Yolanda Ho

On behalf of King County, I am submitting the attached comment letter. Thank you for the opportunity to provide feedback on the preliminary drafts of the SMA WACs.

August 15, 2025

Thank you for the opportunity to review and provide input on the preliminary draft changes to Washington Administrative Code (WAC) Chapters 173-18, 173-20, 173-22, 173-26, and 173-27. We recognize the considerable amount of work that went into these proposed updates, which provide a substantial amount of additional guidance to local governments for the development of shoreline master programs (SMPs). We strongly support the inclusion of sea level rise (SLR) planning provisions and the efforts to craft this language in a manner that acknowledges this is an evolving field of science that currently faces limited data availability. While the timing and magnitude of SLR over the long-term is difficult to predict, SLR is certain to impact marine shorelines for thousands of years to come and local governments need to begin planning accordingly.

We have three key areas of concern to highlight for Ecology's consideration:

1. **Timeline.** Ecology's current plan is to adopt changes to the WACs in the fall of 2026. In July 2027, Ecology intends to provide grant funding to local governments to support the work necessary to inform development of their SMPs, including new requirements to assess SLR vulnerability. In addition to the SLR analysis, other proposed changes to the WACs indicate the next SMP update will require a high level of effort that needs to start well before Ecology plans to distribute funding to support local governments. To help local governments implement the changes without delay, we recommend that Ecology move up the planned distribution of funding to local governments to 2026, pursuant to RCW 90.58.080.

2. **Adoption of critical areas ordinances by reference.** The draft WACs would eliminate the option of allowing local governments to adopt by reference other regulations relevant to the shoreline jurisdiction, such as critical areas ordinances. While the intent of this change is clear and understandable, it may introduce inconsistencies within local governments' codes. We recommend that Ecology establish a different approach that still allows for adoption by reference and clearly indicate where such regulations differ (or do not apply) within the shoreline jurisdiction (see comments for WAC 173-26-191(2)(b) on pp. 7-8). This would also help address concerns about requiring the application of ecological function considerations to critical aquifer recharge areas that are not appropriate (see comments for WAC 173-26-226(1)(i)(i) on pp. 11-12).

3. **SLR planning.** Ecology's approach to SLR planning appears to focus solely on regulating future risks; we suggest also considering current hazards to provide a more complete picture. Many properties are currently at risk of flooding and/or erosion hazards without factoring in SLR, and we recommend that Ecology require an existing conditions scenario as part of the planning approach. Areas projected to be impacted by SLR under the proposed methodology would differ from those identified via FEMA-based models and maps that local governments currently use. To avoid creating conflicting regulations, we recommend adjusting the methodology to integrate existing flood regulations to maintain consistent messaging about coastal flood hazard exposure and clarifying the intent of the analyses (see comments for WAC 173-26-246 on pp. 16-17).

In addition to these core concerns, the following are more detailed comments and recommendations. Addressing these items would provide more clarity and consistency in the updated rules. We appreciate the time you have taken during this rulemaking process to solicit feedback during Local Government Sounding Board meetings and your willingness to meet with us

to discuss aspects of the proposed changes. If you would like to meet with King County staff to talk through our feedback in more detail, we would be happy to do so.

We look forward to reviewing the formal draft WACs that will be released next year.

Sincerely,

Becka Johnson Poppe, Chief Administrative Officer
King County Department of Local Services

Chapter 173-18 WAC Shoreline Management Act – Streams and Rivers Constituting Shorelines of the State

No comments.

Chapter 173-20 WAC Shoreline Management Act – Lakes Constituting Shorelines of the State

No comments.

Chapter 173-22 WAC State Master Program Approval/Amendment Procedures and Master Program Guidelines

WAC 173-22-030 Definitions; "Marine" – A definition for "marine" is proposed, which states: "pertaining to tidally influenced waters, including oceans, sounds, straits, marine channels, and estuaries, including the Pacific Ocean, Puget Sound, Straits of Georgia and Juan de Fuca, and the bays, estuaries, and inlets associated therewith." The inclusion of "tidally influenced waters" and "estuaries" in this definition creates ambiguity in determining how lower reaches of rivers, such as the Duwamish, should be classified. Tidal influence is not necessarily marine and can go upstream well beyond saltwater influence/mixing. Recommendation: refine the definition to clarify the break point between freshwater and saltwater.

WAC 173-22-040(4) Shoreland area designation criteria; Options for extending the shoreland area or shoreline jurisdiction – New language is proposed that would provide local governments with two options for extending the shoreland area or shoreline jurisdiction. Recommendation: clarify both options: (a) specify whether "the one-hundred-year floodplain within the associated shorelands" includes Coastal High Hazard Areas; and (b) clarify what is meant by "areas identified as likely to be exposed to sea level rise" (i.e., is this limited to only areas that would be potentially inundated by daily high tides or could this include changes in the 100 year coastal storms extent in the future?).

Chapter 173-26 WAC

WAC 173-26-020 Definitions

"Arborist report" – A definition for "arborist report" is proposed that establishes a threshold size for identifying individual trees at 8 inches or greater diameter at breast height (DBH) in the report. This threshold size is larger than what would typically be required by many local governments for

critical area reports. Recommendation: lower the threshold size, possibly to 4 inches or greater DBH, to facilitate the evaluation of tree retention options.

"Environmental justice" – A definition for "environmental justice" is proposed that largely matches the same term's definition in Revised Code of Washington (RCW) 36.70A.030(15), with the notable exception of including reference to "eliminating harm." Eliminating harm is ideal but infeasible and furthermore exceeds the State mandate. Recommendation: remove "and eliminating harm" from the definition.

