

**PROPOSED REVISIONS TO WAC 173-18, 173-20, 173-22
AND 173-27**

**SHORELINE MANAGEMENT ACT JURISDICTION AND
PROCEDURAL RULES ADOPTED BY DEPARTMENT OF ECOLOGY**

The following revisions are proposed by the Department of Ecology to rules regarding jurisdiction of the Shoreline Management Act and permit processing under the Act.

**Chapter 173-18, Streams and Rivers Constituting Shorelines
of the State**

- Summary of proposed changes Page 2
- Proposed revisions to rule Page 3

Chapter 173-20, Lakes Constituting Shorelines of the State

- Summary of proposed changes Page 6
- Proposed revisions to rule Page 7

**Chapter 173-22, Adoption of Designations of Shorelands and
Wetlands Associated With Shorelines of the State**

- Summary of proposed changes Page 10
- Proposed revisions to rule Page 12

**Chapter 173-27, Shoreline Management Permit and Enforcement
Procedures**

- Summary of proposed changes Page 16
- Proposed revisions to rule Page 19

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**Summary of Proposed Changes (by section) to
Chapter 173-18, Shoreline Management Act –
Streams and Rivers Constituting Shorelines of the State**

173-18-040 Streams and rivers.

Changes: Revisions will accommodate the proposed shift to using updated Shoreline Master Programs (SMPs) as the source for describing the geographic extent of SMA application. Until updated SMPs based on the new Guidelines are approved by Ecology, the existing county-based lists of streams and rivers in the WAC will identify extent of SMA application. This section will continue to describe the criteria (from statute) which guide designation of streams and rivers included under SMA, for both the county lists and the updated SMPs.

173-18-044 Review and update of designations.

Changes: Designates updated SMPs as the source for updating designations in this chapter, rather than periodic updates through Ecology adoption of revisions to the county lists contained in the rule.

173-18-046 Conflicts between designations and criteria.

Changes: Provides that *criteria* for Shorelines of the State prevail over either the county list in the Ecology rule or updated SMPs (whichever is applicable to the city or county). Stipulates that newly-identified Shorelines of the State need to be formally added to the appropriate SMP within three years (in conformance a Thurston County Superior Court decision that three years was too long between discovery of a water body that should be in the Shoreline program and rule update.)

(DRAFT) Proposed revisions to Chapter 173-18, Shoreline management act – streams and rivers constituting shorelines of the state (DRAFT)

AMENDATORY SECTION (Amending Order 73-14, § 173-18-040, filed 8/27/73; Order DE 72-13, § 173-18-040, filed 6/30/72.)

173-18-040 Streams and rivers.

The following provisions of this chapter delimit, ~~by county,~~ the streams and rivers which constitute shorelines of the state as follows:

(1) Streams which constitute shorelines.

(a) Western Washington. ~~The following provisions describe the s~~Streams in Western Washington from the point at which the stream reaches a mean annual flow of twenty cubic feet per second down to the mouth of said stream or river: Provided, That the stream falls at said point, within the jurisdiction of chapter 90.58 RCW.

(b) Eastern Washington. ~~he following provisions describe the s~~Streams in Eastern Washington from the point at which the stream reaches a mean annual flow of twenty cubic feet per second down to the mouth of said stream or river: Provided, That the stream falls at said point, within the jurisdiction of chapter 90.58 RCW.

(2) Rivers which constitute shorelines of statewide significance.

(a) Western Washington. Any west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at one thousand cubic feet per second or more . ~~The following provisions describe the point on those rivers in Western Washington where the mean annual flow reaches one thousand cubic feet per second and lists said river in all counties below said point through which said river passes with a mean annual flow in excess of one thousand cubic feet per second:~~ Provided, That the river falls at said point within the jurisdiction of chapter 90.58 RCW.

(b) Eastern Washington. ~~The following provisions describe~~ either of the following points on ~~those~~ rivers in Eastern Washington, whichever is farther upstream;

(i) The point at which the mean annual flow exceeds two hundred cubic feet per second, or

(ii) The lowest extremity of the first three hundred square miles of drainage area east of the crest of the Cascade Range; provided that either of said points which is utilized is within the jurisdiction of chapter 90.58 RCW.

~~(iii) The following provisions additionally list said river in all counties below said point through which said river passes.~~

~~(3) Streams or rivers outside the jurisdiction of chapter 90.58 RCW. In those cases where the above described points on streams or rivers fall in geographical areas outside of the jurisdiction of chapter 90.58 RCW. The following provisions list said streams or rivers in all counties downstream from the boundaries of said geographical areas. In such listing, if the body of water is a shoreline of statewide significance below said geographical area, such will be indicated in the description and by asterisk.~~

(4) Until superceded as provided in WAC 173-18-044, rivers constituting shorelines of the state are listed in WAC 173-18-050 through -430. Other data related to these lists.

(a) Wherever a river of statewide significance falls within a county, it is followed by an asterisk.

(b) The following provisions set forth the name of the quadrangle maps where the stream or river is shown. The quadrangle in which the shoreline delimitation begins and the first quadrangle downstream from the county line is underlined. The quadrangle in which the shoreline of statewide significance begins is followed by an asterisk. The size, in minutes, of all quadrangle maps is designated.

(c) Where quadrangle maps are unavailable, photomaps have been used as indicated.

AMENDATORY SECTION (Statutory Authority: RCW 90.58.120 and 90.58.200. 80-08-052. Amending Order DE 80-20, § 173-18-044, filed 6/30/80)

173-18-044 Review and update of designations.

~~The department shall review all the designations made herein at least once in every five year period following the effective date of chapter 90.58 RCW or as frequently before then as is deemed advisable by the department, and prepare the necessary revisions to ensure that the designations conform to the policies of chapter 90.58 RCW and of chapter 173-18 WAC in the manner and form prescribed for adopting and amending rules and regulations in chapter 34.04 RCW (the Administrative Procedure Act). Each local government master program shall include a list of streams constituting shorelines of the state within the jurisdiction of the master program that complies with the requirements of RCW 90.58.030(2)(d). When such master program is approved by the Department subsequent to the effective date of this provision, the list within the master program shall be the official list for that jurisdiction and shall supercede the list contained herein.~~

AMENDATORY SECTION [Statutory Authority: RCW 90.58.120 and 90.58.200. 80-08-052 (Order DE 80-20), § 173-18-046, filed 6/30/80.]

173-18-046 Conflicts between designations and criteria.

In the event that any of the designations set forth in this chapter or a Shoreline Master Program approved under WAC 173-20-044, conflict with the criteria set forth in RCW 90.58.030(2) or in WAC 173-18-040 the criteria shall control. The designation of the stream or river shall be governed by the criteria, except that the local government must amend the local master program to reflect the new designation within 3 years of the discovery of the discrepancy.

