coastal regulations to conform to and effectuate the purposes of municipal coastal plans; and (4) suggested criteria and procedures for undertaking municipal coastal site plan reviews.
- (f) Written technical information provided by the commissioner to coastal municipalities shall be in clear and readily understandable language.

Connecticut General Statutes Annotated

Title 22A. Environmental Protection

~~Chapter 444.~~ Coastal Management

§ 22a-97. Duties of the commissioner. Technical, coordinating and research services. Supervision. Annual report

- (a) The commissioner shall provide, within available appropriations, technical, coordinating and research services to promote the effective administration of this chapter at the federal, state and local levels.
- (b) The commissioner shall have the overall responsibility for general supervision of the implementation of this chapter and shall monitor and evaluate the activities of federal and state agencies and the activities of municipalities to assure continuing, effective,

coordinated and consistent administration of the requirements and purposes of this chapter.

Connecticut General Statutes Annotated
Title 22A. Environmental Protection
Chapter 444. Coastal Management
§ 22a-101. Municipal coastal programs

(a) In order to carry out the policies and provisions of this chapter and to provide more specific guidance to coastal area property owners and developers, coastal municipalities may adopt a municipal coastal program for the area within the coastal boundary and landward of the mean high water mark.

(b) A municipal coastal program shall include, but is not limited to: (1) Revisions to the municipal plan of conservation and development under section 8-23 or special act, insofar as it affects the area within the coastal boundary, such revisions to include an identification and written description of the municipality's major coastal-related issues and problems, both immediate and long-term, such as erosion, flooding, recreational facilities, and utilization of port facilities and to include a description of the municipal boards, commissions and officials responsible for implementing and enforcing the coastal program, a description of enforcement procedures and a description of continuing methods of involving the public in the implementation of the municipal coastal program; (2) revisions to the municipal zoning regulations under section 8-2 or under special act and revisions to the following regulations and ordinances if the municipality has adopted such regulations or ordinances, and insofar as such regulations or ordinances affect the area within the coastal boundary: (A) Historic district ordinances under section 7-147b; (B) waterway encroachment line ordinances under section 7-147; (C) subdivision ordinances under section 8-25; (D) inland wetland regulations under subsection (e) of section 22a-42 and section 22a-42a; (E) sewerage ordinances under section 7-148; (F) ordinances or regulations governing filling of land and removal of soil, loam, sand or gravel under section 7-148; (G) ordinances concerning protection and improvement of the environment under section 7-148; and (H) regulations for the supervision, management, control, operation or use of a sewerage system under section 7-247.

(c) If a municipality has not yet adopted a municipal plan of conservation and development under section 8-23, a municipal planning commission may prepare a municipal coastal plan of development solely for that portion of municipality within the coastal boundary in accordance with subsection (b) of this section and section 22a-102.

(d) A municipal coastal program may include revisions to the following municipal plans or programs which revisions shall be consistent with the municipal plan of conservation and development revised in accordance with subsection (b) of this section and section 22a-102: (1) The community development plan under sections 8-169c and 8-169d; (2) the

harbor improvement plan under section 13b-56; (3) the redevelopment plan under sections 8-125 and 8-127; (4) the port development plan under section 7-329c; (5) the capital improvement plan under section 8-160; (6) the open space plan under section 12-107e; (7) any development project plan or plans under section 8-189; and (8) the municipal water pollution control plan under section 7-245.

(e) Revisions to the municipal plan of development in accordance with subsection (b) of this section and section 22a-102 may include a description of any development projects, acquisition plans, open space tax abatement programs, flood and erosion control projects and other nonregulatory measures which the municipality intends to undertake in order to promote wise management of coastal resources.

Connecticut General Statutes Annotated
Title 22A. Environmental Protection
Chapter 444. Coastal Management
§ 22a-105. Coastal site plan reviews

(a) Coastal municipalities shall undertake coastal site plan reviews in accordance with the requirements of this chapter.

(b) The following site plans, plans and applications for activities or projects to be located fully or partially within the coastal boundary and landward of the mean high water mark shall be defined as "coastal site plans" and shall be subject to the requirements of this chapter: (1) Site plans submitted to a zoning commission in accordance with section 22a-109; (2) plans submitted to a planning commission for subdivision or resubdivision in accordance with section 8-25 or with any special act; (3) applications for a special exception or special permit submitted to a planning commission, zoning commission or zoning board of appeals in accordance with section 8-2 or with any special act; (4) applications for a variance submitted to a zoning board of appeals in accordance with subdivision (3) of section 8-6 or with any special act, and (5) a referral of a proposed municipal project to a planning commission in accordance with section 8-24 or with any special act.

(c) In addition to the requirements specified by municipal regulation, a coastal site plan shall include a plan showing the location and spatial relationship of coastal resources on and contiguous to the site; a description of the entire project with appropriate plans, indicating project location, design, timing, and methods of construction; an assessment of the capability of the resources to accommodate the proposed use; an assessment of the suitability of the project for the proposed site; an evaluation of the potential beneficial and adverse impacts of the project and a description of proposed methods to mitigate adverse effects on coastal resources.

(d) Municipalities, acting through the agencies responsible for the review of the coastal site plans defined in subsection (b) of this section, may require a filing fee to defray the reasonable cost of reviewing and acting upon an application.

