# Shoreline Master Programs

Until about 40 years ago, development along Washington's shorelines tended to be piecemeal and uncoordinated. To improve and protect shoreline values and benefits, the state Legislature passed the state Shoreline Management Act in 1971. The public adopted the Act in a 1972 referendum vote.

To manage shoreline development and uses, the state law established a cooperative relationship between local governments and the Washington Department of Ecology (Ecology). The Shoreline Management Act applies to most streams, lakes greater than 20 acres, and marine waters as well as associated shorelands, wetlands, and floodplains. The law has three main purposes:

- Encourage reasonable and orderly development of shorelines, with an emphasis on water-dependent and related uses that control pollution and prevent damage to the natural environment.
- Protect the natural character of Washington shorelines, the land, vegetation, wildlife, and shoreline environment.
- Promote public access and provide opportunities to enjoy views and recreational activities in shoreline areas.

"Shoreline master programs" are the cornerstone for carrying out the Shoreline Management Act. Under state law, more than 260 towns, cities, and counties with shorelines covered by the Act must develop locally-tailored programs to guide shoreline use, development and public access.

Dungeness Spit in the Strait of Juan de Fuca.

**Q: What do shoreline master programs do?**

**A:** Shoreline master programs help local communities plan for the future. They are a combination of policies, regulations, and permits that guide shoreline use within a town, city or county. They balance shoreline development with environmental protection, and provide for access to public shores and waters.

Shoreline programs:

- Plan for water-dependent uses based on current conditions and long-term needs.
- Identify areas appropriate for public access.
- Maintain the current state of the natural environment into the future.
- Plan for restoration and preservation of shorelines where it makes sense.
- Balance statewide interests with local interests.

**Q: Why are shoreline master programs important?**

**A:** Shorelines are where the land and water meet. If we ever hope to restore and protect state shorelines – including Puget Sound – as we accommodate necessary new uses and development, we must be sure to manage these areas wisely. Whenever we build in our shorelines, we transform a unique and precious aspect of our natural environment. We clear native vegetation, build bulkheads, and put in driveways, roads, roofs and other impervious surfaces. These actions can have negative effects on our valuable fish and shellfish industries, nearby property owners, and other interests. Shoreline master programs establish each community's goals for its shoreline areas and implement policies and regulations to:

- Protect water quality for our marine waters, lakes and streams.
- Protect private property by siting new development safely away from flood, landslide, erosion hazard, and wetland areas.
- Help avoid or lessen environmental damage as shorelines are developed.
- Protect critical habitat as well as fish and wildlife.
- Promote recreational opportunities in shoreline areas.

## Local Governments: Roles and responsibilities

**Q: Why do local governments have to update their shoreline master programs?**

**A:** In 2003, the state Legislature set up a timetable for local governments to update local shoreline master programs. Most haven't updated their programs

comprehensively since the mid 1970s. Since voters passed the Act in 1972, Washington's statewide population nearly doubled from 3.4 million to 6.5 million people. The old shoreline programs need to address current conditions, consider new science, and be aligned with current laws. An effective comprehensive update will reduce unsustainable development and provide shoreline land owners with a clearer set of standards.

**Q: How does a community benefit from updating their shoreline program?**

**A:** Each community is unique so the benefits from updating a shoreline program will be unique. Most communities benefit economically and legally because shoreline programs:

- Protect lives and property by directing development away from flood, landslide, and other hazard areas.
- Help towns, cities, and counties to realize their vision for future waterfront development and public access.
- Provide more certainty to the development community and water-dependent uses through shoreline building ordinances and permitting requirements.
- Avoid costly restoration of degraded shorelines in the future.

**Q: What is the role of local governments in shoreline management?**

**A:** Local governments are responsible for starting shoreline master program planning by deciding which areas are in shoreline jurisdiction, analyzing the present uses and long-term needs for shorelines, and locally adopting a shoreline master program. Local governments must consult with other agencies, tribal governments, and all individuals interested in developing their shoreline master programs. Once adopted, local government is the shoreline master program administrator. The local government reviews new development proposals and uses the permit system to decide what is consistent with state law and the local program.

**Q: Is the public involved in developing shoreline master programs?**

**A:** Yes. The Shoreline Management Act requires local governments to involve all interested parties in the creation or update of shoreline master programs, and provide public notice about permit decisions. Interested parties include shoreline property owners, developers, businesses, recreationists, environmental and conservation groups, Indian tribes, farmers and agricultural interests, tourists, other shoreline users, and local and state government agencies. Among the first steps a local government must take in a comprehensive update is developing a public participation plan and submitting it to Ecology for approval.

