

The following changes are recommended, to clarify provisions of the SMP, and are consistent with SMA (RCW 90.58) policy and the SMP Guidelines (WAC 173-26, Part III):

| ITEM | SMP Provision | BILL FORMAT CHANGES (<u>underline</u> = additions; strike through = deletions) | ECOLOGY DISCUSSION/RATIONALE |
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| 1 | Title Page | *Shoreline Master Program Update <u>Ordinance Resolution # _____</u> adopted December 20, 2016 <u>MO/DAY/YEAR</u> . <u>Effective XX, 20XX.</u> | The final adopted Master Program should reflect the final Ordinance number and date, and the effective date, fourteen days from the date of Ecology’s written notice of final action to the County (RCW 90.58.090(7)). |
| 2 | 1.4 Governing Principles Pages 1-2 to 1-3 1.4 (F) | F. Protecting the shoreline environment is an essential statewide policy goal, consistent with other policy goals. ... 3. By including policies and regulations to address cumulative impacts, ensuring that the cumulative effect <u>of development, including development exempt from permitting</u> development will not cause a net loss of shoreline ecological functions, and by fairly allocating the burden of addressing such impacts among development opportunities; and ... | Recommended edits improve consistency with WAC 173-26-201(3) that ensuring no-net-loss of ecological function includes both permit exempt and non-exempt development. |
| 3 | 2 Definitions Page 2-6 | Date of filing – The date upon <u>of</u> actual receipt by Ecology of the County’s <u>permit</u> decision except as provided for below: ... | Edits are recommend for clarity and to improve consistency with the language in RCW 90.58.140(6). |
| 4 | 2 Definitions Page 2-6 | Development – An activity consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature that may interfere with the normal public use of the surface of the waters overlying lands subject to the Shorelines Management Act of 1971 at any state of water level (RCW 90.58.030(3a)). <u>Development does not include dismantling or removing structures if there is no other associated development or redevelopment.</u> See also Substantial Development. | In 2017, Ecology amended its permit rule to clarify the definition of “development” (WAC 173-27-030(6)) does not include projects that involve only dismantling or removing structures without any associated development or re-development. This is not a new interpretation as it simply codifies the primary holding of the 1992 WA State Supreme Court decision <i>Cowiche Canyon v Bosley</i> (118 Wn.2d 801). |
| 5 | 2 Definition2 Page 2-9 | Floodway – The area, as identified in a master program, that either: (a) Has been established in <u>effective</u> federal emergency management agency flood insurance rate maps or floodway maps; or (b) Consists of those portions of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually. Regardless of the method used to identify the floodway, the <u>The</u> floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state. | It is recommended the definition be revised to clarify the method by which the County proposes to establish the floodway for SMA jurisdiction. The record shows the proposed environment designation maps were created utilizing the County’s effective FEMA flood insurance rate maps. |

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| 6 | 2 Definitions Page 2-11 | 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. <u>In-stream structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, or other purpose.</u> | Including this definition is recommended for consistency with WAC 173-26-241(3)(g). |
| 7 | 2 Definitions Page 2-11 | Marina – Any private commercial or club-owned facility consisting of docks or piers serving five or more vessels or a shared moorage serving a subdivision serving with the capacity to serve 10 or more vessels. | Revision is recommended to improve clarity and internal consistency. |
| 8 | 2 Definitions Page 2-13 | Off-site mitigation – To replace critical areas or shoreline habitats away from the site on which a critical area or shoreline habitat has been impacted. Compensation for project impacts in a different location then the project site. | Revised language improves clarity and internal consistency with provisions in the CAO. Mitigation is not limited to “replacement” of critical areas or shoreline habitats. |
| 9 | 2 Definitions Page 2-22 | Substantial development – Any development of which the total cost or fair market value exceeds six thousand, four hundred, and sixteen dollars <u>seven thousand and forty-seven dollars</u> , or any development which materially interferes with the normal public use of the water or shorelines of the state. The dollar threshold must be adjusted for inflation by the Washington State Office of Financial Management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. | The Office of Financial Management adjusted the cost threshold for substantial development effective September 2, 2017. (RCW 90.58.030(3)(e)) |
| 10 | 2 Definitions Page 2-14 | Wetlands or wetland areas – Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support a prevalence of vegetation adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands. For identifying and delineating a wetland, the methodology shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements as provided in RCW 90.58.380 and WAC 173-22-035. <u>For specific information on wetlands see Chapter 19.15.120 of the Cowlitz County Critical Areas Code.</u> Three general types of wetlands are emergent, forested and scrub-shrub: 1. Emergent wetland – A wetland with at least 30 percent of the surface area covered by erect, rooted, herbaceous vegetation extending above the water surface as the uppermost vegetative stratum. 2. Forested wetland – A wetland with at least 30 percent of the surface area covered by woody vegetation greater than 20 feet in height that is at least partially rooted within the wetland. 3. Scrub-shrub wetland – A wetland with at least 30 percent of its surface area covered by woody vegetation less than 20 feet in height as the uppermost stratum. | Recommended edits improve consistency with the definition in WAC 173-22-030(10). The Critical Areas Ordinance contains specific information on wetlands and it is appropriate to point to it. |