"Future tidal inundation" – A definition for "future tidal inundation" is proposed which states "the area expected to be flooded by daily high tides by about the year 2100 or 70 years from the deadline for completion of the next periodic review, whichever is later." There is some ambiguity in "about the year 2100" that should be clarified. Note that WAC 173-26-246(6)(b)(iii)(B) says "about 70 years from the deadline for completion of the next periodic review, or 2100, whichever is later."

Beginning with "This involves mapping…," the definition includes language that describes how local jurisdictions should determine future tidal inundation, which is better suited for WAC 173-26-246 that describes the requirements for sea level rise (SLR) planning or a separate guidance document. Estimates of SLR continue to evolve and improve, and this should be factored into the WACs accordingly. Though the timing and magnitude of SLR is difficult to predict beyond 2100, the direction and rate of SLR is not: it will go up without relenting for a very long time. Specific to the methodology proposed: for scenario-based projections, it should be made clear if a high emissions scenario is required, as it is for probabilistic-based scenarios; for probabilistic-based scenarios, the direction includes "the amount of sea level rise should align with the 50% likelihood or a lower likelihood," but it is not clear what "lower likelihood" refers to.

Recommendations: remove ambiguity regarding target year of 2100 by specifying years instead of "about the year 2100;" move methodology language out of the definition to elsewhere in the WAC or create separate guidance documents; require a high emissions scenario is for scenario-based projections; and establish requirements for analyzing sea level rise exceedance values for probabilistic-based scenarios (i.e., could state that the amount of SLR to be considered should be 50% likelihood of the exceedance value or lower (e.g., a value that has a 17%, 5%, or 1% probability of being exceeded)).

"Mixed-use development" – A definition of "mixed-use development" is proposed for a project that "includes both nonwater-oriented uses and water- dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives by providing public access and ecological restoration." A mixed-use development is commonly understood to be a project that includes different types of building uses, such as commercial and residential. Using this term differently from common usage may cause confusion. Recommendation: replace "mixed-use development" with "mixed nonwater-oriented and water-dependent development."

"Mooring" – This term is not included in the definitions. Mooring may be used for a variety of purposes, including vessels, kelp farms, and scientific research, and a definition would help to clarify what regulations pertain to which types of mooring. Recommendation: add a definition for mooring.

"Nature-based solutions" – A definition of "nature-based solutions" is proposed that describes such measures as "composed of soft or hard elements, depending on shoreline conditions." Recommendation: provide guidance to help local governments determine the appropriate

proportion of soft versus hard elements and establish definitions for gravel/cobble placement, dynamic revetments, biotechnical measures, and "wood placement or anchor trees."

"Qualified professional" – A definition of "qualified professional" is proposed to describe the required training and experience in various scientific disciplines relevant to critical areas. It appears intended to align with WAC 365-195-905, but it is not consistent with that language as it provides additional specificity that could result in confusion. Further, the Department of Commerce is currently considering changes to WAC 365-195-905 to advance equity goals, which may conflict with the proposed language here. Recommendation: align this definition with WAC 365-195-905.

"Sea Level Rise Hazard Area" – A definition for "Sea Level Rise Hazard Area" is proposed that states it is a "mapped regulatory overlay zone that a local government designates to manage development in areas likely to be impacted by sea level rise." An overlay zone is a specific regulatory approach that creates an area with additional development regulations that do not alter underlying zoning. This level of specificity seems unnecessary as the intent of this could be met using alternative regulatory approaches. Recommendations: change "overlay zone" to "a mapped regulatory geography" to provide flexibility.

"Vulnerable populations" – A definition for "vulnerable populations" is proposed that largely matches the definition in RCW 36.70A.030(47), with the notable exception of including reference to "populations of workers experiencing environmental harms." This exceeds the State mandate and should not be included. Recommendation: Remove "and populations of workers experiencing environmental harms" from the definition.

Part I: State Master Program

No comments.

Part II: Shoreline Master Program Approval/Amendment Draft Review

WAC 173-26-090(2) Process for periodic review of master programs; Periodic review – Table WAC 173-26.090.1 Deadlines for Completion of Periodic Review includes years that have passed. Recommendation: remove past years from table and retain current deadlines and footnote about 10-year update cycle.

WAC 173-26-090(2)(e) Process for periodic review of master programs; Periodic review – New language states that "local governments shall document all authorizations, regardless of whether a shoreline permit or exemption is required, within shoreline jurisdiction and shoreline conditions to facilitate appropriate updates of master program provisions to improve shoreline management over time." In cases where permits or exemptions are not required, it is not clear what other authorization would be documented. Recommendation: clarify how authorizations that do not require permits or exemptions may be documented.

WAC 173-26-090(3)(b)(ii) Steps in master program periodic review and amendment process; Public participation plan – There is proposed removal of a reference to RCW 36.70A.140 related to establishing and disseminating a public participation plan for shoreline master program (SMP) update processes. The referenced RCW includes public participation requirements per the Growth Management Act (GMA). The removal suggests that public participation plans may no longer be subject to GMA requirements, and that there could be different requirements for SMP updates. Related, instances of "continuous" are proposed to be replaced with "continual." "Continuous" is the term used in RCW 36.70A.140 and WAC 365-196-600. Additionally, it is not clear if the specific

provisions described in A through C are intended to be encouraged but not required. Providing additional guidance would help ensure consistent implementation across local governments. Recommendation: retain cross-reference to RCW 36.70A.140 and "continuous" throughout the WACs, as applicable, to maintain consistency with GMA requirements and terminology and clarify that provisions A through C are subject to "should."