(e) The board or commission reviewing the coastal site plan shall, in addition to the discretion granted in any other sections of the general statutes or in any special act, approve, modify, condition or deny the activity proposed in a coastal site plan on the basis of the criteria listed in section 22a-106 to ensure that the potential adverse impacts of the proposed activity on both coastal resources and future water-dependent development activities are acceptable. The provisions of this chapter shall not be construed to prevent the reconstruction of a building after a casualty loss.

(f) Notwithstanding the provisions of any other section of the general statutes to the contrary, the review of any coastal site plan pursuant to this chapter shall not be deemed complete and valid unless the board or commission having jurisdiction over such plan has rendered a final decision thereon. If such board or commission fails to render a decision within the time period provided by the general statutes or any special act for such a decision, the coastal site plan shall be deemed rejected.

Connecticut General Statutes Annotated

Title 22A. Environmental Protection

Chapter 444. Coastal Management

§ 22a-106. Criteria and process for action on coastal site plans

(a) In addition to determining that the activity proposed in a coastal site plan satisfies other lawful criteria and conditions, a municipal board or commission reviewing a coastal site plan shall determine whether or not the potential adverse impacts of the proposed activity on both coastal resources and future water-dependent development activities are acceptable.

(b) In determining the acceptability of potential adverse impacts of the proposed activity described in the coastal site plan on both coastal resources and future water-dependent development opportunities a municipal board or commission shall: (1) Consider the characteristics of the site, including the location and condition of any of the coastal resources defined in section 22a-93; (2) consider the potential effects, both beneficial and adverse, of the proposed activity on coastal resources and future water-dependent development opportunities; and (3) follow all applicable goals and policies stated in section 22a-92 and identify conflicts between the proposed activity and any goal or policy.

(c) Any persons submitting a coastal site plan as defined in subsection (b) of section 22a-105 shall demonstrate that the adverse impacts of the proposed activity are acceptable and shall demonstrate that such activity is consistent with the goals and policies in section 22a-92.

(d) A municipal board or commission approving, modifying, conditioning or denying a coastal site plan on the basis of the criteria listed in subsection (b) of this section shall state in writing the findings and reasons for its action.

(e) In approving any activity proposed in a coastal site plan, the municipal board or

commission shall make a written finding that the proposed activity with any conditions or modifications imposed by the board: (1) Is consistent with all applicable goals and policies in section 22a-92; (2) incorporates as conditions or modifications all reasonable measures which would mitigate the adverse impacts of the proposed activity on both coastal resources and future water-dependent development activities.

Appendix B

Washington Shoreline Management Act

Title 90. Water Rights--Environment

Chapter 90.58. Shoreline Management Act of 1971

90.58.020. Legislative findings--State policy enunciated--Use preference

The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefor, 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.

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance. The department, in adopting guidelines for shorelines of statewide significance, and local government, in developing master programs for shorelines of statewide significance, shall give preference to uses in the following order of preference which:

- (1) Recognize and protect the statewide interest over local interest;
- (2) Preserve the natural character of the shoreline;

- (3) Result in long term over short term benefit;
- (4) Protect the resources and ecology of the shoreline;
- (5) Increase public access to publicly owned areas of the shorelines;
- (6) Increase recreational opportunities for the public in the shoreline;
- (7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. Alterations of the natural condition of the shorelines and shorelands of the state shall be recognized by the department. Shorelines and shorelands of the state shall be appropriately classified and these classifications shall be revised when circumstances warrant regardless of whether the change in circumstances occurs through man-made causes or natural causes. Any areas resulting from alterations of the natural condition of the shorelines and shorelands of the state no longer meeting the definition of "shorelines of the state" shall not be subject to the provisions of chapter 90.58 RCW.

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

Title 90. Water Rights--Environment

***Chapter 90.58. Shoreline Management Act of 1971**

**90.58.050. Program as cooperative between local government and state--
Responsibilities differentiated**

This chapter establishes a cooperative program of shoreline management between local government and the state. Local government shall have the primary responsibility for initiating the planning required by this chapter and administering the regulatory program

consistent with the policy and provisions of this chapter. The department shall act primarily in a supportive and review capacity with an emphasis on providing assistance to local government and on insuring compliance with the policy and provisions of this chapter.

Title 90. Water Rights--Environment

Chapter 90.58. Shoreline Management Act of 1971

90.58.100. Programs as constituting use regulations--Duties when preparing programs and amendments thereto--Program contents

(1) The master programs provided for in this chapter, when adopted or approved by the department shall constitute use regulations for the various shorelines of the state. In preparing the master programs, and any amendments thereto, the department and local governments shall to the extent feasible:

(a) Utilize a systematic interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts;

(b) Consult with and obtain the comments of any federal, state, regional, or local agency having any special expertise with respect to any environmental impact;

(c) Consider all plans, studies, surveys, inventories, and systems of classification made or being made by federal, state, regional, or local agencies, by private individuals, or by organizations dealing with pertinent shorelines of the state;

(d) Conduct or support such further research, studies, surveys, and interviews as are deemed necessary;

(e) Utilize all available information regarding hydrology, geography, topography, ecology, economics, and other pertinent data;

(f) Employ, when feasible, all appropriate, modern scientific data processing and computer techniques to store, index, analyze, and manage the information gathered.