**Q: Who approves local shoreline master programs?**

**A:** Each local government approves its program after a period of public review and comment. Then the local government sends its approved program to Ecology, who reviews it for

consistency with state law. Ecology must approve the locally approved and submitted program before it takes effect. To ensure respect for private property rights, local and state legal authorities are required to review a shoreline program before formal adoption.

Homes destroyed in 1997 Perkins Lane landslide on Magnolia Bluff in Seattle

**Q: Who pays to have a local master program updated?**

**A:** The Shoreline Management Act requires the state to provide "reasonable and adequate" funding for shoreline master program updates. Ecology gives legislative appropriations to local governments in the form of grants. For the current budget cycle (from July 1, 2009, through June 30, 2011), state lawmakers authorized $7.5 million in grants to jurisdictions in Clark, Clallam, Island, King, Kitsap, Mason Pierce, San Juan, Skagit, and Snohomish counties to update their shoreline master programs.

**Q: How is each grant amount determined?**

**A:** Ecology determines each jurisdiction's grant award based on a number of factors. The department considers past levels of funding provided to local jurisdictions for shoreline master program updates. Ecology also looks at:

- Miles of shoreline in each jurisdiction
- Number and complexity of kinds of shoreline (marine, streams and rivers, and lakes)
- Population
- Area
- Growth rate

**Q: What if a local government can't meet the update deadline set by the state legislature, or chooses not to update its shoreline master program?**

**A:** Once a local government receives a grant from the state to help them update their shoreline program, they have three years to locally adopt and submit the updated program to Ecology for approval. Ecology is required by law to prepare and adopt an updated shoreline program for any town, city, or county that misses the deadline set by law. In that case, much of the opportunity for local determination of how to regulate shorelines would be reduced.

## Guidelines, Funding and Review: Ecology's role

**Q: What is Ecology's role in the shoreline master program process?**

**A:** Lawmakers made Ecology responsible for ensuring local shoreline programs, when added together, protect the statewide public interest. Ecology does this by providing guidance to local governments about the essential elements a shoreline master program must contain, and reviewing and approving local programs. The agency may also join in appeals or lawsuits regarding the Shoreline Management Act or the guidelines that implement the Act. Finally, Ecology provides financial support, technical assistance, guidance materials, and regular training to support local governments.

**Q: What is the purpose of Ecology's 2003 Shoreline Management Act guidelines?**

**A:** The guidelines set minimum procedural and substantive standards for local governments updating their programs. The 2003 guidelines now in place resulted from a negotiated settlement between business interests, ports, environmental groups, shoreline user groups, cities and counties, Ecology, and the courts. Ecology and state Growth Management Hearings Boards use the guidelines to review and approve local shoreline program updates. Also in 2003, the state legislature provided funding and established a mandatory schedule for local shoreline program updates through 2014.

**Q: What types of action can Ecology take when it receives an updated shoreline program?**

**A:** After Ecology reviews the local program to determine if it complies with state requirements, the department can approve it as submitted by the local government, approve it with changes, or reject it. Once Ecology approves a local shoreline master program, it becomes part of the statewide shoreline "master" program. At that point, local governments are responsible for applying their locally-adopted shoreline policies and regulations to individual projects.

**Q: Why is it important for local governments to get Ecology's approval?**

**A:** The Legislature made Ecology responsible for ensuring statewide policies are upheld and implemented when local shoreline master programs are adopted. Under the Shorelines Management Act, a locally approved program must meet state guidelines. Once an updated program receives approval at the local and state levels, the state becomes a full partner in defending any legal challenges to the updated program.

## Legal Issues

**Q: Aren't requirements for shoreline vegetation buffers a "taking" of private property rights?**

**A:** No. The U.S. Constitution allows state and local governments to limit private property activities provided it's for a legitimate public benefit and they do not deprive the landowner of all reasonable use of the property. For example, state and local governments can adopt regulations that prevent sediment from running off private property and entering a salmon-spawning stream. These regulations protect salmon, a public resource.

Buffers do not deprive landowners of all reasonable use of their property and, in fact, all property tends to benefit from reasonable setbacks and buffers. In those limited instances where the buffer precludes or significantly interferes with a reasonable use, the property owner may obtain a variance.