WAC 173-26-090(3)(b)(iii) Steps in master program periodic review and amendment process; Communication with state agencies – New language states that "Before undertaking substantial work, local governments shall notify state agencies with an interest in shoreline management to identify…" It is not clear what "substantial work" means. Recommendation: provide additional guidance.

WAC 173-26-090(3)(b)(iv) Steps in master program periodic review and amendment process; Public participation plan – New language states that "Prior to undertaking substantial work, local governments shall notify affected Indian Tribes to identify Tribal interests, relevant Tribal efforts, available information, and methods for coordination and input; and solicit Tribal knowledge." This does not appear to align with current commitments and requirements for Tribal consultation. Recommendation: given the potential for local shoreline master programs to impact Tribal treaty rights and cultural resources, local governments should both notify and invite consultation with affected Tribes.

WAC 173-26-090(3)(b)(v) Steps in master program periodic review and amendment process; Public participation plan – New language states that outreach and engagement efforts should focus on "potentially impacted overburdened communities and vulnerable populations." This is generally in alignment with changes to the GMA as a result of House Bill (HB) 1181, but this should not be mandated, which would exceed the intent of HB 1181. Recommendation: clarify that this provision is subject to "should."

WAC 173-26-090(3)(c)(v) Steps in master program periodic review and amendment process; Review and analysis to determine need for revisions – New language states that "Local governments are encouraged to update restoration plans and public access plans as part of this periodic review process." Updating both plans during the periodic review process would be a significant undertaking. As written, it appears this work is recommended, but not required, but it is not clear. Recommendation: clarify that updates to restoration plans and public access plans are encouraged at this stage.

WAC 173-26-090(3)(e) Steps in master program periodic review and amendment process; Take legislative action – New introductory language states "Legislative action means the adoption of a resolution or ordinance following notice and a public hearing…" This does not match the proposed changes to subsection (ii)(C) that states that a local government "shall adopt a resolution or a motion declaring findings of adequacy" or WAC 173-26-090(3)(f)(ii)(A) that includes the requirement that local governments submit a "resolution or motion declaring findings of adequacy." Recommendation: clarify if adoption of a motion, resolution, or an ordinance is the required legislative action.

WAC 173-26-095(2)(a)(ii) Process for shoreline master program locally initiated amendments; Locally initiated master program reviews and amendments – New language states, "Only one master program amendment may be processed per WAC 173-26-120 at a time." As written, it could be interpreted to mean either that (1) a local government is limited to acting on a single ordinance to update its SMP, which may not be realistic depending on the specifics of the amendments, or (2)

Ecology will only review one ordinance at a time, which is similarly unrealistic. Recommendation: clarify what is intended/expected related to processing SMP amendments.

WAC 173-26-100(2)(a) Standard local process for approving/amending shoreline master programs – New language states that local governments shall "send notice, invite engagement, and provide opportunity for comment during the amendment scoping and drafting" to "Tribal governments and Tribal organizations." References to Tribal governments in WAC 173-26-090(3)(b) specify that these should be "affected Indian Tribes." Tribal governments are sovereign governments with unique legal and political rights, whereas Tribal organizations do not have these same rights. Additionally, it is not clear what qualifies as a Tribal organization (the Governor's Office of Indian Affairs has a list of Indian Organizations - https://goia.wa.gov/tribal-directory/indian-organizations). Recommendation: specify that local governments should contact affected Tribes, establish different processes for engaging with Tribal governments versus Tribal organizations, and clarify what meets the definition of a Tribal organization.

WAC 173-26-104(1)(a)(i) Joint review process for amending shoreline master programs – Amended language states "The department will provide the local government with a shoreline master program amendment checklist, if necessary, to help identify issues to address." This suggests that a checklist may not be required in all instances. Recommendation: clarify when SMP amendment checklists are required. This same comment applies to WAC 173-26-110(8).

WAC 173-26-104(1)(b) and (c) Joint review process for amending shoreline master programs – Amended language includes changing "continuous" to "continual," which diverges from terminology in public participation requirements per the GMA. Additionally, it is not clear if the provision in (1)(b)(iv) related to participation from "vulnerable populations and overburdened communities" is required. As stated previously, this would exceed the intent of HB 1181. Note also that local governments have a requirement to consult with Tribes, not just provide notice, as described in (1)(c). Recommendation: retain "continuous" (see comment for WAC 173-26-090(3)(b)(ii)); require that local governments both notify and invite consultation with affected Tribes (see comment for WAC 173-26-090(3)(b)(iv)); and clarify that local governments "should" encourage participation from vulnerable populations and overburdened communities (see comment for WAC 173-26-090(3)(b)(v)).

WAC 173-26-110(7)(b) Submittal to department of proposed master programs/amendments – New language states that local governments shall submit, where applicable, "responses to comments, including evidence of consideration of comments." It is not clear what in addition to a response to a comment would demonstrate the local government's consideration of said comment. Recommendation: remove "including evidence of consideration of comments."

WAC 173-26-110(7)(c) Submittal to department of proposed master programs/amendments – Amended language states that local governments shall submit, where applicable, "A record of names and mailing or email addresses of interested parties that expressed interest in or provided comment during the local government review process." Including interested parties that "expressed interest in" is overly broad, and it is not clear how local governments would have contact information for such individuals if they did not provide comment. Recommendation: remove "that expressed interest in or" and retain solely the requirement to provide the contact information for those who provided comment during the process.