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| 11 | 3.1 Applicability Page 3-3 3.1.J | J. Unless specifically exempted by statute, all proposed uses and development occurring within shoreline jurisdiction must conform to chapter 90.58 RCW, the Shoreline Management Act and this Program whether or not a permit is required. All prior approved shoreline substantial development permits, <u>and local and state approved conditional use permits or variances are recognized as being accepted valid, unless overturned by a court decision.</u> Major changes or new phases of projects that were not included in the originally approved plan will be subject to the policies and regulations of this Program. | Recommended edits improve clarity. |
| 12 | 3.1 Applicability Page 3-3 | <p>3.1 Applicability</p> <p>...</p> <p><u>K. Certain developments are not required to obtain shoreline permits or local reviews as described in WAC 173-27-044.</u></p> <p><u>L. Certain developments are not subject to the Shoreline Management Act as described in WAC 173-27-045.</u></p> | <p>Revisions are recommended for improved implementation and consistency with WAC 173-27.</p> <p>Addition of 3.1.K and L will more clearly address two separate categories of activities, identified by the Legislature which either do not need shoreline permits or are not required to meet requirements of the Shoreline Management Act.</p> <p>In 2017, Ecology revised its rule to reflect these distinctions. WAC 173-27-044 consolidates three special exceptions to the requirement for shoreline permits and the applicability of local Shoreline Master Programs.</p> <p>Ecology also revised WAC 173-27-045, a separate rule that describes developments which are not required to meet SMA requirements.</p> |
| 13 | 3.2 Exemptions from a Shoreline Substantial Development Permit Page 3-3 3.2(A)(2) | <p>3.2 Exemptions from a Shoreline Substantial Development Permit</p> <p>A. A Shoreline Substantial Development Permit (SSDP) (see Section 8.7.C, Shoreline Substantial Development Permit) shall be required for projects occurring within the County’s shoreline jurisdiction pursuant to the requirements and procedures contained in WAC 173-27, Shoreline Management Permit and Enforcement Procedures; except that:</p> <ol style="list-style-type: none"> 1. A SSDP is not required for projects that are below the threshold levels established in WAC 173-27-040(2), Developments exempt from substantial development permit requirement. 2. A SSDP is not required for those actions described in WAC 173-27-045, Developments not subject to the Shoreline Management Act. | Revision is recommended consistent with the recommended changes to 3.1 Applicability (See Recommended change 12) |
| 14 | 3.3 Nonconforming Development Page 3-5 3.3(H) | <p>3.3 Nonconforming <u>Uses and</u> Development</p> <p>H. If a nonconforming use or structure is destroyed by any natural or accidental cause, it may be reconstructed to those configurations existing immediately prior to the time the development was damaged, ... If court action rules at any time that the owner of the destroyed pre-existing nonconforming</p> | <p>Revision to the title is recommended for consistency with the intent of the section to address both uses and development.</p> <p>The recommended edit removes the word “building” which is a</p> |