(2) The master programs shall include, when appropriate, the following:

(a) An economic development element for the location and design of industries, industrial projects of statewide significance, transportation facilities, port facilities, tourist facilities, commerce and other developments that are particularly dependent on their location on or use of the shorelines of the state;

(b) A public access element making provision for public access to publicly owned areas;

(c) A recreational element for the preservation and enlargement of recreational opportunities, including but not limited to parks, tidelands, beaches, and recreational

areas;

(d) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other public utilities and facilities, all correlated with the shoreline use element;

(e) A use element which considers the proposed general distribution and general location and extent of the use on shorelines and adjacent land areas for housing, business, industry, transportation, agriculture, natural resources, recreation, education, public buildings and grounds, and other categories of public and private uses of the land;

(f) A conservation element for the preservation of natural resources, including but not limited to scenic vistas, aesthetics, and vital estuarine areas for fisheries and wildlife protection;

(g) An historic, cultural, scientific, and educational element for the protection and restoration of buildings, sites, and areas having historic, cultural, scientific, or educational values;

(h) An element that gives consideration to the statewide interest in the prevention and minimization of flood damages; and

(i) Any other element deemed appropriate or necessary to effectuate the policy of this chapter.

(3) The master programs shall include such map or maps, descriptive text, diagrams and charts, or other descriptive material as are necessary to provide for ease of understanding.

(4) Master programs will reflect that state-owned shorelines of the state are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational activities for the public and will give appropriate special consideration to same.

(5) Each master program shall contain provisions to allow for the varying of the application of use regulations of the program, including provisions for permits for conditional uses and variances, to insure that strict implementation of a program will not create unnecessary hardships or thwart the policy enumerated in RCW 90.58.020. Any such varying shall be allowed only if extraordinary circumstances are shown and the public interest suffers no substantial detrimental effect. The concept of this subsection shall be incorporated in the rules adopted by the department relating to the establishment of a permit system as provided in RCW 90.58.140(3).

(6) Each master program shall contain standards governing the protection of single family residences and appurtenant structures against damage or loss due to shoreline erosion. The standards shall govern the issuance of substantial development permits for shoreline protection, including structural methods such as construction of bulkheads, and nonstructural methods of protection. The standards shall provide for methods which

achieve effective and timely protection against loss or damage to single family residences and appurtenant structures due to shoreline erosion. The standards shall provide a preference for permit issuance for measures to protect single family residences occupied prior to January 1, 1992, where the proposed measure is designed to minimize harm to the shoreline natural environment.

Title 90. Water Rights--Environment

Chapter 90.58. Shoreline Management Act of 1971

90.58.140. Development permits--Grounds for granting--Administration by local government, conditions--Applications--Notices--Rescission--Approval when permit for variance or conditional use

(1) A development shall not be undertaken on the shorelines of the state unless it is consistent with the policy of this chapter and, after adoption or approval, as appropriate, the applicable guidelines, rules, or master program.

(2) A substantial development shall not be undertaken on shorelines of the state without first obtaining a permit from the government entity having administrative jurisdiction under this chapter.

A permit shall be granted:

(a) From June 1, 1971, until such time as an applicable master program has become effective, only when the development proposed is consistent with: (i) The policy of RCW 90.58.020; and (ii) after their adoption, the guidelines and rules of the department; and (iii) so far as can be ascertained, the master program being developed for the area;

(b) After adoption or approval, as appropriate, by the department of an applicable master program, only when the development proposed is consistent with the applicable master program and this chapter.

(3) The local government shall establish a program, consistent with rules adopted by the department, for the administration and enforcement of the permit system provided in this section. The administration of the system so established shall be performed exclusively by the local government.

(4) Except as otherwise specifically provided in subsection (11) of this section, the local government shall require notification of the public of all applications for permits governed by any permit system established pursuant to subsection (3) of this section by ensuring that notice of the application is given by at least one of the following methods:

(a) Mailing of the notice to the latest recorded real property owners as shown by the records of the county assessor within at least three hundred feet of the boundary of the property upon which the substantial development is proposed;

(b) Posting of the notice in a conspicuous manner on the property upon which the project

is to be constructed; or

(c) Any other manner deemed appropriate by local authorities to accomplish the objectives of reasonable notice to adjacent landowners and the public.

The notices shall include a statement that any person desiring to submit written comments concerning an application, or desiring to receive notification of the final decision concerning an application as expeditiously as possible after the issuance of the decision, may submit the comments or requests for decisions to the local government within thirty days of the last date the notice is to be published pursuant to this subsection. The local government shall forward, in a timely manner following the issuance of a decision, a copy of the decision to each person who submits a request for the decision.

If a hearing is to be held on an application, notices of such a hearing shall include a statement that any person may submit oral or written comments on an application at the hearing.

(5) The system shall include provisions to assure that construction pursuant to a permit will not begin or be authorized until twenty-one days from the date the permit decision was filed as provided in subsection (6) of this section; or until all review proceedings are terminated if the proceedings were initiated within twenty-one days from the date of filing as defined in subsection (6) of this section except as follows:

(a) In the case of any permit issued to the state of Washington, department of transportation, for the construction and modification of SR 90 (I-90) on or adjacent to Lake Washington, the construction may begin after thirty days from the date of filing, and the permits are valid until December 31, 1995;

(b) Construction may be commenced no sooner than thirty days after the date of the appeal of the board's decision is filed if a permit is granted by the local government and (i) the granting of the permit is appealed to the shorelines hearings board within twenty-one days of the date of filing, (ii) the hearings board approves the granting of the permit by the local government or approves a portion of the substantial development for which the local government issued the permit, and (iii) an appeal for judicial review of the hearings board decision is filed pursuant to chapter 34.05 RCW. The appellant may request, within ten days of the filing of the appeal with the court, a hearing before the court to determine whether construction pursuant to the permit approved by the hearings board or to a revised permit issued pursuant to the order of the hearings board should not commence. If, at the conclusion of the hearing, the court finds that construction pursuant to such a permit would involve a significant, irreversible damaging of the environment, the court shall prohibit the permittee from commencing the construction pursuant to the approved or revised permit until all review proceedings are final. Construction pursuant to a permit revised at the direction of the hearings board may begin only on that portion of the substantial development for which the local government had originally issued the permit, and construction pursuant to such a revised permit on other portions of the substantial development may not begin until after all review proceedings are terminated.