**Q: Hasn't Whatcom County's Shoreline Master Program been challenged and overturned in court?**

**A:** No. A local developer and the Building Industry Association of Whatcom County took Whatcom County and Ecology to court and lost on all issues except one. All other issues addressed by the Western Washington Growth Management Hearings Board, and in a separate Skagit County Superior Court case, were found in Whatcom County and Ecology's favor. The issue the Board found in the appellant's favor was "despite critical areas being originally approved through a county critical areas ordinance public process, they need to revisited and justified if incorporated into an updated shoreline master program."

The Western Washington Growth Management Hearings Board ruled:

- Ecology's approval of the shoreline master program was valid as originally approved on August 8, 2009.
- The public process was proper and legally correct.
- The county's inventory and analysis supported the designation of all marine near shore areas, streams, and lakes as critical areas.
- The issue challenging the required 100 to 150 foot buffers was dismissed.

The Skagit County Superior Court found:

- The shoreline master program is not subject to certain statutory limitations on the regulation of development because shoreline master programs constitute state, not merely local, regulations.

**Q: We keep hearing that "junk science" is being used, our property rights are being stolen, and that our land is being condemned. Is this true?**

**A:** Unfortunately, some people are worried and angry at times based on misinformation about how buffer zones or shoreline regulations would affect their property values. Many claims have been made about how shoreline master programs will affect what people can and can't do on their property. The Shoreline Management Act requires local and state government to include the views of all interested persons in developing shoreline master program goals, policies, and regulations.

We encourage open and honest dialogue with all stakeholders to develop strong shoreline programs supported by the best, sound science. To ensure respect for private property rights, local and state legal authorities are required to review a shoreline program before being formally adopted by Ecology.

## Scientific Information

**Q: What kinds of information do local governments use to help modernize their shoreline master programs?**

**A:** Ecology's 2003 guidelines require local governments to "make use of and, where applicable, incorporate all available scientific information." This includes reports, documents and materials including:

- Inventory data.
- Technical assistance materials.
- Manuals and services from reliable, scientific sources.
- Aerial photography.
- Other applicable information.

**Q: What is scientific information?**

**A:** Common sources of scientific information include:

- **Monitoring data** collected periodically over time to determine a resource trend or evaluate a management program.
- **Inventory data** collected from an entire population, such as individuals in a plant or animal species, or an ecosystem area.
- **Survey data** collected from a statistical sample from a population or ecosystem.
- **Assessment,** which entails the inspection and evaluation of site-specific information by a qualified scientific expert. An assessment may or may not involve collection of new data.
- **Research data** collected and analyzed as part of a controlled experiment, or other appropriate methodology, to test a specific hypothesis.
- **Modeling** which entails the mathematical or symbolic simulation or representation of a natural system. Models generally are used to understand and explain occurrences that can't be directly observed.

- **Synthesis,** which is a comprehensive review and explanation of pertinent literature and other relevant existing knowledge by a qualified scientific expert.

**Q: How do we know if information is scientifically valid?**
**A:** Scientific studies are generally expected to have the following characteristics:

- **Methods.** The methods that were used to obtain the information are clearly stated and able to be replicated. The methods are standardized in the pertinent scientific discipline or, if not, the methods have been appropriately peer-reviewed to assure their reliability and validity.
- **Logical conclusions and reasonable inferences.** The conclusions presented are based on reasonable assumptions supported by other studies and consistent with the general theory underlying the assumptions. The conclusions are logically and reasonably derived from the assumptions and supported by the data presented. Any gaps in information and inconsistencies with other pertinent scientific information are adequately explained.
- **Context.** The information is placed in proper context. The assumptions, analytical techniques, data, and conclusions are appropriately framed with respect to the prevailing body of pertinent scientific knowledge.
- **References.** The assumptions, analytical techniques, and conclusions are well referenced with citations to relevant, credible literature and other existing pertinent information.
- In addition, for research and modeling, an **appropriate quantitative analysis** is essential. The data must be analyzed using appropriate statistical or quantitative methods.

Moreover, **peer review** is a vital characteristic of research, modeling and synthesis of scientific information. Publication in a peer reviewed or "refereed" scientific journal usually indicates the information has been appropriately peer-reviewed.

**Q: How do I know if a paper or a report has been credibly peer-reviewed?**
**A:** Scientific publications are evaluated through a peer-review process administered by a scientific journal, public agency, consulting research firm, or scientific non-profit entity. Before the document is published, other researchers with appropriate areas of expertise evaluate the quality of the research and provide written reviews – and the document is improved as a result of the process. The document must include a complete citation showing where, when and by whom it was published. An example of an appropriately cited article is:

> Diefenderfer HL, SL Sargeant, RM Thom, AB Borde, PF Gayaldo, CA Curtis, BL Court, DM Pierce, and DS Robison. 2004. "Demonstration Dock Designed to Benefit Eelgrass Habitat Restoration (Washington)." *Ecological Restoration* 22(2):140-141.