**Summary of Proposed Changes (by section) to
Chapter 173-20, Shoreline Management Act –
Lakes Constituting Shorelines of the State**

**173-20-040 List of Lakes coming under purview of chapter
90.58 RCW until superceded.**

Changes: Revisions will accommodate the proposed shift to using updated Shoreline Master Programs (SMPs) as the source for describing the geographic extent of SMA application. Until updated SMPs based on the new Guidelines are approved by Ecology, the existing county-based lists of lakes in the WAC will identify extent of SMA application.

173-20-044 Review and update of designations.

Changes: Designates updated SMPs as the source for updating designations in this chapter, rather than periodic Ecology rule update of the county lists contained in this chapter.

173-20-046 Conflicts between designations and criteria.

Changes: Provides that the criteria for Shorelines of the State prevail over either county lists in the rule or updated SMPs (whichever is applicable). Stipulates that newly-identified Shorelines of the State need to be formally added to the appropriate SMP within three years (in conformance a Thurston County Superior Court decision that three years was too long between discovery of a water body that should be in the Shoreline program and rule update.)

173-20-640 Lakes coming under purview of chapter 90.58 RCW – Snohomish County lakes.

Changes: This revision stems from the outcome of the Thomas Lake case (SHB 98-29), which found that longer than three years was an excessive period to accomplish formal recognition of a "new" Shoreline of the State. Revision is proposed as a "housekeeping" measure to ensure consistency with this ruling.

(DRAFT) Proposed Revisions to Chapter 173-20, Shoreline Management Act – Lakes Constituting Shorelines of the State (DRAFT)

AMENDATORY SECTION (Amending Order DE 73-13, § 173-20-040, filed 8/27/73; Order DE 72-14, § 173-20-040, filed 6/30/72.)

173-20-040 List of Lakes coming under purview of chapter 90.58 RCW until superceded.

Volumes I and II of the book *Lakes of Washington* by Ernest E. Wolcott and updated information from ~~the United States Geological Survey~~ various sources were used as reference material for ~~theis~~ listings in WAC 173-20-050 through 173-20-810.. These listings are in effect until superceded by an approved shoreline master program as described in WAC 173-20-044.

This listing includes only those lakes coming under purview of chapter 90.58 RCW.

Use designations are taken directly from Lakes of Washington as follows:

R - Recreation-wildlife, general public use, beautification, fishing, etc.

D - Domestic-private use, farm pond, fire protection, stock, garden, etc.

PS - Public supply, municipal use, civic, industrial use, etc.

P - Power hydroelectric.

I - Irrigation.

Acreage given includes only water surface acres and not contiguous wetlands.

AMENDATORY SECTION [Statutory Authority: RCW 90.58.120 and 90.58.200. 80-08-053. Amending Order DE 80-21), § 173-20-044, filed 6/30/80.)

173-20-044 Review and update of designations.

~~The department shall review all the designations made herein at least once in every five year period following~~

~~the effective date of chapter 90.58 RCW or as frequently before then as is deemed advisable by the department, and prepare the necessary revisions to ensure that the designations conform to the policies of chapter 90.58 RCW and of chapter 173-20 WAC in the manner and form prescribed for adoption and amending rules and regulations in chapter 34.04 RCW (the Administrative Procedure Act). Each local government master program shall include a list of lakes constituting shorelines of the state within the jurisdiction of the master program that complies with the requirements of RCW 90.58.030(2)(d). When such master program is approved by the Department subsequent to the effective date of this provision, the list within the master program shall be the official list for that jurisdiction and shall supercede the list contained herein.~~

AMENDATORY SECTION (Statutory Authority: RCW 90.58.120 and 90.58.200. 80-08-053. Amending Order DE 80-21), § 173-20-046, filed 6/30/80.)

173-20-046 Conflicts between designations and criteria.

In the event that any of the designations set forth in this chapter or a Shoreline Master Program approved under WAC 173-20-044, conflict with the criteria set forth in RCW 90.58.030(2) or in WAC 173-20-030 the criteria shall control. The designation of the lake shall be governed by the criteria, except that the local government must amend the local master program to reflect the new designation within 3 years of the discovery of the discrepancy..

AMENDATORY SECTION (Statutory Authority: RCW 90.58.200. 98-09-098. Amends Order 97-40), § 173-20-640, filed 4/22/98, effective 5/23/98; Order DE 76-16, § 173-20-640, filed 5/3/76; Order DE 72-14, § 173-20-640, filed 6/30/72.)

173-20-640 Lakes coming under purview of chapter 90.58 RCW – Snohomish County lakes.