WAC 173-26-120(2)(f) State process for approving/amending shoreline master programs; State comment period – Amended language states "The department shall provide an opportunity for the

local government to submit a written response as to how the proposal addresses the identified issues consistent with the policy of RCW 90.58.020 and the applicable guidelines or propose additional amendments to address the identified issues." It is not clear what "propose additional amendments to address the identified issues" entails. If it involves the local government describing what additional amendments may be needed to address issues, this is achievable within the 45-day response period. If the intent is for local governments to take action by adopting additional legislation, this is not feasible within that timeframe. Recommendation: clarify what is meant by "propose additional amendments to address the identified issues."

WAC 173-26-120(4)(b) State process for approving/amending shoreline master programs; Department decision – The amended language regarding Ecology's process for requiring modifications as part of a conditional approval states that "The local government must review the following options and provide the department with an initial response within 30 days of the department's notification to the local government of required changes and/or recommended modifications." One option includes a process whereby the local government submits an alternative proposal to address a consistency issue identified by the department. In this case, new language states that "The local government shall approve the alternative proposal via resolution or ordinance and submit documentation of such approval to the department." It is not clear if local government action is intended to occur within the 30-day period following Ecology's notification. It is not feasible for local governments to adopt legislation within such a short timeframe. Recommendation: clarify when local governments are expected to take action on alternative proposals.

Part III: Guidelines

WAC 173-26-176(2) General policy goals of the act and guidelines for shorelines of the state – New language states that "Shoreline jurisdiction is a riparian area that is managed consistent with the state interest in both use and protection. Achieving both shoreline utilization and protection is the policy guiding management of this riparian area." Since shoreline jurisdiction frequently includes floodways and floodplains, the language appears to go beyond any local government's approach to defining riparian areas for critical areas. It would mean large areas not currently regulated as riparian in critical area ordinances or SMPs will be classified as riparian. Recommendation: clarify intent.

WAC 173-26-176(3)(k) General policy goals of the act and guidelines for shorelines of the state – New language from RCW 90.58.630 is added that states "Increasing the resilience of people, property, and the environment to the impact of sea level rise and increased storm severity." Recommendation: add "shoreline natural resources" to match the language quoted from the RCW.

WAC 173-26-191(1)(b)(i) Master program contents; Master program concepts – New language includes reference to GMA requirements: "The Growth Management Act (chapter 36.70A RCW) also uses the word 'element' for discrete components of a comprehensive plan. Unlike comprehensive planning, local jurisdictions are not required to address the master program elements listed in the Shoreline Management Act as discrete sections. The elements may be addressed throughout master program provisions rather than used as a means to organize the master program." As written, this is inaccurate. The GMA does not require local jurisdictions to address program elements as discrete sections. Recommendation: remove this language.

WAC 173-26-191(2)(b) Master program contents; Basic requirements – Amended language states "For the purposes of completeness and consistency of master programs, local governments

must include all necessary master program provisions directly within the master program rather than through an incorporation by reference." The proposed change avoids the risk of mistakenly adopting code standards inappropriate for SMPs. However, this is a significant change that will result in duplicative language within local governments' codes – one set of regulations that applies within the shoreline jurisdiction and another that applies outside the shoreline jurisdiction. This creates a high risk of introducing inconsistencies within the code.

To address both concerns, there is a third way to reconcile master programs with other local government code provisions: allow adoption of code standards (e.g., critical area ordinances) by reference, but specifically name provisions that do not apply within the shoreline jurisdiction (e.g., reasonable use exceptions, wetland buffer reductions). Some local governments have taken this approach, with Ecology's approval, including Kitsap County and the City of Mercer Island. This would also mirror the approach in draft WAC 173-26(3)(j) where the rules note that specific provisions of GMA do not apply within the shoreline jurisdiction.

Recommendation: replace proposed language with "local governments may address required master program provisions by incorporating existing code standards by reference, provided that any necessary adjustments are made to provide for no net loss of shoreline ecological function." This comment and recommendation also applies to WAC 173-26-191(2)(a)(iii)(C) and WAC 173-26-226(1).

WAC 173-26-211(4)(a)(iv)(B) Environment designation system; Regulations – New language states that building or structure height and bulk limits, setbacks, maximum density or minimum frontage requirements, and site development standards "must be in the master program and this requirement cannot be met with reference to the zoning code or comprehensive plan provisions contained outside the master program." This will further complicate the code with duplicative provisions, creating the risk of inconsistencies within the code. Recommendation: (1) continue to allow reference to some zoning standards if an analysis is completed that demonstrates the existing standards are appropriate and (2) provide guidance for developing SMP-specific dimensional standards, if these will be required. This comment also applies to WAC 173-26-226(2)(b)(i).

WAC 173-26-221(1)(d) General master program provisions; Archaeological and cultural resources – New language states that "Pursuant to RCW 90.58.100(2)(g) master programs shall include provisions for the protection and restoration of buildings, sites, and areas having historic, cultural, scientific, or educational values." RCW 90.58.100(2)(g) states that these provisions shall be included "when appropriate." Recommendation: change language to match RCW 90.58.100(2)(g) – "Pursuant to RCW 90.58.100(2)(g) master programs shall include, when appropriate, provisions for the protection and restoration…"

WAC 173-26-221(2)(a)(v)(C) General master program provisions; Nonconforming uses, developments, and lots – New language states that SMPs must include the following nonconforming development regulations: "Establish thresholds for determining and definitions for repair, replacement, and redevelopment of nonconforming structures and developments." This will require some effort for local governments to create since the factors will vary depending on the type of structure. Recommendation: provide additional guidance on how such thresholds should be established.