In such a hearing before the court, the burden of proving whether the construction may involve significant irreversible damage to the environment and demonstrating whether such construction would or would not be appropriate is on the appellant;

(c) If the permit is for a substantial development meeting the requirements of subsection (11) of this section, construction pursuant to that permit may not begin or be authorized until twenty-one days from the date the permit decision was filed as provided in subsection (6) of this section.

If a permittee begins construction pursuant to subsections (a), (b), or (c) of this subsection, the construction is begun at the permittee's own risk. If, as a result of judicial review, the courts order the removal of any portion of the construction or the restoration of any portion of the environment involved or require the alteration of any portion of a substantial development constructed pursuant to a permit, the permittee is barred from recovering damages or costs involved in adhering to such requirements from the local government that granted the permit, the hearings board, or any appellant or intervener.

(6) Any decision on an application for a permit under the authority of this section, whether it is an approval or a denial, shall, concurrently with the transmittal of the ruling to the applicant, be filed with the department and the attorney general. With regard to a permit other than a permit governed by subsection (10) of this section, "date of filing" as used herein means the date of actual receipt by the department. With regard to a permit for a variance or a conditional use, "date of filing" means the date a decision of the department rendered on the permit pursuant to subsection (10) of this section is transmitted by the department to the local government. The department shall notify in writing the local government and the applicant of the date of filing.

(7) Applicants for permits under this section have the burden of proving that a proposed substantial development is consistent with the criteria that must be met before a permit is granted. In any review of the granting or denial of an application for a permit as provided in RCW 90.58.180 (1) and (2), the person requesting the review has the burden of proof.

(8) Any permit may, after a hearing with adequate notice to the permittee and the public, be rescinded by the issuing authority upon the finding that a permittee has not complied with conditions of a permit. If the department is of the opinion that noncompliance exists, the department shall provide written notice to the local government and the permittee. If the department is of the opinion that the noncompliance continues to exist thirty days after the date of the notice, and the local government has taken no action to rescind the permit, the department may petition the hearings board for a rescission of the permit upon written notice of the petition to the local government and the permittee if the request by the department is made to the hearings board within fifteen days of the termination of the thirty-day notice to the local government.

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

(10) Any permit for a variance or a conditional use by local government under approved master programs must be submitted to the department for its approval or disapproval.

(11)(a) An application for a substantial development permit for a limited utility extension or for the construction of a bulkhead or other measures to protect a single family residence and its appurtenant structures from shoreline erosion shall be subject to the following procedures:

(i) The public comment period under subsection (4) of this section shall be twenty days. The notice provided under subsection (4) of this section shall state the manner in which the public may obtain a copy of the local government decision on the application no later than two days following its issuance;

(ii) The local government shall issue its decision to grant or deny the permit within twenty-one days of the last day of the comment period specified in (i) of this subsection; and

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

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

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

(ii) Will serve an existing use in compliance with this chapter; and

(iii) Will not extend more than twenty-five hundred linear feet within the shorelines of the state.

**WASHINGTON ADMINISTRATIVE CODE
TITLE 173. ECOLOGY, DEPARTMENT OF
CHAPTER 173-26. STATE MASTER PROGRAM APPROVAL/AMENDMENT
PROCEDURES AND MASTER PROGRAM GUIDELINES**

173-26-010. Authority and purpose.

The provisions of this chapter implement the requirements of chapter 90.58 RCW, the Shoreline Management Act of 1971. RCW 90.58.200 authorizes the adoption of rules by the department as necessary and appropriate to carry out the provisions of the act. RCW 90.58.080 directs local governments to develop and administer local shoreline master programs for regulation of uses on shorelines of the state. Such local programs should be integrated with other local government systems for administration and enforcement of land use regulations. RCW 36.70A.480 provides that the goals and policies contained in a

local shoreline master program shall be considered an element of the local comprehensive plan required by the Growth Management Act. All other portions of the local shoreline master program, including the use regulations, are considered a part of the local development regulations required by the Growth Management Act.

This chapter is drafted to also reflect RCW 90.58.050 which provides that the Shoreline Management Act is intended to be a cooperative program between local government and the state. It is the intent of this chapter to provide minimum procedural requirements as necessary to comply with the statutory requirements while providing latitude for local government to establish procedural systems based on local needs and circumstances.

Pursuant to the Shoreline Management Act, the department must approve master programs prepared by local governments or adopt them by rule consistent with the act. In order to facilitate this process, Part I of this chapter establishes a recordkeeping system for the department and defines the contents of the state master program. Part II sets forth procedures for approving and adopting master programs and amendments thereto. Part III comprises the guidelines pursuant to RCW 90.58.060 and provides guidance for developing the content of shoreline master programs. Part IV - addresses the requirements of the state Ocean Resources Management Act.