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| | | <p>structure or building was responsible for said destruction, then any existing or future structure shall conform to the provisions of this chapter.</p> | <p>term already included in the definition of "structure."</p> |
| 15 | <p>Non-conforming uses SMP Page 3-5, 3.3(L)</p> | <p>L. Notwithstanding Sections 3.3.A through 3.3.K, the following shall apply only to pre-existing legally established residential structures, including floating homes, constructed prior to the effective date of this Program:</p> <ol style="list-style-type: none"> 1. Residential structures and appurtenant structures that were legally established and are used for a conforming use, but that do not meet standards for the following, shall be considered a conforming structure: Setback, buffers, or yards; area; bulk; height; or density. 2. The County shall allow redevelopment, expansion, or a change of <u>classification</u> of occupancy for the residential structure if it is consistent with the SMP, including requirements for no net loss of shoreline ecological functions. For example, vertical, lateral or anterior expansions that do not intrude farther horizontally into a required buffer and which are consistent with the maximum height allowed by this SMP or underlying zoning may be allowed. <ol style="list-style-type: none"> a. <u>Pre-existing legally established floating homes may be relocated so long as consistency with the SMP is achieved.</u> 3. ... | <p>The revisions are recommended for clarity.</p> |
| 16 | <p>4.3 Historic, Cultural, Archeological, and Educational Resources Page 4-4 4.3.2(B)(5)</p> | <p>4.3.2 Policies B. ... 5. Development which might destroy an archaeological or historic site may be delayed to allow the appropriate agency or organization to investigate options to purchase the site, design a proposal to avoid areas of concern, or conserve artifacts. Such delays will not be prolonged if little or no interest is shown, or if a group wanting protection tends to cause delay.</p> | <p>Recommended edit to remove a regulatory provision in a policy.</p> |
| 17 | <p>4.7 Public access Pages 4-12 and 4-13 4.7.2(A)(4) and (F)</p> | <p>4.7.2 Policies A.4. Where public access can be safely provided, it should be considered as potential mitigation of impacts to shoreline resources and values for all water-related or water-dependent commercial <u>and industrial</u> development unless such improvements are demonstrated to be infeasible or inappropriate. ... F. Future roads, when built paralleling shorelines, should provide multiple access/view points to the shoreline wherever possible to ease concentration <u>congestion</u>.</p> | <p>Suggested edit to this policy improves internal consistency with SMP sections 6.5 Public Access and 7.2.6 Industrial and consistency with WAC 173-26-241(3)(f). Recommended edit for clarity.</p> |

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| 18 | 4.10 Other shoreline uses and modifications Page 4-16 4.10.1(C)(3) | 4.10.1 Other Shoreline Use Policies C. Institutional Uses 3. Institutional uses that foster appreciation of shoreline historic, cultural, scientific, and educational resources are encouraged. | Minor correction, adding punctuation. |
| 19 | 4.10.2 Shoreline Modification Policies Page 4-16 4.10.2(A)(5) | A. General Policies 5. The removal of dredge materials, <u>particularly volcanic ash</u> , disposed of within frequently flooded areas should be encouraged for the purpose of conservation and restoration. | Recommended revision. |
| 20 | Shoreline Designations 5.1 Introduction Page 5-1 | ... Chapters 6 and 7 contain development regulations to specify how and where permitted development can take place within each shoreline designation, and governing <u>govern</u> heights and setbacks. | Minor recommended edit. |
| 21 | 5.4.1 High-Intensity Environment Page 5-3 5.4.1(D) | Management Policies ... D. Where unavoidable impacts to ecological functions occur, appropriate mitigation should be provided in accordance with this Program <u>to assure no net loss of ecological function</u> . Where applicable, development should include environmental cleanup and restoration of the shoreline in accordance with relevant state and federal law. | Recommended edit for improved consistency with WAC 173-26-211(5)(d)(ii)(C). |
| 22 | 6-1 General Shoreline Regulations Introduction Page 6-1 | This chapter describes <u>contains</u> general regulations which apply to all shorelines of the state that are located in Cowlitz County. The general regulations Chapter is used in conjunction with specific use and modification regulations found in Chapter 7. | Recommended edit for clarity. |
| 23 | 7.1 Shoreline Use, Modification, and Standards Table Page 7-2 7.1(A) | 7.1 A. Table 7-1 Permit Requirements for Shoreline Uses and Modifications shall be used to determine which uses or modifications may be permitted, approved with conditions, or prohibited in each shoreline environment as applicable. These permit requirements apply only to new or expanded uses or modifications; legally established existing uses and modifications may continue to exist, be used, and be maintained and repaired. For those uses and modifications that meet the exemption criteria mentioned in Section 3.2, a shoreline substantial development permit is not required if Table 7-1 indicates "P." However, if "CU" is listed for a use or modification that is exempt from the shoreline substantial development permit requirement, that use or modification must obtain a Conditional Use Permit. <u>In the event conflicts exist between Table 7.1 and the text in this chapter, the text shall apply.</u> | Ecology recommends this language be included to clarify that the text holds over any inconsistency in the table. |