WAC 173-26-221(2)(a)(v)(F) General master program provisions; Nonconforming uses, developments, and lots – New language states that SMPs must include the following

nonconforming development regulations: "Expansion of nonconforming development should be allowed only when necessary to support a conforming use." It is not clear what is defined as "necessary to support a conforming use." Recommendation: provide additional guidance on how local governments should determine what is necessary to support conforming uses.

WAC 173-26-221(2)(a)(v)(H) General master program provisions; Nonconforming uses, developments, and lots – New language states that SMPs must include the following nonconforming development regulations: "A single-family residence that is authorized to be enlarged by enclosing a deck or patio to create additional living space may not subsequently add a new deck or patio within a buffer, setback, or critical area to replace the converted deck or patio." While this is intended to limit nonconforming development, the current language is too narrowly focused, which could inadvertently allow applicants to find alternate approaches to legally expand a nonconforming structure. Recommendation: replace this provision with clearer limits based on footprint area and/or proximity to the ordinary high water mark (OHWM) to make regulations more effective and consistent.

WAC 173-26-221(2)(a)(vii)(B) General master program provisions; Nonconforming uses, developments, and lots – New language states that SMPs must include the following nonconforming development regulations: "Allowance for reasonable use of nonconforming lots. Consider the allowed uses and shoreline environment designations to determine whether special modest home allowances or recreational lot designations are appropriate." It is not clear what constitutes a "modest home allowance." Recommendation: provide additional guidance on how local governments should determine what is a modest home allowance.

WAC 173-26-226(1)(a)(ii) Protection of critical areas and shoreline ecological functions; Critical areas protection – Amended language states that "At a minimum, the master program critical areas provisions apply to the following areas and ecosystems: (A) Wetlands in shoreline jurisdiction and associated wetlands…" The removal of "within the shorelines of the state" from this provision suggests that it applies more broadly.

Additionally, the amended language provides a list of areas and ecosystems that are subject to SMP critical areas provisions. This list does not align with the critical area categories in Chapter 365-190 WAC; for example, channel migration zones and floodways are not specifically listed as critical areas, whereas frequently flooded areas are. Listing additional categories of critical areas suggests that they may be subject to different regulations than what is required by the GMA.

Recommendation: change language to "At a minimum, the master program critical areas provisions apply to the following areas and ecosystems within the shorelines of the state…"and modify the list to match the GMA list of critical areas.

WAC 173-26-226(1)(b)(x) Protection of critical areas and shoreline ecological functions; Critical areas protection – New language states that "Master programs cannot include critical areas impact allowances and reasonable use provisions. The master program shall include only protective standards and allowances for restoration or enhancement. Deviation from these standards can be authorized only through a variance subject to WAC 173-27-140 through 170." This language appears to prohibit all impacts to all critical areas and all reasonable use provisions. This is overly broad and would benefit from additional specificity. Further, this will likely substantially increase the number of shoreline variances local governments will have to process, which would impact permit processing times.

Recommendation: specify critical areas where impact allowances are to be prohibited or where a variance is required, and provide for limited allowances without a variance (e.g., necessary repair or modification of public roads, parks, trails, or other public facilities, utility distribution infrastructure, or site access for certain uses); and define which uses are not appropriate for reasonable use provisions and provide limits for uses that may be appropriate (e.g., residential and commercial use may be deemed inappropriate for reasonable use, whereas recreational use may be appropriate, but only the minimum impact necessary for safe access to the site and to the water can be allowed under the variance.)

WAC 173-26-226(1)(d)(ii) Protection of critical areas and shoreline ecological functions; Critical areas protection; Wetlands – New language states that "Wetland protection regulations shall ensure that the following development, activities, or modifications are not allowed within wetlands or their protective buffers unless proposed as part of a restoration or enhancement project." This appears overly restrictive and precludes buffer alterations with a variance. Additionally, it does not reference wetland alterations that are allowed and described later. Recommendation: add a reference to subsection (iv) Alterations to wetlands and include a provision for buffer alterations with a variance and clarify how this section aligns with the shoreline modifications in WAC 173-26-231 (e.g., are docks and trails/boardwalks prohibited where wetlands are present in all cases? Are new agricultural activities prohibited in wetlands and buffers?).

WAC 173-26-226(1)(d)(ii)(F) Protection of critical areas and shoreline ecological functions; Critical areas protections; Wetlands – New language states that "construction, reconstruction, demolition, or expansion of any structure" is not allowed within wetlands or their protective buffers unless it is part of a restoration or enhancement project. It is not clear if this also excludes repair of structures. Recommendation: clarify if repair of structures is allowed within wetlands or their protective buffers.

WAC 173-26-226(1)(e)(iii)(D) Protection of critical areas and shoreline ecological functions; Critical areas protections; Geologically hazardous areas – New language states that "Stabilization of existing structures or measures to protect existing primary residential structures from erosion or geomorphic movement may be allowed only when relocation is demonstrated to be infeasible and only if no net loss of ecological functions will result." It is not clear how relocation can be demonstrated to be infeasible. Recommendation: provide additional guidance for how to evaluate and determine infeasibility.

WAC 173-26-226(1)(f)(iii)(B) Protection of critical areas and shoreline ecological functions; Critical areas protections; Fish and wildlife habitat conservation areas – New language states that "Local governments shall protect identified priority species habitat by applying information from the department of natural resources' aquatic resources division, the department of fish and wildlife, the department, and affected Indian Tribes to identify and protect critical freshwater habitats. Local governments, in conjunction with state resource agencies and affected Indian Tribes, may designate additional habitats and species of local importance." It is not clear what information from State departments should be applied by local governments to protect identified priority species habitat. Additionally, the process for designating additional habitats and species of importance by local governments in conjunction with State agencies and affected Tribes is unclear. Recommendation: clarify what information should be used by local governments to identify priority species habitat and the process by which local governments would work with State agencies and affected Tribes to designate additional habitats and species of local importance.