Location	Section	Name	Area (Acres)	Use
(1) T27N-R4E	1-SW1/4	Martha Lk.	59.3	R

(2)	T27N-R4E	32-SW1/4	Ballinger Lk.	103.2	R
(3)	T27N-R5E	36-SE1/4	Crystal Lk. (Res.)	39.1	R
(4)	T27N-R7E	22-A/B	Fontal Lk.	37.2	R
(5)	T27N-R7E	23-SW1/4	Hannan Lk.	48.4	R
(6)	T27N-R8E	21-B/C	Tomtit Lk.	27.9	R
(7)	T27N-R8E	21-E/M	Dagger Lk.	27.7	R
(8)	T27N-R11E	21-NE1/4	Sunset Lk.	38.4	R
(9)	T28N-R4E	34-S1/2	Serene Lk.	42.3	R
(10)	T28N-R4E	35-A/B	Stickney Lk.	25.7	R
(11)	T28N-R5E	24-E1/4	Hanson Slough	35.0	R
(12)	T28N-R5E	30-H	Silver Lk.	102.3	R
(13)	T28N-R5E	32&34	Thomas Lk.	400	PS
(14)	T28N-R6E	1-SE1/4	Storm Lk.	78.1	R
(15)	T28N-R6E	2-A	Flowing Lk.	134.8	R
(16)	T28N-R6E	2-C/D	Panther Lk.	46.7	R
(17)	T28N-R6E	7-NW1/4	Blackmans Lk.	60.1	R
(18)	T28N-R6E	24-A	Chain Lk.	22.8	R
(19)	T28N-R7E	12-J	Woods Lk.	20.5	R
(20)	T28N-R7E	16-A	Cochran Lk.	33.6	R
(21)	T28N-R8E	6-G	Chaplain Lk. (Res.)	443.7	PS
(22)	T28N-R8E	22-G/H	Kellogg Lk.	20.2	R
(23)	T28N-R9E	20-NE1/4	Wallace Lk.	55.3	R
(24)	T28N-R10E	5-G/H	Boulder Lk.	21.7	R
(25)	T28N-R11E	1-W1/2	Blanca Lk.	179.0	R
(26)	T29N-R7E	15-NE1/4	Purdy Creek Ponds	20.0	R
(27)	T29N-R7E	27-N/P	Hughes Lk.	20.2	R
(28)	T29N-R7E	28-E	Roesiger Lk.	352.2	R
(29)	T29N-R8E	21-D	Echo Lk.	24.6	R
(30)	T29N-R9E	9-M/N	East Boardman Lk.	24.7	R
(31)	T29N-R9E	36-J/R	Greider Lks. Upper	58.4	R
(32)	T29N-R10E	4	Copper Lk.	60.8	R
(33)	T30N-R6E	31-C/D	Cassidy Lk.	124.6	R
(34)	T30N-R6E	36-E1/2	Bosworth Lk.	95.4	R
(35)	T31N-R4E	18-SE1/4	Martha Lk.	58.4	R
(36)	T31N-R4E	20-L/P	Howard Lk.	27.1	R
(37)	T31N-R4E	23-L	Ki Lk.	97.4	R
(38)	T31N-R4E	33-G	Goodwin Lk.	546.8	R
(39)	T31N-R4E	33-P	Shoecraft Lk.	136.8	R
(40)	T31N-R4E	34-H	Crabapple Lk.	36.3	R
(41)	T31N-R4E	35-A/H	Loma Lk.	21.1	R
(42)	T32N-R4E	26-K/L	Sunday Lk.	38.7	R
(43)	T32N-R5E	26-SE1/4	Armstrong Lk.	30.7	R
(44)	T32N-R5E	27-F/G	Bryant Lk.	20.2	R
(45)	T32N-R6E	26-C	Little Lk.	23.4	R
(46)	T32N-R7E	19-H/J	Riley Lk.	30.0	R
(47)	T32N-R10E	28	Evangeline Lk.	25.0	

**Summary of Proposed Changes (by section) to
Chapter 173-22, Shoreline Management Act –
Adoption of Designations of Shorelands and Wetlands
Associated With Shorelines of the State**

WAC 173-22-030(5) Definition of "Floodway".

Changes: The final sentence of this WAC was found invalid in the Samuel's Furniture case (Court of Appeals No. 46666-6-1.) The provision in question allowed use of flood regulation ordinance (FEMA) maps for delineating SMA floodway. Revision to reference the statute is proposed as a "housekeeping" measure to ensure consistency with this ruling.

173-22-040 Shoreland area designation criteria.

Changes: Only change is to update reference in (3)(b) from WAC 173-19 to the superceding WAC 173-26.

WAC 173-22-050 Review and update of designations

Changes: Under this proposed change, we will begin using updated Shoreline Master Programs (SMPs) for the official description of the geographic extent of SMA application. Until updated SMPs based on the new Guidelines are approved by Ecology, the existing county-based lists in the WAC will identify extent of SMA application.

WAC 173-22-055 Conflicts between designations and criteria.

Changes: Provides that the criteria for Shorelines of the State prevail over either county lists in the rule or updated SMPs (whichever is applicable). Stipulates that newly-identified Shorelines of the State need to be formally added to the appropriate SMP within three years (in conformance a Thurston County Superior Court decision that three years was too long between discovery of a water body that should be in the Shoreline program and rule update.)

WAC 173-22-060 Shoreline designation maps until superceded.

Changes: The outdated Ecology maps referenced in this section of the rule would be replaced by new updated maps as comprehensive amended Shoreline Master Programs are approved. The revision also reflects that the term "wetlands" was replaced with "shoreland areas" by RCW 90.58.030(2)(f). In addition, location of Ecology headquarters is updated.

(DRAFT) Proposed revisions to Chapter 173-22, Shoreline Management Act – Adoption of Designations of Shorelands and Wetlands Associated With Shorelines of the State (DRAFT)

AMENDATORY SECTION (Statutory Authority: RCW 90.58.140(3) and [90.58].200. 97-04-076 (Order 96-12), § 173-22-030, filed 2/5/97, effective 3/8/97. Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-030, filed 5/23/86. Statutory Authority: RCW 90.58.030 (2) (f), 90.58.120, and 90.58.200. 80-08-086 (Order DE 80-22), § 173-22-030, filed 7/2/80; Order DE 73-11, § 173-22-030, filed 7/20/73; Order DE 72-15, § 173-22-030, filed 6/30/72.])

WAC 173-22-030 Definitions. As used herein, the following words have the following meanings:

(5) "Floodway" ~~means those portions of the area 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. The 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. The limit of the floodway is that which has been established in flood regulation ordinance maps or by a reasonable method which meets the objectives of the act; has the meaning provided in section 90.58.030 RCW.~~

AMENDATORY SECTION [Statutory Authority: RCW 90.58.140(3) and [90.58].200. 97-04-076 (Order 96-12), § 173-22-040, filed 2/5/97, effective 3/8/97. Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-040, filed 5/23/86. Statutory Authority: RCW 90.58.030, 90.58.120 and 90.58.200. 85-09-043 (Order DE 85-05), § 173-22-040, filed 4/15/85. Statutory Authority: RCW 90.58.030 (2)(f), 90.58.120, and 90.58.200. 80-08-086 (Order DE 80-22), § 173-22-040, filed 7/2/80; Order DE 76-30, § 173-22-

040, filed 7/27/76; Order DE 73-11, § 173-22-040, filed 7/20/73; Order DE 72-15, § 173-22-040, filed 6/30/72.]

173-22-040 Shoreland area designation criteria. The following criteria contain the standards for the department's designation of shoreland areas associated with shorelines of the state which are subject to the jurisdiction of chapter 90.58 RCW:

(3) Streams. The shoreland area shall include the greater of:

(a) Those lands which extend landward two hundred feet as measured on a horizontal plane from the ordinary high water mark;

(b) Those floodplains which extend landward two hundred feet as measured on a horizontal plane from the floodway: Provided, That local government may, at its discretion, include all or a larger portion of the one hundred-year floodplain within the associated shorelands. Designation of this shoreland area shall be in accordance with chapter ~~173-19~~ 173-26 WAC, the state master program. If the applicable master program does not designate the shoreland area for a stream, it shall be designated under the rules which applied at the time of adoption by the department;

(c) Those wetlands which are in proximity to and either influence or are influenced by the stream. This influence includes but is not limited to one or more of the following: Periodic inundation; location within a floodplain; or hydraulic continuity; and

(d) Those lands within a river delta floodplain except for 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.