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TITLE 173. ECOLOGY, DEPARTMENT OF
CHAPTER 173-26. STATE MASTER PROGRAM APPROVAL/AMENDMENT
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173-26-020. Definitions.

In addition to the definitions and concepts set forth in RCW 90.58.030, as amended, and the other implementing rules for the SMA, as used herein, the following words and phrases shall have the following meanings:

(1) 'Act' means the Washington State Shoreline Management Act, chapter 90.58 RCW.

(2) 'Adoption by rule' means an official action by the department to make a local government shoreline master program effective through rule consistent with the requirements of the Administrative Procedure Act, chapter 34.05 RCW, thereby incorporating the adopted shoreline master program or amendment into the state master program.

(4) 'Amendment' means a revision, update, addition, deletion, and/or reenactment to an existing shoreline master program.

(5) 'Approval' means an official action by a local government legislative body agreeing to submit a proposed shoreline master program or amendments to the department for review and official action pursuant to this chapter; or an official action by the department to make a local government shoreline master program effective, thereby incorporating the

approved shoreline master program or amendment into the state master program.

(7) 'Department' means the state department of ecology.

(8) 'Development regulations' means the controls placed on development or land uses by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, all portions of a shoreline master program other than goals and policies approved or adopted under chapter 90.58 RCW, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto.

(9) 'Document of record' means the most current shoreline master program officially approved or adopted by rule by the department for a given local government jurisdiction, including any changes resulting from appeals filed pursuant to RCW 90.58.190.

(13) 'Feasible' means, for the purpose of this chapter, that an action, such as a development project, mitigation, or preservation requirement, meets all of the following conditions:

(a) The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;

(b) The action provides a reasonable likelihood of achieving its intended purpose; and

(c) The action does not physically preclude achieving the project's primary intended legal use.

In cases where these guidelines require certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant.

In determining an action's infeasibility, the reviewing agency may weigh the action's relative public costs and public benefits, considered in the short-and long-term time frames.

(18) 'Guidelines' means those standards adopted by the department to implement the policy of chapter 90.58 RCW for regulation of use of the shorelines of the state prior to adoption of master programs. Such standards shall also provide criteria for local governments and the department in developing and amending master programs.

(19) 'Local government' means any county, incorporated city or town which contains within its boundaries shorelines of the state subject to chapter 90.58 RCW.

(20) 'Marine' means pertaining to tidally influenced waters, including oceans, sounds, straits, marine channels, and estuaries, including the Pacific Ocean, Puget Sound, Straits of Georgia and Juan de Fuca, and the bays, estuaries and inlets associated therewith.

(21) 'May' means the action is acceptable, provided it conforms to the provisions of this chapter.

(22) 'Must' means a mandate; the action is required.

(23) 'Nonwater-oriented uses' means those uses that are not water-dependent, water-related, or water-enjoyment.

(28) 'Shall' means a mandate; the action must be done.

(29) 'Shoreline areas' and 'shoreline jurisdiction' means all 'shorelines of the state' and 'shorelands' as defined in RCW 90.58.030.

(30) 'Shoreline master program' or 'master program' means the comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020.

As provided in RCW 36.70A.480, the goals and policies of a shoreline master program for a county or city approved under chapter 90.58 RCW shall be considered an element of the county or city's comprehensive plan. All other portions of the shoreline master program for a county or city adopted under chapter 90.58 RCW, including use regulations, shall be considered a part of the county or city's development regulations.

(31) 'Shoreline modifications' means those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, pier, weir, dredged basin, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, or application of chemicals.

(32) 'Should' means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this chapter, against taking the action.

(34) 'State master program' means the cumulative total of all shoreline master programs and amendments thereto approved or adopted by rule by the department.

(35) 'Substantially degrade' means to cause significant ecological impact.

(36) 'Water-dependent use' means a use or portion of a use which cannot exist in a location that is not adjacent to the water and which is dependent on the water by reason of the intrinsic nature of its operations.

(37) 'Water-enjoyment use' means a recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for

recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

(38) 'Water-oriented use' means a use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.

(40) 'Water-related use' means a use or portion of a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because:

(a) The use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or

(b) The use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient:

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TITLE 173. ECOLOGY, DEPARTMENT OF
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PROCEDURES AND MASTER PROGRAM GUIDELINES
PART III GUIDELINES

173-26-171. Authority, purpose and effects of guidelines.

(1) **Authority.** RCW 90.58.090 authorizes and directs the department to adopt 'guidelines consistent with RCW 90.58.020, containing the elements specified in RCW 90.58.100' for development of local master programs for regulation of the uses of 'shorelines' and 'shorelines of statewide significance.' RCW 90.58.200 authorizes the department and local governments 'to adopt such rules as are necessary and appropriate to carry out the provisions of the Shoreline Management Act.

(2) **Purpose.** The general purpose of the guidelines is to implement the 'cooperative program of shoreline management between local government and the state.' Local government shall have the primary responsibility for initiating the planning required by the Shoreline Management Act and 'administering the regulatory program consistent with the policy and provisions' of the act. 'The department shall act primarily in a supportive and review capacity with an emphasis on providing assistance to local government and insuring compliance with the policy and provisions' of the act. RCW 90.58.050.