WAC 173-26-226(1)(f)(iv) Protection of critical areas and shoreline ecological functions; Critical areas protections; Fish and wildlife habitat conservation areas – New language states that "Critical saltwater habitats include all kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as herring, smelt and sandlance; subsistence, commercial and recreational shellfish beds; mudflats, intertidal habitats with vascular plants, and areas with which priority species have a primary association." Primary association is not a defined term and as a result, it could have a very broad interpretation, particularly regarding salmonids. Recommendation: define "primary association."

WAC 173-26-226(1)(f)(iv)(C)(I) Protection of critical areas and shoreline ecological functions; Critical areas protections; Fish and wildlife habitat conservation areas – New language states that local governments shall protect critical saltwater habitats with standards, including "All proposed over-water and near-shore developments in marine and estuarine waters require an inventory of the site and adjacent beach sections to assess the presence of critical saltwater habitats and functions." It is unclear what should be included in an "adjacent beach section." Recommendation: provide additional guidance on how local governments develop the required inventory, including how to assess adjacent beach sections.

WAC 173-26-226(1)(f)(iv)(C)(II) Protection of critical areas and shoreline ecological functions; Critical areas protections; Fish and wildlife habitat conservation areas – New language states that local governments shall protect critical saltwater habitats with standards, including "Docks, piers, bulkheads, seawalls, bridges, fill, floats, jetties, utility crossings, other human-made structures, and shoreline modifications shall not intrude into or over critical saltwater habitats." This is a substantial change that appears to prohibit such structures in any case where critical saltwater habitats are present. Recommendation: clarify if this provision only applies to new structures as opposed to repair and replacement. As with other proposed prohibitions, more clarity is needed regarding if and when variances are allowed.

WAC 173-26-226(1)(f)(v) Protection of critical areas and shoreline ecological functions; Critical areas protections; Fish and wildlife habitat conservation areas – New language states that "As locally applicable, additional priority habitats and priority species shall be identified and protected. The local government shall consult with ecology, the department of fish and wildlife, and the department of natural resources to obtain current information and recommendations." It is unclear if this provision is intended to require that local governments protect all priority habitats and species. Additionally, as written, the level of protection required is not clear. Recommendation: specify what type of protection is needed for other types of priority habitats and species.

WAC 173-26-226(1)(i)(i) Protection of critical areas and shoreline ecological functions; Critical areas protections; Critical aquifer recharge areas – New language regarding critical aquifer recharge areas (CARA) is included, and the proposed language raises concerns. Subsection (i) states "These areas play an essential role in supporting shoreline ecological functions by maintaining stream base flows, filtering water before it reaches the aquifer, ensuring availability of freshwater for riparian vegetation, and cool freshwater storage seeps for replenishing waterbodies during warm seasons." CARA is focused on drinking water and potable areas and is not currently associated with any shoreline jurisdiction areas nor does it have any shoreline ecological functions. As written, the language appears to confuse CARA with groundwater flow. Groundwater and its flow are essential components of many shoreline areas.

Subsection (i)(A) states that "Local governments must consult with the department of commerce, department of health, and ecology to identify and map critical aquifer recharge areas and the

ecological functions they provide." This suggests that local governments are required to identify and map CARA and its ecological functions within all shoreline jurisdiction areas, but it is not clear if that is the intent. The same subsection also states that "The water table of groundwater aquifers within shoreline jurisdiction is typically close to the surface and shallow." The depth of the water table is not always shallow and near the surface within shoreline jurisdictions; thus, they are not all equally susceptible to contamination transported from adjacent areas.

Subsection (i)(B) states that "Local governments shall apply information from department of natural resources' natural heritage program, the department of fish and wildlife, the department, and affected Indian Tribes to identify areas within shoreline jurisdiction where low flow, high water temperatures, and drought conditions threaten terrestrial and aquatic priority species and habitats." These assessments are not relevant to CARA or potable water and the purpose of these assessments is unclear.

Recommendations: do not address CARA as part of the SMP because the required critical area protections are predicated on ensuring no net loss of shoreline ecological functions (CARA does not have a no net loss component), and allow cross-reference to the critical areas ordinance provisions related to CARA.

WAC 173-26-226(2)(d)(ii) Protection of critical areas and shoreline ecological functions; Shoreline buffers – New language states that if shoreline buffers are degraded such that they are not performing essential function, "the buffer may need to be expanded or enhanced to ensure that proposed uses and developments will not adversely impact the shoreline or result in a net loss of shoreline ecological function." It is not clear how local governments would evaluate the level of degradation or determine the amount of expansion that is appropriate. Recommendation: provide additional guidance for evaluating shoreline buffer degradation and determining appropriate buffer expansion.

WAC 173-26-226(2)(e)(ii)(A) Protection of critical areas and shoreline ecological functions; Shoreline vegetation conservation – New language states that "Vegetation conservation policies and regulations shall be applied throughout shoreline jurisdiction, within shoreline water bodies and shorelands. Implementation of vegetation conservation policies applies to upland terrestrial, emergent, and submerged vegetation." This significantly expands the applicability of these policies and regulations and would change how local governments regulate trees within floodways and floodplains. Recommendation: clarify intent (see related comments for WAC 173-26-176(2)).