AMENDATORY SECTION (Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-050, filed 5/23/86. Statutory Authority: RCW 90.58.030 (2) (f), 90.58.120, and 90.58.200. 80-08-086 (Order DE 80-22), § 173-22-050, filed 7/2/80; Order DE 73-11, § 173-22-050, filed 7/20/73; Order

DE 72-15, § 173-22-050, filed 6/30/72.)

WAC 173-22-050 Review and update of designations.

~~The department shall review all the designations made herein at least once in every five year period following the effective date of chapter 90.58 RCW or as frequently as is deemed advisable by the department, and prepare the necessary revisions to ensure that the designations conform to the policies of chapter 90.58 RCW and of chapter 173-22 WAC in the manner and form prescribed for adopting and amending rules and regulations in chapter 34.04 RCW (the Administrative Procedure Act). Each local government master program shall include a map of shorelands constituting shorelines of the state within the jurisdiction of the master program that complies with the requirements of RCW 90.58.030(2) (d). When such master program is approved by the Department subsequent to the effective date of this provision, the list within the master program shall be the official list for that jurisdiction and shall supercede the list contained herein.~~

AMENDATORY SECTION (Statutory Authority: Chapter 90.58, RCW. 86-12-011 (Order 86-06), § 173-22-055, filed 5/23/86. Statutory Authority: RCW 90.58.030 (2)(f), 90.58.120, and 90.58.200. 80-08-086 (Order DE 80-22), § 173-22-055, filed 7/2/80; Order DE 73-11, § 173-22-055, filed 7/20/73.)

WAC 173-22-055 Conflicts between designations and criteria.

In the event that any of the wetland designations shown on the maps adopted in WAC 173-22-060 or a Shoreline Master Program approved under WAC 173-20-044, conflict with the criteria set forth in this chapter the criteria shall control. The boundary of the designated wetland areas shall be governed by the criteria set forth in WAC 173-22-040 except that the local government must amend the local master program to reflect the new designation within 3 years of the discovery of the discrepancy.

AMENDATORY SECTION (Statutory Authority: Chapter 90.58 RCW. 86-12-011 (Order 86-06), § 173-22-060, filed 5/23/86. Statutory Authority: RCW 90.58.030, 90.58.120 and

90.58.200. 85-14-001 (Order 85-15), § 173-22-060, filed 6/20/85; 85-09-043 (Order DE 85-05), § 173-22-060, filed 4/15/85. Statutory Authority: RCW 90.58.120, 90.58.200 and 90.58.030 (2)(f). 81-13-034 (Order DE 81-18), § 173-22-060, filed 6/15/81; Order DE 72-15, § 173-22-060, filed 6/30/72.)

WAC 173-22-060 Shoreline designation maps until superceded.

Shoreline designation maps are those maps which have been prepared and adopted by the department in a manner consistent with chapter 34.04 RCW (the Administrative Procedure Act) that designate the location of shorelines of the state and their ~~associated wetland shoreland~~ areas. ~~Wetland-Shoreland~~ area designations are applied under the criteria contained in WAC 173-22-040. Due to the bulk of the maps designating the ~~wetland-shoreland~~ areas, they are not included in the text of this chapter, but rather are incorporated herein as an appendix hereto, having full legal force and effect as if published herein. Copies of the appendix are available to the public at all reasonable times for inspection in the headquarters of the department of ecology in ~~Olympia~~ Lacey, the Washington state code reviser's office, the appropriate county auditor and city clerk. Copies of portions thereof, or of the complete set, will be available from the department at the expense of the party requesting the same. Volumes I, II, and III entitled *Shorelines under the Shoreline Management Act of 1971* (chapter 90.58 RCW, chapter 286, Laws of 1971 1st ex. sess.) were adopted by reference on June 30, 1972. These maps are in effect until superceded by an approved shoreline master program as described in WAC 173-22-050.

**Summary of Proposed Changes (by section) to
Chapter 173-27, Shoreline Management Act –
Shoreline Management Permit and Enforcement Procedures**

WAC 173-27-040 Developments exempt from substantial development permit requirement.

Changes:

Subsection 2(a): Updates substantial development dollar threshold to conform to changes in statute. In July 2007, OFM will begin applying an inflation factor to this threshold.

Subsection 2 (f): Updates navigational aids exemption to conform to revisions in statute striking reference to coast guard or designated port authority.

Subsection 2 (g)and (h): Revised to read the same as statute.

Subsection 2 (k): Updates threshold date for dikes and drainages exemption to conform to change in statute.

Subsection 2(p): Updates exemption for fish and wildlife projects to reflect changes in statutes. Extensive new text is included from department of fish and wildlife statutes that have amended this exemption. This section provides criteria that, when met, shift qualifying fish and wildlife projects from review under the SMA to review under department of fish and wildlife requirements. Included are provisions for review under hydraulic project approval permit procedures.

Section 3: Section deleted here and moved to new 173-27-045. The new WAC section lists statutes that fully or partially exempt specific types of developments from the Shoreline Management Act as a whole. (In contrast, the activities which will continue to be listed in 173-27-040 are exempt only from obtaining a substantial development permit, and are still required to conform to the SMA.)

173-27-045 Developments not subject to the Shoreline Management Act.

Proposed new section: New section lists statute sections where all or part of the Shoreline Management Act is superceded regarding review and regulation of specified development.

173-27-060 Applicability of chapter 90.58 RCW to federal lands and agencies.

Changes: These proposed revisions regarding Federal consistency determinations are necessary to conform Ecology's rule to new Federal CZM guidance. The existing Ecology rule is inconsistent with new federal guidance in several aspects, including: Provision that Ecology shall request input from local governments on consistency determinations for projects in shoreline jurisdiction; and option for local governments to make a consistency determination by reviewing the project in a regular local permit process. The proposed Ecology rule revision directs the reader to Washington's federally approved CZM program document (<http://www.ecy.wa.gov/pubs/0006029.pdf>). The section on consistency determinations begins on page 112 of the Washington CZM document. The amended NOAA CZM rules are available at (http://www.ocrm.nos.noaa.gov/czm/fedcon_rule2006.html).

173-27-070 Application of the permit system to substantial development undertaken prior to the effective date of the act.

Changes: Proposed additions address changes in shoreline act jurisdiction due to updated shoreline master programs meeting the new guidelines. When approved, the extent of shoreline act application as described in the updated master program will supercede the original lists of streams, lakes and wetlands contained in rule. For example, see proposed revisions to WAC 173-18-044 included in this proposed rule amendment. Section 173-27-070 provides guidance on "grandfathering" substantial development that predates the effective date of the shoreline act.

73-27-090 Time requirements of permit.

Changes: Revised sections 1 - 4 to match RCW 90.58.143.

173-27-100 Revisions to permits.