Two examples of peer-reviewed scientific journals are: *Estuaries & Coasts*, the journal of the Coastal and Estuarine Research Federation, and *Ecological Applications*, a journal of the Ecological Society of America. An example of an Ecology report that has gone through a documented peer review process is our synthesis of information on wetlands. To see a copy go to: www.ecy.wa.gov/biblio/0506006.html.

**Q: If a document contains a lot of numbers and statistics, does this mean it is credible science?**

**A:** No. On the surface, it may be difficult to assess the quality of the methods and statistics reported in a document. Technical documents should always include a clear description of the methods used and undergo a rigorous review by other experts in the field. This ensures proper scientific methods, research procedures, and review protocols were used.

**Q: Can local governments accept technical comments and information from the public that has not gone through a formal peer-review or publication process?**

**A:** Yes. Local governments have a process for receiving all kinds of comments, including anecdotal information, from the public regarding local shoreline master program updates. Information, experience, and anecdotal evidence provided by interested parties may offer valuable information to supplement scientific information. However, non-scientific information shouldn't be used as a substitute for valid and available scientific information. Where information collected by or provided to local governments conflicts with other data or is inconsistent, the local government is obligated to base its shoreline master program provisions on a reasoned, objective evaluation of the relative merits of the conflicting data.

**Q: Where can I get more background on the use of science in city and county shoreline master program updates?**

**A:** See Ecology's shoreline master program guidelines at: http://apps.leg.wa.gov/wac/default.aspx?cite=173-26&full=true#173-26-201.

The state Department of Commerce also has guidelines for "best available science" for critical areas ordinances at: http://apps.leg.wa.gov/wac/default.aspx?cite=365-195-905.

## Property Issues

**Q: Won't buffers and other shoreline regulations decrease my property values?**

**A:** Property values are relatively unaffected by buffers. Waterfront property has skyrocketed in value in the past 30 years despite shoreline buffers of 25 to 125 feet being in place for the same period. Protecting native vegetation along the shoreline actually enhances property values by:

- Stabilizing slopes.
- Screening adjacent development from view.
- Providing attractive landscaping and habitat.
- Blocking noise and glare from adjacent properties.

**Q: Is it true if my house burns down I can't rebuild it in the same location?**

**A:** No. While each local jurisdiction can modify their approach, single-family homes are "grandfathered" under the state Shoreline Management Act. This means if your burns down, it can almost always be re-built in the same footprint. The only exception would be if the existing location was dangerous or unsafe for building such as in a floodway or on a failing bluff.

**Q: Whatcom County updated its shoreline master program in 2008. Have property owners applying for improvements such as new additions and garages run into any problems?**

**A:** Since Whatcom County adopted its updated shoreline program, the county has received more than 20 applications to make building improvements. These building permits received approval and were issued in a timely manner. No decisions have been appealed.

**Q: Could updating the local shoreline master program require me to tear down my existing shoreline structure?**

**A:** No. Shoreline programs are not retroactive. They only apply to development occurring after adoption.

**Q: Will waterfront property owners still be able to protect their property with a bulkhead under an updated shoreline master program?**

**A:** If property owners can clearly demonstrate a need exists, they can use an approach that has the least impact on the natural shoreline.

**Q: Will homeowners face more limits on building new docks?**

**A:** That depends on the local circumstances and the choices made locally about how a community wants its future shoreline to look. If new docks can be shown not to harm the natural shoreline they can be allowed.

**Q: Could there be limits on repairing houses, barns, fences, bulkheads, docks or other structures?**

**A:** Provisions in state law allow the repair and maintenance of existing, lawful constructed structures. State shoreline guidelines allow repair and maintenance of existing structures, subject to any building requirements imposed separately by local jurisdictions.

## Bulkheads, Sea Walls and Armoring

**Q: What is hard armoring? What are its impacts on the shoreline?**

**A:** The natural character of shorelines and many organisms living there depend on a continuous and uninterrupted relationship between upland areas and the water. Beaches depend on erosion to supply sand and gravel. Hard armoring interrupts this natural relationship. Property owners use hard armoring to protect an owner's preference for how the waterfront edge should look or limit property loss by erosion. Armoring prevents the supply of new material for beach formation and disturbs other ecological functions.