WAC 173-26-226(2)(e)(iii)(C) Protection of critical areas and shoreline ecological functions; Shoreline vegetation conservation – New language regarding trees in shoreline vegetation standards states that "Tree removal can be authorized only after demonstration of mitigation sequencing, and tree replacement ratios must exceed 3:1." This requirement could use additional clarification. Recommendation: provide guidance for replacement tree size and species and clarify whether a tree replacement ratio of 3:1 meets this requirement or if the ratio must be greater than 3:1.

WAC 173-26-231(2)(f) Shoreline modifications; General principles applicable to all shoreline modifications – New language states that "Where shoreline modifications to address erosion or flooding are warranted and permissible, nature-based solutions should be prioritized over other types of interventions." These types of projects require need to meet the requirements of local SMPs and hydraulic project approval (HPA), per RCW 77.55.231. Recommendation: align WAC 173-26-231(2)(g) (shoreline modifications to address erosion or flooding) with RCW 77.55.231, which

provides an order of preference for erosion control methods, rather than the goal of being nature-based.

WAC 173-26-231(3)(a) Shoreline modifications; Standards for specific shoreline modifications; Access structures – New language about specific types of access structures states that "Access structures provide public or private physical or visual access to the shoreline and include stairs, trams, trails, viewing platforms, towers, and the like." Trails do not typically involve structures unless they include boardwalks. Recommendation: provide clarification about what types of trails qualify as access structures.

WAC 173-26-231(3)(b)(i) Shoreline modifications; Standards for specific shoreline modifications; Boat launches – New language related to boat launch standards states that "Boat launches are not appropriate for private residential or recreational properties." It is unclear if this means that boat launches are prohibited or discouraged. Recommendation: clarify intent.

WAC 173-26-231(3)(f)(i) Shoreline modifications; Standards for specific shoreline modifications; Fencing – New language regarding fencing states that "fencing can be authorized only outside of buffers and setbacks or at the edge of existing development." It is not clear how livestock fencing in existing agriculture should be regulated. Recommendation: clarify if livestock fencing in these cases would be allowed, and whether allowing such fencing would require a variance.

WAC 173-26-231(3)(g)(iv) Shoreline modifications; Standards for specific shoreline modifications; Fill – New language regarding the addition of fill states that "Fill in wetlands shall not be allowed." This is overly restrictive and could inadvertently prohibit restoration projects and other work that provides public benefit. Recommendation: clarify if fill may be allowed in wetlands with a variance and provide limited instances where this would be allowed (e.g., maintenance of existing public roads, facilities, parks, or utility distribution infrastructure) and either create exceptions for restoration and other work that provides public benefit or shift focus of this provision to ensuring no net loss.

WAC 173-26-231(3)(h)(i) Shoreline modifications; Standards for specific shoreline modifications; Grading and excavation – New language regarding grading and excavation states that "Grading provisions shall apply to the entirety of shoreline jurisdiction, including areas landward of buffers and setbacks." It is not clear if the same grading provisions are required to apply across the entirety of the shoreline jurisdiction or if the provisions can vary within and outside buffers as long as provisions are established for the entirety of the shoreline jurisdiction. Recommendation: clarify if provisions may vary so long as they apply to the entirety of the shoreline jurisdiction.

WAC 173-26-231(3)(i)(vii) Shoreline modifications; Standards for specific shoreline modifications; Mooring buoys – New language related to mooring buoys states that "All permit authorizations that include mooring buoys sited on state-owned aquatic lands shall require confirmation of the department of natural resources' authorization through a license, lease, or registration as a condition of approval." It is not clear if approval from the State is required before a local government may issue a permit for mooring buoys sited on State-owned aquatic lands or if a local government may issue a permit that is conditioned on State approval. Local governments are subject to restrictions on permit review times per State Bill 5290 that could be impacted if State approval is required before a local government can issue a permit. Recommendation: allow local

governments to issue permits conditional upon State approval throughout this subsection, as applicable.

WAC 173-26-231(3)(j) Shoreline modifications; Standards for specific shoreline modifications; On-site sewage systems (OSS) – New language adds standards for OSS. OSS would not be permitted without being a necessary appurtenance to a permitted use. Creating a standalone OSS subsection suggests that an OSS can be permitted separately, which is not possible. Additionally, new language in subsection (v)(B) regarding standards for OSS state that "Proposals for new or replacement shoreline stabilization to protect existing OSS must first demonstrate the following: (A) The existing OSS cannot be relocated; (B) Uses at the site cannot be served by public sewer." It is not clear what is meant by "cannot be served by public sewer" – this could be due to physical limitations or regulatory prohibition.

Recommendation: move OSS provisions to respective sections (e.g., shoreline stabilization, bulk and dimension standards); clarify that "cannot be served by public sewer" includes both physical and regulatory restrictions; and require local governments to ensure that advanced treatment, proprietary OSS within shoreline areas are operated, monitored, and maintained in accordance with WAC 246-272A-0270.

WAC 173-26-231(3)(l)(vii) Shoreline modifications; Standards for specific shoreline modifications; Piers and docks – New language related to standards for piers and docks states that "Docks and piers are commonly proposed on state-owned aquatic lands. The master program shall require coordination with the Washington state department of natural resources for all docks and piers proposed on state-owned aquatic lands. All permit authorizations that include docks or piers sited on state-owned aquatic lands shall require confirmation of the department of natural resources' authorization through a license, lease, or registration as a condition of approval." It is unclear what "coordination" entails in this context. As mentioned previously, local governments are subject to restrictions on permit review times (see comment for WAC 173-26-231(3)(i)(vii)), and this requirement could extend the permit review process. Recommendation: allow notification to the State during the public comment to meet the coordination requirement.