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| 24 | 7.1 Shoreline Use, Modification, and Standards Table Page 7-2 7.1(B)(3)(a) | B.3. Building height restrictions a. There shall be a 35-foot maximum building height for all structures, except that <u>the following are not subject to this restriction: bridges and</u> , in the High-Intensity shoreline environment, water-oriented industrial structures and facilities meeting the requirements of Section 7.2.6(H) of this Program, and in-stream structures meeting the requirements of Section 7.2.8(B) of this Program, are not subject to these height restrictions. | Ecology recommends added language to clarify that height restrictions do not apply to bridges. |
| 25 | Table 7-1 Permit Requirements Pages 7-3 to 7-7 | See attached Table 7-1 for changes. | Recommended changes and Ecology's rationale are shown on Table 7-1. |
| 26 | Table 7-2. Dimensional Standards Page 7-8 | Maximum Height⁴ Table Notes <u>4. Bridges are not subject to the height standards.</u> | Adding the title 'Table Notes' is recommended. The addition of note 4 to Table 7-2 is recommended consistent with the recommended revisions in 7.1 B (3)(a) shown in change #24 above. |
| 27 | 7.2.5 Forest Practices Page 7-17 | <u>E. A forest practice that only involves timber cutting is not a development under the act and does not require a shoreline substantial development permit or a shoreline exemption. A forest practice that includes activities other than timber cutting may be a development under the act and may require a substantial development permit, as required by WAC 222-50-020.</u> | New (E) provides recommended language to aid in implementation of this section. In 2017, Ecology amended forestry use regulations in the Guidelines to clarify that a forest practice that only involves timber cutting is not considered development under the SMA and does not require permits, but forestry activities other than timber cutting may require a Substantial Development Permit (SDP). Ecology adopted this housekeeping amendment to address a regularly recurring question which is partly answered in Forest Practices Board laws and rules but not addressed in SMA rules. |
| 28 | 7.2.3 Boating Facilities Page 7-14 7.2.3 (E)(1) | E. Covered Moorage 1. Covered moorage is only permitted within a marina or as a necessary component of a water-dependent industrial or commercial use. Commercial covered moorage facilities may be permitted only where vessel construction or repair work is to be the primary activity and covered work areas are demonstrated to be the minimum necessary over water, including a demonstration that adequate upland sites are not feasible. Covered moorage facilities associated with any residential development shall be prohibited. | Revision is recommended for clarity. |
| 29 | 7.3.4 Residential Moorage and Launch Facilities Page 7-36 7.3.4 (F)(1) | F. Docks shall meet the following standards: 1. Docks shall be restricted to the minimum size necessary to meet the needs of the proposed water-dependent use. The length of docks accessory to residential use/development shall be no greater than that required for safety | Recommended revision clarifies how to measure the dock length. |