In keeping with the relationship between state and local governments prescribed by the act, the guidelines have three specific purposes: To assist local governments in developing master programs; to serve as standards for the regulation of shoreline

development in the absence of a master program along with the policy and provisions of the act and, to be used along with the policy of RCW 90.58.020, as criteria for state review of local master programs under RCW 90.58.090.

(3) Effect.

(a) The guidelines are guiding parameters, standards, and review criteria for local master programs. The guidelines allow local governments substantial discretion to adopt master programs reflecting local circumstances and other local regulatory and nonregulatory programs related to the policy goals of shoreline management as provided in the policy statements of RCW 90.58.020, WAC 173-26-176 and 173-26-181. The policy of RCW 90.58.020 and these guidelines constitute standards and criteria to be used by the department in reviewing the adoption and amendment of local master programs under RCW 90.58.090 and by the growth management hearings board and shorelines hearings board adjudicating appeals of department decisions to approve, reject, or modify proposed master programs and amendments under RCW 90.58.190.

(b) Under RCW 90.58.340, the guidelines, along with the policy of the act and the master programs, also shall be standards of review and criteria to be used by state agencies, counties, and public and municipal corporations in determining whether the use of lands under their respective jurisdictions adjacent to the shorelines of the state are subject to planning policies consistent with the policies and regulations applicable to shorelines of the state.

(c) The guidelines do not regulate development on shorelines of the state in counties and cities where approved master programs are in effect. In local jurisdictions without approved master programs, development on the shorelines of the state must be consistent with the policy of RCW 90.58.020 and the applicable guidelines under RCW 90.58.140.

(d) As provided in RCW 90.58.060, the department is charged with periodic review and update of these guidelines to address technical and procedural issues that arise as from the review of shoreline master programs (SMPs) as well as compliance of the guidelines with statutory provisions. As a part of this process, ecology will compile information concerning the effectiveness and efficiency of these guidelines and the master programs adopted pursuant thereto with regard to accomplishment of the policies of the Shoreline Management Act and the corresponding principles and specific requirements set forth in these guidelines.

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173-26-191. Master program contents.

(1) **Master program concepts.** The following concepts are the basis for effective shoreline master programs.

(a) **Master program policies and regulations.** Shoreline master programs are both planning and regulatory tools. Master programs serve a planning function in several ways. First, they balance and integrate the objectives and interests of local citizens. Therefore, the preparation and amending of master programs shall involve active public participation, as called for in WAC 173-26-201(3). Second, they address the full variety of conditions on the shoreline. Third, they consider and, where necessary to achieve the objectives of chapter 90.58 RCW, influence planning and regulatory measures for adjacent land. For jurisdictions planning under chapter 36.70A RCW, the Growth Management Act, the requirements for consistency between shoreline and adjacent land planning are more specific and are described in WAC 173-26-191 (1)(e). Fourth, master programs address conditions and opportunities of specific shoreline segments by classifying the shorelines into 'environment designations' as described in WAC 173-26-211.

The results of shoreline planning are summarized in shoreline master program policies that establish broad shoreline management directives. The policies are the basis for regulations that govern use and development along the shoreline. Some master program policies may not be fully attainable by regulatory means due to the constitutional and other legal limitations on the regulation of private property. The policies may be pursued by other means as provided in RCW 90.58.240. Some development requires a shoreline permit prior to construction. A local government evaluates a permit application with respect to the shoreline master program policies and regulations and approves a permit only after determining that the development conforms to them. The regulations apply to all uses and development within shoreline jurisdiction, whether or not a shoreline permit is required, and are implemented through an administrative process established by local government pursuant to RCW 90.58.050 and 90.58.140 and enforcement pursuant to RCW 90.58.210 through 90.58.230.

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173-26-241. Shoreline uses.

(1) **Applicability.** The provisions in this section apply to specific common uses and types of development to the extent they occur within shoreline jurisdiction. Master programs should include these, where applicable, and should include specific use provisions for other common uses and types of development in the jurisdiction. All uses and development must be consistent with the provisions of the environment designation in which they are located and the general regulations of the master program.

(2) General use provisions.

(a) Principles. Shoreline master programs shall implement the following principles:

(i) Establish a system of use regulations and environment designation provisions consistent with WAC 173-26-201 (2)(d) and 173-26-211 that gives preference to those uses that are consistent with the control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon uses of the state's shoreline areas.

(ii) Ensure that all shoreline master program provisions concerning proposed development of property are established, as necessary, to protect the public's health, safety, and welfare, as well as the land and its vegetation and wildlife, and to protect property rights while implementing the policies of the Shoreline Management Act.

(iii) Reduce use conflicts by including provisions to prohibit or apply special conditions to those uses which are not consistent with the control of pollution and prevention of damage to the natural environment or are not unique to or dependent upon use of the state's shoreline. In implementing this provision, preference shall be given first to water-dependent uses, then to water-related uses and water-enjoyment uses.

(iv) Establish use regulations designed to assure no net loss of ecological functions associated with the shoreline.

(b) Conditional uses.

(i) Master programs shall define the types of uses and development that require shoreline conditional use permits pursuant to RCW 90.58.100(5). Requirements for a conditional use permit may be used for a variety of purposes, including:

To effectively address unanticipated uses that are not classified in the master program as described in WAC 173-27-030.

To address cumulative impacts.

To provide the opportunity to require specially tailored environmental analysis or design criteria for types of use or development that may otherwise be inconsistent with a specific environment designation within a master program or with the Shoreline Management Act policies.