Changes: For clarity, amended reference in section 3 to identify statute rather than WAC section. WAC referenced here is proposed for revision, which would make the reference outdated.

173-27-130 Filing with department.

Changes:

Sections (5) - (7): The "date of filing" provisions in the rule were found to exceed statutory language by the H and H Partnership case (Pierce County Superior Court # 01-2-09493-4). Revision is proposed to ensure conformance to statute and case law.

Section 9: New section 9 adds existing language on permit processing from RCW 90.58.140(6) to assist readers in understanding all requirements.

Renumbered section 10: Language is amended to clarify that local government is responsible for providing the department with the final order on an appeal.

(DRAFT) Proposed revisions to Chapter 173-27, Shoreline Management Act – Shoreline Management Permit and Enforcement Procedures (DRAFT)

AMENDATORY SECTION (Statutory Authority: RCW 90.58.140(3) and [90.58].200. 96-20-075 (Order 95-17), § 173-27-040, filed 9/30/96, effective 10/31/96. Subsection 2(p):2005 c 146 § 505; 2001 c 253 § 55; 1998 c 249 § 3. Formerly RCW 77.55.290, 75.20.350.)

173-27-040 Developments exempt from substantial development permit requirement.

(1) Application and interpretation of exemptions.

(a) Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from the substantial development permit process.

(b) An exemption from the substantial development permit process is not an exemption from compliance with the act or the local master program, nor from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and provisions of the applicable master program and the Shoreline Management Act. A development or use that is listed as a conditional use pursuant to the local master program or is an unlisted use, must obtain a conditional use permit even though the development or use does not require a substantial development permit. When a development or use is proposed that does not comply with the bulk, dimensional and performance standards of the master program, such development or use can only be authorized by approval of a variance.

(c) The burden of proof that a development or use is exempt from the permit process is on the applicant.

(d) If any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire proposed development project.

(e) Local government may attach conditions to the approval of exempted developments and/or uses as necessary

to assure consistency of the project with the act and the local master program.

(2) The following developments shall not require substantial development permits:

(a) Any development of which the total cost or fair market value, whichever is higher, does not exceed ~~two thousand five hundred dollars~~, five thousand dollars, if such development does not materially interfere with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect. For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030 (2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;

(b) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original

structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment;

(c) Construction of the normal protective bulkhead common to single-family residences. A "normal protective" bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per one foot of wall may be used as backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the department of fish and wildlife.

(d) Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this chapter. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit which would have been required, absent an emergency, pursuant to chapter 90.58 RCW, these regulations, or the local master program, obtained. All emergency construction shall be consistent with the policies of chapter 90.58 RCW and the local master program. As a general matter, flooding or other seasonal events that can be anticipated and may

occur but that are not imminent are not an emergency;

(e) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels: Provided, That a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

(f) Construction or modification, ~~by or under the authority of the Coast Guard or a designated port management authority,~~ of navigational aids such as channel markers and anchor buoys;

(g) Construction on shorelands by an owner, lessee or contract purchaser of a single-family residence for their own use or for the use of their family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to chapter 90.58 RCW. "Single-family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. On a statewide basis, normal appurtenances include a garage; deck; driveway; utilities; fences; installation of a septic tank and drainfield and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark. Local circumstances may dictate additional interpretations of normal appurtenances which

shall be set forth and regulated within the applicable master program. Construction authorized under this exemption shall be located landward of the ordinary high water mark;

(h) Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner~~s~~, lessee, or contract purchaser of ~~a~~-single-family and multiple-family residences. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. This exception applies if either:

(i) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or

(ii) In fresh waters the fair market value of the dock does not exceed ten thousand dollars, but if subsequent construction having a fair market value exceeding two thousand five hundred dollars occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this chapter.

For purposes of this section salt water shall include the tidally influenced marine and estuarine water areas of the state including the Pacific Ocean, Strait of Juan de Fuca, Strait of Georgia and Puget Sound and all bays and inlets associated with any of the above;

(i) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored ground water from the irrigation of lands;

(j) The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;

(k) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on ~~June 4~~ September 8, 1975, which were created, developed or utilized primarily as a part of an agricultural drainage or

diking system;

(l) Any project with a certification from the governor pursuant to chapter 80.50 RCW;

(m) Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:

(i) The activity does not interfere with the normal public use of the surface waters;

(ii) The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;

(iii) The activity does not involve the installation of any structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;

(iv) A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and

(v) The activity is not subject to the permit requirements of RCW 90.58.550;

(n) The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the department of agriculture or the department of ecology jointly with other state agencies under chapter 43.21C RCW;

(o) Watershed restoration projects as defined herein. Local government shall review the projects for consistency with the shoreline master program in an expeditious manner and shall issue its decision along with any conditions within forty-five days of receiving all materials necessary to review the request for exemption from the applicant. No fee may be charged for accepting and processing requests for exemption for watershed restoration projects as used in

this section.

(i) "Watershed restoration project" means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or a part of the plan and consists of one or more of the following activities:

(A) A project that involves less than ten miles of streamreach, in which less than twenty-five cubic yards of sand, gravel, or soil is removed, imported, disturbed or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;

(B) A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or

(C) A project primarily designed to improve fish and wildlife habitat, remove or reduce impediments to migration of fish, or enhance the fishery resource available for use by all of the citizens of the state, provided that any structure, other than a bridge or culvert or instream habitat enhancement structure associated with the project, is less than two hundred square feet in floor area and is located above the ordinary high water mark of the stream.

(ii) "Watershed restoration plan" means a plan, developed or sponsored by the department of fish and wildlife, the department of ecology, the department of natural resources, the department of transportation, a federally recognized Indian tribe acting within and pursuant to its authority, a city, a county, or a conservation district that provides a general program and implementation measures or actions for the preservation, restoration, re-creation, or enhancement of the natural resources, character, and ecology of a stream, stream segment, drainage area, or watershed for which agency and public review has been conducted pursuant to chapter 43.21C RCW, the State Environmental Policy Act;

(p) A public or private project, ~~the primary purpose of which is~~ that is designed to improve fish or wildlife

habitat or fish passage, when all of the following apply:

(i) The project has been approved in writing by the department of fish and wildlife ~~as necessary for the improvement of the habitat or passage and appropriately designed and sited to accomplish the intended purpose;~~

(ii) The project has received hydraulic project approval by the department of fish and wildlife pursuant to chapter ~~75.20~~ 70.55 RCW; and

(iii) The local government has determined that the project is substantially consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.