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| | | and practicality for the residential use. The maximum length for residential docks shall be limited to either sixty (60) feet as measured horizontally <u>perpendicular</u> from the OHWM or the length necessary to provide a minimum of six (6) feet of water depth. The maximum width for residential docks shall be limited to six (6) feet. The dimensional standards may be adjusted as required by conditions of state and federal agency permits or authorizations, if the Director finds that such adjustment will better preserve ecological functions. | |
| 30 | 8.6.9 Rulings to state Page 8-9 | 8.6.9 Rulings to State Filing permits with the State Any ruling <u>final decision</u> on an application for a shoreline permit under authority of this Program, whether it is an approval or denial, shall, with the transmittal of the ruling <u>decision</u> to the applicant, be filed concurrently with Ecology and the Attorney General by the County. Filing shall occur in accordance with RCW 90.58.140(6) and WAC 173-27-130. | Recommended changes to clarify the intent and purpose. |
| 31 | 8.6.10 Appeals Page 8-9 | <p>A. Level I SSDP decisions or exemption decisions may be appealed, by applicants or parties of record, to the Hearing Examiner. Any such appeal shall be filed in writing within 20 calendar days of the issuance of the decision. The Director shall provide the Hearing Examiner with findings and documentation relating to the decision being appealed. The appellant carries the burden of proof on appeal.</p> <p>B. Any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 may seek a review from the Shorelines Hearings Board by filing a petition for review within twenty-one (21) days of the "date of filing" of the decision as provided for in RCW 90.58.140(6).</p> <p>A: Any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140 may seek a review from the Shoreline Hearings Board by filing a petition for review within twenty-one (21) days of the "date of filing" of the decision as provided for in RCW 90.58.140(6).</p> <p>B: Level I SSDP decisions or exemption decisions may be appealed, by applicants or parties of record, to the Hearing Examiner. Any such appeal shall be filed in writing within 20 calendar days of the issuance of the decision. The Director shall provide the Hearing Examiner with findings and documentation relating to the decision being appealed. The appellant carries the burden of proof on appeal.</p> | <p>Ecology recommends reversing the order of the two provisions. This will put them in the correct sequence of timing, with any local appeal occurring prior to an appeal to the Shorelines Hearings Board.</p> <p>A typographical correction is made to the name of the Board.</p> |
| 32 | 8.14 Amendments Authorized Pages 8-16 to 8-17 | E. The Shoreline Master Program shall be periodically reviewed beginning on or before June 30, 2021 and every eight years thereafter, and revised as necessary to reflect changing local circumstances, new information or improved data, and changes in State statutes and regulations. This review process shall be consistent with the requirements in WAC 173-26. | Ecology recommends the addition of this language consistent with RCW 90.58.080 and WAC 173-26-090. |

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| 33 | Appendix A SED Map | Label the following waterbodies on the SED map: Lakes: Fawn Lake (Tile 4) Horseshoe Lake (Tile 12) Streams/rivers: Brooks Creek (tile 13) Cape Horn Creek (tile 13) Dog Creek (tile 11) Green River (tile 4) Herrington Creek (tile 8) Jim Creek (tile 13) Mulholland Creek (tile 6) Panamaker Creek (tile 11) Salmon Creek #1 (tile 2) Salmon Creek #2 (tile 6) Speelyai Diversion Ditch (tile 11) Speelyai Creek West Fork (tile 13) Swift Power Canal #2 (tile 11) Unnamed Tributary to Green River (tile 3,4) Unnamed Tributary to Speelyai Creek (tile 11) Unnamed Tributary to Toutle River South Fork #58 (tile 8) Unnamed Tributary to Toutle River South Fork #59 (tile 8) Unnamed Tributary Toutle River, South Fork #60 (tile 8) Unnamed Tributary to Coweeman River (tile 7) Unnamed Tributary to Kalama River (tile 11) Unnamed Tributary to Toutle River, South Fork #65 (tile 7) Unnamed Tributary to Toutle River, South Fork #66 (tile 8) Unnamed Tributary to Fossil Creek (tile 8) | Recommended changes for consistency with WAC 173-26-211(2)(b), WAC 173-22-050 and to aid implementation of the SMP over time by county and Ecology staff. Many, but not all, the waterbodies listed in Table 3-1 are labeled on the map. Tile numbers are provided for reference only. The # used to distinguish unnamed tributaries originates in the U.S. Geological Survey Water-Resources Investigations Report 96-4208, Determination of Upstream Boundaries on Western Washington Stream and Rivers Under the Requirements of the Shoreline Management Act of 1971. Tacoma, 1998. |
| 34 | Appendix A SED Map | Coal Creek Slough | Consider labeling Coal Creek Slough on Tile/map 5 to distinguish it from Coal Creek. Coal Creek Slough is part of the Columbia River. |
| 35 | Global corrections | Final corrections to citations, formatting, spelling, and punctuation. | Minor corrections for clarity and accuracy. |