In these cases, allowing a given use as a conditional use could provide greater flexibility within the master program than if the use were prohibited outright.

(ii) If master programs permit the following types of uses and development, they should require a conditional use permit:

(A) Uses and development that may significantly impair or alter the public's use of the water areas of the state.

(B) Uses and development which, by their intrinsic nature, may have a significant ecological impact on shoreline ecological functions or shoreline resources depending on location, design, and site conditions.

(C) Development in critical saltwater habitats.

(iii) The provisions of this section are minimum requirements and are not intended to limit local government's ability to identify other uses and developments within the master program as conditional uses where necessary or appropriate.

(3) **Standards.** Master programs shall establish a comprehensive program of use regulations for shorelines and shall incorporate provisions for specific uses consistent with the following as necessary to assure consistency with the policy of the act and where relevant within the jurisdiction.

(c) **Boating facilities.** For the purposes of this chapter, 'boating facilities' excludes docks serving four or fewer single-family residences. Shoreline master programs shall contain provisions to assure no net loss of ecological functions as a result of development of boating facilities while providing the boating public recreational opportunities on waters of the state.

Where applicable, shoreline master programs should, at a minimum, contain:

(i) Provisions to ensure that boating facilities are located only at sites with suitable environmental conditions, shoreline configuration, access, and neighboring uses.

(ii) Provisions that assure that facilities meet health, safety, and welfare requirements. Master programs may reference other regulations to accomplish this requirement.

(iii) Regulations to avoid, or if that is not possible, to mitigate aesthetic impacts.

(iv) Provisions for public access in new marinas, particularly where water-enjoyment uses are associated with the marina, in accordance with WAC 173-26-221(4).

(v) Regulations to limit the impacts to shoreline resources from boaters living in their vessels (live-aboard).

(vi) Regulations that assure that the development of boating facilities, and associated and accessory uses, will not result in a net loss of shoreline ecological functions or other significant adverse impacts.

(vii) Regulations to protect the rights of navigation.

(viii) Regulations restricting vessels from extended mooring on waters of the state except as allowed by applicable state regulations and unless a lease or permission is obtained from the state and impacts to navigation and public access are mitigated.

(d) Commercial development. Master programs shall first give preference to water-dependent commercial uses over nonwater-dependent commercial uses; and second, give preference to water-related and water-enjoyment commercial uses over nonwater-oriented commercial uses.

The design, layout and operation of certain commercial uses directly affects their classification with regard to whether or not they qualify as water-related or water-enjoyment uses. Master programs shall assure that commercial uses that may be authorized as water-related or water-enjoyment uses are required to incorporate appropriate design and operational elements so that they meet the definition of water-related or water-enjoyment uses.

Master programs should require that public access and ecological restoration be considered as potential mitigation of impacts to shoreline resources and values for all water-related or water-dependent commercial development unless such improvements are demonstrated to be infeasible or inappropriate. Where commercial use is proposed for location on land in public ownership, public access should be required. Refer to WAC 173-26-221(4) for public access provisions.

Master programs should prohibit nonwater-oriented commercial uses on the shoreline unless they meet the following criteria:

(i) The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration; or

(ii) Navigability is severely limited at the proposed site; and the commercial use provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration.

In areas designated for commercial use, nonwater-oriented commercial development may be allowed if the site is physically separated from the shoreline by another property or public right of way.

Nonwater-dependent commercial uses should not be allowed over water except in existing structures or in the limited instances where they are auxiliary to and necessary in support of water-dependent uses.

Master programs shall assure that commercial development will not result in a net loss of shoreline ecological functions or have significant adverse impact to other shoreline uses,

resources and values provided for in RCW 90.58.020 such as navigation, recreation and public access.

(f) Industry. Master programs shall first give preference to water-dependent industrial uses over nonwater-dependent industrial uses; and second, give preference to water-related industrial uses over nonwater-oriented industrial uses.

Regional and statewide needs for water-dependent and water-related industrial facilities should be carefully considered in establishing master program environment designations, use provisions, and space allocations for industrial uses and supporting facilities. Lands designated for industrial development should not include shoreline areas with severe environmental limitations, such as critical areas.

Where industrial development is allowed, master programs shall include provisions that assure that industrial development will be located, designed, or constructed in a manner that assures no net loss of shoreline ecological functions and such that it does not have significant adverse impacts to other shoreline resources and values.

Master programs should require that industrial development consider incorporating public access as mitigation for impacts to shoreline resources and values unless public access cannot be provided in a manner that does not result in significant interference with operations or hazards to life or property, as provided in WAC 173-26-221(4).

Where industrial use is proposed for location on land in public ownership, public access should be required. Industrial development and redevelopment should be encouraged to locate where environmental cleanup and restoration of the shoreline area can be incorporated. New nonwater-oriented industrial development should be prohibited on shorelines except when:

(i) The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration; or

(ii) Navigability is severely limited at the proposed site; and the industrial use provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration.

In areas designated for industrial use, nonwater-oriented industrial uses may be allowed if the site is physically separated from the shoreline by another property or public right of way.

(g) In-stream structural uses. 'In-stream structure' means a structure placed by humans within a stream or river waterward of the ordinary high-water mark that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. In-stream structures may include those for hydroelectric

generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, or other purpose.