(A) Fish habitat enhancement projects that conform to the provisions of RCW 77.55.181 are determined to be consistent with local shoreline master programs, as follows:

(1) In order to receive the permit review and approval process created in this section, a fish habitat enhancement project must meet the criteria under (a) and (b) of this subsection:

(a) A fish habitat enhancement project must be a project to accomplish one or more of the following tasks:

(i) Elimination of human-made fish passage barriers, including culvert repair and replacement;

(ii) Restoration of an eroded or unstable streambank employing the principle of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water;
or

(iii) Placement of woody debris or other instream structures that benefit naturally reproducing fish stocks.

The department of fish and wildlife shall develop size or scale threshold tests to determine if projects accomplishing any of these tasks should be evaluated under the process created in this section or under other project

review and approval processes. A project proposal shall not be reviewed under the process created in this section if the department determines that the scale of the project raises concerns regarding public health and safety; and

(b) A fish habitat enhancement project must be approved in one of the following ways:

(i) By the department of fish and wildlife pursuant to chapter 77.95 or 77.100 RCW;

(ii) By the sponsor of a watershed restoration plan as provided in chapter 89.08 RCW;

(iii) By the department as a department of fish and wildlife-sponsored fish habitat enhancement or restoration project;

(iv) Through the review and approval process for the jobs for the environment program;

(v) Through the review and approval process for conservation district-sponsored projects, where the project complies with design standards established by the conservation commission through interagency agreement with the United States fish and wildlife service and the natural resource conservation service;

(vi) Through a formal grant program established by the legislature or the department of fish and wildlife for fish habitat enhancement or restoration; and

(vii) Through other formal review and approval processes established by the legislature.

(2) Fish habitat enhancement projects meeting the criteria of subsection (1) of this section are expected to result in beneficial impacts to the environment. Decisions pertaining to fish habitat enhancement projects meeting the criteria of subsection (1) of this section and being reviewed and approved according to the provisions of this section are not subject to the requirements of RCW 43.21C.030(2)(c).

(3)(a) A hydraulic project approval permit is required for projects that meet the criteria of subsection (1) of this section and are being reviewed and approved under this

section. An applicant shall use a joint aquatic resource permit application form developed by the office of regulatory assistance to apply for approval under this chapter. On the same day, the applicant shall provide copies of the completed application form to the department of fish and wildlife and to each appropriate local government. Local governments shall accept the application as notice of the proposed project. The department of fish and wildlife shall provide a fifteen-day comment period during which it will receive comments regarding environmental impacts. Within forty-five days, the department shall either issue a permit, with or without conditions, deny approval, or make a determination that the review and approval process created by this section is not appropriate for the proposed project. The department shall base this determination on identification during the comment period of adverse impacts that cannot be mitigated by the conditioning of a permit. If the department determines that the review and approval process created by this section is not appropriate for the proposed project, the department shall notify the applicant and the appropriate local governments of its determination. The applicant may reapply for approval of the project under other review and approval processes.

(b) Any person aggrieved by the approval, denial, conditioning, or modification of a permit under this section may formally appeal the decision to the hydraulic appeals board pursuant to the provisions of this chapter.

(4) No local government may require permits or charge fees for fish habitat enhancement projects that meet the criteria of subsection (1) of this section and that are reviewed and approved according to the provisions of this section.

~~———(3) Hazardous substance remedial actions. The procedural requirements of chapter 90.58 RCW shall not apply to a project for which a consent decree, order or agreed order has been issued pursuant to chapter 70.105D RCW or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department shall, in consultation with the appropriate local government, assure that such projects comply with the substantive requirements of chapter 90.58 RCW, chapter~~

~~173-26 WAC and the local master program.~~

NEW SECTION [Statutory Authority: RCW 90.58.390, RCW 90.58.045, RCW 90.58.355 and 80.50 RCW.]

173-27-045 Developments not subject to the Shoreline Management Act.

Certain developments are not required to meet requirements of the Shoreline Management Act as follows.

(1) Pursuant to RCW 90.58.390, certain secure community transition facilities are not subject to the Shoreline Management Act. An emergency has been caused by the need to expeditiously site facilities to house sexually violent predators who have been committed under chapter 71.09 RCW. To meet this emergency, secure community transition facilities sited pursuant to the preemption provisions of RCW 71.09.342 and secure facilities sited pursuant to the preemption provisions of RCW 71.09.250 are not subject to the provisions of this chapter.

(a) This section expires June 30, 2009.

(2) Pursuant to RCW 90.58.045 regarding environmental excellence program agreements, notwithstanding any other provision of law, any legal requirement under the Shoreline Management Act, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW.

(3) Pursuant to RCW 90.58.355 regarding hazardous substance remedial actions, the procedural requirements of the Shoreline Management Act shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department of ecology shall ensure compliance with the substantive requirements of chapter 90.58 RCW, chapter 173-26 WAC and the local master program through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or during the department-conducted remedial

action, through the procedures developed by the department pursuant to RCW 70.105D.090.

(4) The holder of a certification from the governor pursuant to chapter 80.50 RCW shall not be required to obtain a permit under chapter 90.58 RCW.

AMENDATORY SECTION: [Statutory Authority: RCW 90.58.140(3) and [90.58].200. 96-20-075 (Order 95-17), § 173-27-060, filed 9/30/96, effective 10/31/96.]

173-27-060 Applicability of chapter 90.58 RCW to federal lands and agencies.

~~The policies and provisions of chapter 90.58 RCW including the permit system shall be applied in the following manner to federal agencies on lands meeting the criteria of the Shoreline Management Act for shorelines of the state.~~

~~——(1) Within the coastal counties.~~

~~(1) Direct federal agency actions and projects shall be consistent to the maximum extent practicable with the approved Washington state coastal zone management program subject to certain limitations set forth in the Federal Coastal Zone Management Act, 16 U.S.C. 1451 et seq. (CZMA) and regulations adopted pursuant thereto. Other applicable federal law governing the federal agency actions may determine whether the permit system of chapter 90.58 RCW is applicable.~~

The Shoreline Management Act is incorporated into the Washington state coastal zone management plan and, thereby, those direct federal actions occurring on lands subject to the act must be consistent to the maximum practicable extent with the act, regulations adopted pursuant to the act and with the local master program. ~~Local government is in the best position to determine the appropriate procedure for review of federal development activities at the local level while the state must take action on federal consistency determinations submitted to it.~~

The process for CZMA federal consistency decision-making is described in Washington's federally approved CZM program

document (Ecology Publication 00-06-029).