**Q: What is soft armoring? What are its impacts on the shoreline?**

**A:** There are many ways to slow the rate of erosion that are less disruptive than hard armoring. Soft armoring approaches often use a combination of less rigid structural materials and native vegetation to stabilize the shoreline. Placing large logs or native vegetation along the shoreline, for example, can serve as a natural break for waves while simultaneously providing some habitat value.

## No Net Loss and Restoration

**Q: What is "no net loss" of ecological or environmental functions?**

**A:** The new environmental protection standard for updated shoreline master programs is "no-net-loss of shoreline ecological functions." While restoration of degraded areas is encouraged, this does not mean all shoreline areas are required to be made "pristine" or returned to pre-settlement conditions. Local governments are required to inventory current shoreline conditions – including identifying existing ecological processes and functions that influence physical and biological conditions. When a shoreline program is adopted, existing ecological conditions on the ground must be protected while development of shoreline areas is continued in accordance with adopted regulations. This is accomplished by avoiding or minimizing the introduction of impacts to ecological functions that result from new shoreline development.

**Q: Do the new guidelines require restoration?**

**A:** Local governments must plan for restoration in their shoreline master programs. Restoration is not a direct requirement for private development. Local government must consider its restoration needs, identify resources available to conduct restoration, prioritize restoration actions, and make sure development activities don't interfere with planned restoration efforts in the community and vice versa. A shoreline master program may include incentives for developers to invest in shoreline restoration.

**Q: Why are some "conservancy" or "urban" shoreline areas being designated "natural?"**

**A:** State guidelines establish criteria specifying that if an area meets those criteria, they should be designated as such. This is an important part of achieving the broad policy objective of "no net loss."

## Agricultural Issues

**Q: How do Shoreline Master Programs apply to farms / agriculture?**

**A:** A 2002 state law requires when local shoreline programs are updated, the new standards, setbacks and buffers do not apply retroactively to existing agricultural development. Updated shoreline program requirements will however apply to new agricultural activities located in shoreline areas and where agricultural activities are converted to other uses. Local governments will need to be aware of this requirement when updating their master programs. Agricultural interests represented in the negotiations agreed with this approach.

## Other Shoreline-Related Issues

**Q: Why are critical areas ordinances often incorporated into local shoreline program updates?**

**A:** A recent state Supreme Court decision (*Futurewise v. Anacortes*) decided that the shoreline master program solely regulates the shorelines and critical areas covered by the program, once Ecology approves it. Many existing master programs contain buffer requirements but are based on outdated conditions and science. Rather than repeat the work local governments have already done developing their critical areas ordinances under the state Growth Management Act (GMA), relevant portions of existing critical areas ordinances may be placed in updated shoreline master programs under the Shoreline Management Act.

**Q: What are differences between critical areas ordinances and shoreline master programs?**

**A:** Local governments and Ecology implement the Shoreline Management Act using locally-tailored Shoreline Master Programs. Local governments implement critical areas ordinances under the authority of the state Growth Management Act. The two laws have many similar requirements for environmental protection but they are administered with different kinds of regulatory procedures. The two laws also have many similar and some different objectives for dealing with future land use and development. Integrating Growth Management and Shoreline Management Act goals, policies, and regulations is required but often difficult to accomplish.

**Q: Do the rules surrounding "best available science" apply to shoreline master programs?**

**A:** No. Current science is the basis for shoreline master programs while "best available science" is a term from the state Growth Management Act, and does not apply to shoreline master programs. Shoreline management requires use of the "most current, accurate and complete scientific and technical information" as the basis for decision making.

**Q: What is Ecology's role in developing and providing wetlands guidance to local governments?**

**A:** Local governments implement the GMA. Ecology, however, has expertise in managing and protecting wetlands. We knew most local governments didn't have the resources to develop a science-based standard for protecting wetlands. To help local governments meet GMA requirements without reinventing the wheel, Ecology got a federal grant in 2002 and spent three years crafting wetlands guidance. We scanned over 15,000 scientific articles and summarized another 1,000 related to protecting and managing wetlands. Ecology continues to provide this guidance and technical assistance, as applicable wetland regulations are updated all across the state.

**Q: Where can I get more information?**

**A:** There is an array of valuable information available at Ecology's Shoreline Master Program Web site at http://www.ecy.wa.gov/programs/sea/shorelines/smp/index.html. The site includes:

- A citizen's guide for shoreline master programs.
- Shoreline planners' toolbox.
- Laws, rules, and legal cases related to shoreline management.
- Shoreline master program publications.

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