In-stream structures shall provide for the protection and preservation, of ecosystem-wide processes, ecological functions, and cultural resources, including, but not limited to, fish and fish passage, wildlife and water resources, shoreline critical areas, hydrogeological processes, and natural scenic vistas. The location and planning of in-stream structures shall give due consideration to the full range of public interests, watershed functions and processes, and environmental concerns, with special emphasis on protecting and restoring priority habitats and species.

(i) Recreational development. Recreational development includes commercial and public facilities designed and used to provide recreational opportunities to the public. Master programs should assure that shoreline recreational development is given priority and is primarily related to access to, enjoyment and use of the water and shorelines of the state. Commercial recreational development should be consistent with the provisions for commercial development in (d) of this subsection. Provisions related to public recreational development shall assure that the facilities are located, designed and operated in a manner consistent with the purpose of the environment designation in which they are located and such that no net loss of shoreline ecological functions or ecosystem-wide processes results.

In accordance with RCW 90.58.100(4), master program provisions shall reflect that state-owned shorelines are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational uses for the public and give appropriate special consideration to the same.

For all jurisdictions planning under the Growth Management Act, master program recreation policies shall be consistent with growth projections and level-of-service standards established by the applicable comprehensive plan.

(j) Residential development. Single-family residences are the most common form of shoreline development and are identified as a priority use when developed in a manner consistent with control of pollution and prevention of damage to the natural environment. Without proper management, single-family residential use can cause significant damage to the shoreline area through cumulative impacts from shoreline armoring, storm water runoff, septic systems, introduction of pollutants, and vegetation modification and removal. Residential development also includes multifamily development and the creation of new residential lots through land division.

Master programs shall include policies and regulations that assure no net loss of shoreline ecological functions will result from residential development. Such provisions should include specific regulations for setbacks and buffer areas, density, shoreline armoring, vegetation conservation requirements, and, where applicable, on-site sewage system standards for all residential development and uses and applicable to divisions of land in shoreline jurisdiction.

Residential development, including appurtenant structures and uses, should be sufficiently set back from steep slopes and shorelines vulnerable to erosion so that structural improvements, including bluff walls and other stabilization structures, are not required to protect such structures and uses. (See RCW 90.58.100(6).)

New over-water residences, including floating homes, are not a preferred use and should be prohibited. It is recognized that certain existing communities of floating and/or over-water homes exist and should be reasonably accommodated to allow improvements associated with life safety matters and property rights to be addressed provided that any expansion of existing communities is the minimum necessary to assure consistency with constitutional and other legal limitations that protect private property.

New multiunit residential development, including the subdivision of land for more than four parcels, should provide community and/or public access in conformance to the local government's public access planning and this chapter.

Master programs shall include standards for the creation of new residential lots through land division that accomplish the following:

(i) Plats and subdivisions must be designed, configured and developed in a manner that assures that no net loss of ecological functions results from the plat or subdivision at full build-out of all lots.

(ii) Prevent the need for new shoreline stabilization or flood hazard reduction measures that would cause significant impacts to other properties or public improvements or a net loss of shoreline ecological functions.

(iii) Implement the provisions of WAC 173-26-211 and 173-26-221.

(k) **Transportation and parking.** Master programs shall include policies and regulations to provide safe, reasonable, and adequate circulation systems to, and through or over shorelines where necessary and otherwise consistent with these guidelines.

Transportation and parking plans and projects shall be consistent with the master program public access policies, public access plan, and environmental protection provisions.

Circulation system planning shall include systems for pedestrian, bicycle, and public transportation where appropriate. Circulation planning and projects should support existing and proposed shoreline uses that are consistent with the master program.

Plan, locate, and design proposed transportation and parking facilities where routes will have the least possible adverse effect on unique or fragile shoreline features, will not result in a net loss of shoreline ecological functions or adversely impact existing or planned water-dependent uses. Where other options are available and feasible, new roads or road expansions should not be built within shoreline jurisdiction.

Parking facilities in shorelines are not a preferred use and shall be allowed only as necessary to support an authorized use. Shoreline master programs shall include policies and regulations to minimize the environmental and visual impacts of parking facilities.

(l) **Utilities.** These provisions apply to services and facilities that produce, convey, store, or process power, gas, sewage, communications, oil, waste, and the like. On-site utility features serving a primary use, such as a water, sewer or gas line to a residence, are 'accessory utilities' and shall be considered a part of the primary use.

Master programs shall include provisions to assure that:

All utility facilities are designed and located to assure no net loss of shoreline ecological functions, preserve the natural landscape, and minimize conflicts with present and planned land and shoreline uses while meeting the needs of future populations in areas planned to accommodate growth.

Utility production and processing facilities, such as power plants and sewage treatment plants, or parts of those facilities, that are nonwater-oriented shall not be allowed in shoreline areas unless it can be demonstrated that no other feasible option is available.

Transmission facilities for the conveyance of services, such as power lines, cables, and pipelines, shall be located outside of the shoreline area where feasible and when necessarily located within the shoreline area shall assure no net loss of shoreline ecological functions.

Utilities should be located in existing rights of way and corridors whenever possible.

Development of pipelines and cables on tidelands, particularly those running roughly parallel to the shoreline, and development of facilities that may require periodic maintenance which disrupt shoreline ecological functions should be discouraged except where no other feasible alternative exists. When permitted, provisions shall assure that the facilities do not result in a net loss of shoreline ecological functions or significant impacts to other shoreline resources and values.