~~— (a) When the department receives a consistency determination for a development proposed by the federal government on land subject to the act, it shall request that local government review the proposal and respond in writing that the local government:~~

~~— (i) Cannot make a determination of the consistency of the project with the master program without reviewing the project in the regular permit process; or~~

~~— (ii) Has reviewed the project for consistency with the local master program without using the permit system. Local government may recommend that the project be approved, approved only under certain specified conditions or denied.~~

~~— (iii) Defers review of the project to the state.~~

~~— (b) Upon receipt of a response from local government that a permit is required to make a determination, the department shall inform the requesting agency of the local government finding and shall indicate that concurrence with the consistency determination cannot be granted until a permit is issued. If the local government chooses to review and make a recommendation without using the permit system it shall so notify the department and submit its recommendation to the department within thirty days unless a longer period of time is agreed to by the federal agency and the department. If no response is received from local government within thirty days they shall be deemed to have deferred review of the project.~~

~~— (c) Nothing in this section shall be deemed to preclude independent review of the project by the state pursuant to any appropriate authority consistent with the approved coastal zone management plan.~~

~~— (d) The coastal counties, as established in Washington's approved coastal zone management plan, consist of the following counties: Whatcom, Skagit, San Juan, Island, Snohomish, King, Pierce, Thurston, Mason, Kitsap, Jefferson, Clallam, Grays Harbor, Pacific and Wahkiakum.~~

~~— (2) Outside of the coastal counties.~~

~~— (a) Direct federal agency actions that are reasonably~~

~~likely to affect any coastal use or resource shall be consistent with the approved coastal zone management plan to the maximum extent practicable subject to limitations set forth in the Federal Coastal Zone Management Act, 16 U.S.C. 1451 et seq. (CZMA) and regulations adopted pursuant thereto. Other applicable federal law governing the federal agency actions may determine whether the permit system of chapter 90.58 RCW is applicable.~~

~~(b) Except as provided in (a) of this subsection, federal agencies shall not be required to obtain permits for developments undertaken by the federal government on lands owned in fee by the federal government or on easements obtained by the federal government for a specified purpose where the proposed development is consistent with the specified purpose, unless under either circumstance the federal government grants or reserves to the state or local government substantial jurisdiction over activities on those lands.~~

~~(c) Except as provided in (a) of this subsection, the permit system shall apply to developments undertaken on lands not federally owned but under lease, license, or other similar federal property rights short of fee ownership, to the federal government.~~

(~~23~~) The policies and provisions of chapter 90.58 RCW, including the permit system, shall apply statewide to all nonfederal developments and uses undertaken on federal lands and on lands subject to nonfederal ownership, lease or easement, even though such lands may fall within the external boundaries of a federal ownership.

AMENDATORY SECTION: [Statutory Authority: RCW 90.58.140(3) and [90.58].200. 96-20-075 (Order 95-17), § 173-27-070, filed 9/30/96, effective 10/31/96.]

173-27-070 Application of the permit system to substantial development undertaken prior to the effective date of the act.

(1) Substantial development undertaken on the shorelines of the state prior to the effective date of the act, including changes in shoreline jurisdiction as described in section 2, shall not require a permit except under the

following circumstances:

(a) When the activity was unlawful prior to the effective date of the act.

(b) When there has been an unreasonable period of dormancy in the project between its inception and the effective date of the act.

(c) When the development is not completed within two years after the effective date of the act.

(d) When substantial development occurred prior to the effective date of the act on a shoreline and continued on to a different lake, river or tributary after the effective date, a permit shall be required for the development undertaken after the effective date.

(e) Substantial development undertaken prior to the effective date of the act shall not continue without a permit into other phases that were not part of the plan being followed at the time construction commenced.

(2) The effective date of the act is determined by one of the following procedures:

(a) When a change in the area subject to the jurisdiction of the act occurs as a result of a determination of jurisdiction by the department based on the provisions of RCW 90.58.030 (2)(d) or (e), the effective date of the act shall be the date the department provides written notice of the change to the local government(s) in which the affected area is located.

(b) When a change in the area subject to the jurisdiction of the act occurs as a result of an updated shoreline master program that supercedes the jurisdiction lists in WAC 173-18, 173-20 and 173-22, the effective date of the act shall be the date the department approves the updated master program.

AMENDATORY SECTION. [Statutory Authority: RCW 90.58.140(3) and [90.58].200. 96-20-075 (Order 95-17), § 173-27-090, filed 9/30/96, effective 10/31/96.]

173-27-090 Time requirements of permit.

(1) The ~~following~~ time requirements of this section shall apply to all substantial development permits and to any development authorized pursuant to a variance or conditional use permit authorized by this chapter. ~~(1)~~ Upon a finding of good cause, based on the requirements and circumstances of the project proposed and consistent with the policy and provisions of the master program and ~~the act~~ this chapter, local government may adopt appropriate different time limits from those set forth in subsections (2) and (3) of this section as a part of action on a substantial development permit. ~~and local government, with the approval of the department, may adopt appropriate time limits as a part of action on a conditional use or variance permit: "Good cause based on the requirements and circumstances of the project," shall mean that the time limits established are reasonably related to the time actually necessary to perform the development on the ground and complete the project that is being permitted, and/or are necessary for the protection of shoreline resources.~~

~~—(2) Where neither local government nor the department include specific provisions establishing time limits on a permit as a part of action on the permit, the following time limits shall apply:~~

~~(a)~~ (2) Construction activities shall be commenced or, where no construction ~~is~~ activities are involved, the use or activity shall be commenced within two years of the effective date of a shoreline substantial development permit. ~~Provided, that~~ However, local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record on the substantial development permit and to the department.

~~—(b)~~ (3) Authorization to conduct development activities shall terminate five years after the effective date of a shoreline substantial development permit. ~~Provided, that~~ However, local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and to the department.

~~(3) The effective date of a shoreline permit shall be the date of the last action required on the shoreline permit and all other government permits and approvals that authorize the development to proceed, including all administrative and legal actions on any such permit or approval. It is the responsibility of the applicant to inform the local government of the pendency of other permit applications filed with agencies other than the local government and of any related administrative and legal actions on any permit or approval. If no notice of the pendency of other permits or approvals is given to the local government prior to the date established by the shoreline permit or the provisions of this section, the expiration of a permit shall be based on the shoreline permit.~~

(4) The effective date of a substantial development permit shall be the date of filing as provided in RCW 90.58.140(6). The permit time periods in subsections (2) and (3) of this section do not include the time during which a use or activity was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals.

~~(4) When permit approval is based on conditions, such conditions shall be satisfied prior to occupancy or use of a structure or prior to commencement of a nonstructural activity: Provided, That an alternative compliance limit may be specified in the permit.~~

(5) Revisions to permits under WAC 173-27-100 may be authorized after original permit authorization has expired ~~under subsection (2) of this section~~: Provided, That this procedure shall not be used to extend the original permit time requirements or to authorize substantial development after the time limits of the original permit.

(6) Local government shall notify the department in writing of any change to the effective date of a permit, as authorized by this section, with an explanation of the basis for approval of the change. Any change to the time limits of a permit other than those authorized by ~~this section~~ chapter 90.58.143 RCW as amended shall require a

new permit application.

AMENDATORY SECTION. [Statutory Authority: RCW 90.58.140(3) and [90.58].200. 96-20-075 (Order 95-17), § 173-27-100, filed 9/30/96, effective 10/31/96.]

173-27-100 Revisions to permits.

A permit revision is required whenever the applicant proposes substantive changes to the design, terms or conditions of a project from that which is approved in the permit. Changes are substantive if they materially alter the project in a manner that relates to its conformance to the terms and conditions of the permit, the master program and/or the policies and provisions of chapter 90.58 RCW. Changes which are not substantive in effect do not require approval of a revision.

When an applicant seeks to revise a permit, local government shall request from the applicant detailed plans and text describing the proposed changes.

(1) If local government determines that the proposed changes are within the scope and intent of the original permit, and are consistent with the applicable master program and the act, local government may approve a revision.

(2) "Within the scope and intent of the original permit" means all of the following:

(a) No additional over water construction is involved except that pier, dock, or float construction may be increased by five hundred square feet or ten percent from the provisions of the original permit, whichever is less;

(b) Ground area coverage and height may be increased a maximum of ten percent from the provisions of the original permit;

(c) The revised permit does not authorize development to exceed height, lot coverage, setback, or any other requirements of the applicable master program except as authorized under a variance granted as the original permit or a part thereof;

(d) Additional or revised landscaping is consistent with any conditions attached to the original permit and with the applicable master program;

(e) The use authorized pursuant to the original permit is not changed; and

(f) No adverse environmental impact will be caused by the project revision.

(3) Revisions to permits may be authorized after original permit authorization has expired under [RCW 90.58.143](#) ~~WAC 173-27-080(2)~~. The purpose of such revisions shall be limited to authorization of changes which are consistent with this section and which would not require a permit for the development or change proposed under the terms of chapter 90.58 RCW, this regulation and the local master program. If the proposed change constitutes substantial development then a new permit is required. Provided, this subsection shall not be used to extend the time requirements or to authorize substantial development beyond the time limits of the original permit.

(4) If the sum of the revision and any previously approved revisions under former WAC 173-14-064 or this section violate the provisions in subsection (2) of this section, local government shall require that the applicant apply for a new permit.

(5) The revision approval, including the revised site plans and text consistent with the provisions of WAC 173-27-180 as necessary to clearly indicate the authorized changes, and the final ruling on consistency with this section shall be filed with the department. In addition, local government shall notify parties of record of their action.

(6) If the revision to the original permit involves a conditional use or variance, local government shall submit the revision to the department for the department's approval, approval with conditions, or denial, and shall indicate that the revision is being submitted under the requirements of this subsection. The department shall render and transmit to local government and the applicant its final decision within fifteen days of the date of the department's receipt of the submittal from local

government. Local government shall notify parties of record of the department's final decision.

(7) The revised permit is effective immediately upon final decision by local government or, when appropriate under subsection (6) of this section, upon final action by the department.

(8) Appeals shall be in accordance with RCW 90.58.180 and shall be filed within twenty-one days from the date of receipt of the local government's action by the department or, when appropriate under subsection (6) of this section, the date the department's final decision is transmitted to local government and the applicant. Appeals shall be based only upon contentions of noncompliance with the provisions of subsection (2) of this section. Construction undertaken pursuant to that portion of a revised permit not authorized under the original permit is at the applicant's own risk until the expiration of the appeals deadline. If an appeal is successful in proving that a revision is not within the scope and intent of the original permit, the decision shall have no bearing on the original permit.

AMENDATORY SECTION. [Statutory Authority: RCW 90.58.140(3) and [90.58].200. 96-20-075 (Order 95-17), § 173-27-130, filed 9/30/96, effective 10/31/96.]

173-27-130 Filing with department.

(1) All applications for a permit or a permit revision shall be submitted to the department upon a final decision by local government. Final decision by local government shall mean the order or ruling, whether it be an approval or denial, which is established after all local administrative appeals related to the permit have concluded or the opportunity to initiate such appeals have lapsed.

(2) When a substantial development permit and a conditional use or variance permit are required for a development, the submittal on the permits shall be made concurrently.

(3) A complete submittal shall consist of the following documents and information:

(a) A copy of the complete application pursuant to WAC 173-27-180;

(b) Findings and conclusions that establish the basis for the decision including but not limited to identification of shoreline environment designation, applicable master program policies and regulations and the consistency of the project with appropriate review criteria for the type of permit(s) as established in WAC 173-27-140 through 173-27-170;

(c) The final decision of the local government;

(d) The permit data sheet required by WAC 173-27-190;
and

(e) Where applicable, local government shall also file the applicable documents required by chapter 43.21C RCW, the State Environmental Policy Act, or in lieu thereof, a statement summarizing the actions and dates of such actions taken under chapter 43.21C RCW.

(4) When the project has been modified in the course of the local review process, plans or text shall be provided to the department that clearly indicate the final approved plan.

(5) Submittal of substantial development permits, conditional use permits, variances, rescissions and revisions is complete when all of the documents required pursuant to subsections (3) and (4) of this section have been received by the department. If the department determines that the submittal does not contain all of the documents and information required by this section, the department shall identify the deficiencies and so notify local government and the applicant in writing. The Ecology will not act on conditional use permit or variance submittals and permit are void unless and until the material requested in writing is submitted to the department.

(6) "Date of filing" of a local government final decision involving approval or denial of a substantial development permit, ~~or involving a denial of a variance or conditional use permit,~~ is the date of actual receipt by

the department of a complete submittal by the department local government's final decision on the permit.

(7) "Date of filing" involving approval or denial of a variance or conditional use permit approved or denied by local government, and such permits which also involve concurrent submittal by local government of a substantial development permit, is the date of transmittal of the department's final decision on the variance or conditional use permit to local government and the applicant.

(8) The department shall provide a written notice to the local government and the applicant of the "date of filing."

(9) 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.

(~~910~~) When a permit has been appealed pursuant to RCW 90.58.180, upon conclusion of all review proceedings, a copy of the final order shall be provided ~~to~~ by the local government and to the department. When the project has been modified in the course of the review proceeding, plans or text shall be provided to the local government, consistent with the provisions of WAC 173-27-180, that clearly indicate the final approved plan and the local government shall reissue the permit accordingly and submit a copy of the reissued permit and supporting documents consistent with subsection (3) of this section to the department for completion of the file on the permit. The purpose of this provision is to assure that the local and department files on the permit are complete and accurate and not to provide a new opportunity for appeal of the permit.