WAC 173-26-231(3)(m) Shoreline modifications; Standards for specific shoreline modifications; Scientific data-collection or monitoring devices – New language related to standards for scientific data-collection or monitoring devices states that "Scientific monitoring devices are an appropriate use of the shoreline and shall not require a conditional use permit." Subsection (3)(m)(ii) states "Installation of scientific data-collection or monitoring devices requires review by the local government and may meet the definition of development and require a shoreline substantial development permit." This is a departure from current practices where a conditional use permit has been required, resulting in an onerous permitting process.

Recommendation: clarify what type of devices may be considered substantial development and add a provision to require that a data collection agency notify the local government prior to installation or data collection when scientific monitoring devices do not meet the definition of substantial development and thus are not subject to local government review. Add provisions related to scientific data-collection or monitoring devices to Chapter 173-27 WAC, where they are currently not addressed.

WAC 173-26-231(3)(q)(iii) Shoreline modifications; Standards for specific shoreline modifications; Upland retaining walls – New language related to standards for upland retaining walls states "A geotechnical report is required as part of the application submittal package for all

retaining walls proposed within or adjacent to geologically hazardous areas. The report must be written by a qualified professional and demonstrate that the retaining wall is necessary and sufficient to prevent slope or bluff failure." The condition for allowing retaining walls in these situations is overly broad and should be restricted to at-risk legally established primary structures or existing single family residences and principle appurtenant structures, not slopes generally. Recommendation: modify language about the report to "The report must be written by a qualified professional and demonstrate that the retaining wall is necessary to prevent slope or bluff failure that would put the legally established primary structures or existing single family residences and principle appurtenant structures at risk."

WAC 173-26-231(3)(r)(iii) Shoreline modifications; Standards for specific shoreline modifications; Vegetation modifications – New language related to standards for vegetation modifications states that "Vegetation removal, clearing, or grading occurring landward of required shoreline buffers or setbacks and outside of critical areas and their buffers may be authorized as part of a development proposal in support of an authorized shoreline use, provided the ecological functional impact of the vegetation modification is considered in the application of mitigation sequencing, and all vegetation related impacts are fully minimized and compensated for." It is not clear if a mitigation plan is required for vegetation clearing outside of a buffer that is within the shoreline jurisdiction. Requiring mitigation plans in such instances would be a significant departure from current practices. Recommendation: clarify intent (see related comments for WAC 173-26-226(2)(e)(ii)(A)).

WAC 173-26-231(3)(b) and (c) Shoreline modifications; Shoreline stabilization – New language is not consistent when describing structures that are subject to regulations. Subsection (3)(b)(vi) references "existing single-family residences and principal appurtenant structures," subsection (3)(b)(vii) references "existing residence or primary structure," subsection (3)(c)(iv)(A) references "primary structure," and subsection (3)(c)(vi) references "legally established existing primary structures." Recommendation: use consistent terms where applicable and provide a description of Ecology's intent to help distinguish between similar terms. Note that there is a numbering error that has resulted in two subsections 173-26-231(3). These comments are related to pp. 139-141 of the "clean" version.

WAC 173-26-231(3)(c) and (g) and (4)(a) Shoreline stabilization and Flood Hazard Reduction modifications – The language between the two sections lacks specific descriptions or definitions as to what impacts are caused by erosion versus by flooding such that it is not clear which type or when shoreline stabilization is allowed. Since (3)(g)(iii) states that shoreline stabilization is not allowed to address a hazard that is primarily flood in origin, the ability to distinguish between the two causes of impact is important. The current language does not provide a practical distinction. Related, 4(b)(v) refers to nature-based solutions as the primary solution for flooding; however, all of the nature-based solutions in 3(b)(v) address erosion through shoreline stabilization and do not generally address flooding impacts. Recommendation: provide a clear distinction for impacts from flooding versus erosion and provide more directly implementable language to address each hazard.

WAC 173-26-241(3)(j)(vii) Shoreline uses; Standards; Residential development – New language regarding standards for accessory dwelling units (ADUs) includes the following provisions: "(C) ADUs as a residential use shall be prohibited within critical areas and their buffers" and "(D) ADUs are not necessary for reasonable residential use of a property located within shoreline jurisdiction and shall not be acceptable project components in shoreline variance permit applications." This prohibition is overly broad and does not distinguish between attached and detached ADUs.

Related, subsection (3)(j)(vii)(A)(I) states "ADUs may be allowed within existing single-family residential structures through the conversion of existing space to create an ADU if no new exterior construction, expansion of the footprint, or additional impervious surface is added." This language describes an attached ADU (AADU), which creates minimal additional impact (as compared to a detached ADU (DADU)) while also creating additional housing. Recommendation: specify that DADUs are prohibited, but AADUs may be allowed, with limits on footprint area and proximity to OHWM (similar to comment for WAC 173-26-221(2)(a)(v)(H)).

WAC 173-26-246 Sea level rise planning – This new section establishes the process and requirements for analyzing impacts of, planning for, and adapting to SLR. Our primary concern is related to the sole focus on future risk without considering current risks. Ecology's proposed SLR analytical approach relies on changes to daily tides, which could result in a SLR Hazard Area that is smaller than the County's existing coastal flood hazard area that has identified where people are at risk now, based on the County's recent analysis using USGS CoSMoS data. Ecology's SLR Hazard Area is also likely entirely waterward of the County's existing SLR risk area. As such, this may create a situation where a local government has identified property owners currently at risk through FEMA models/regulations, but the local government's SMP will identify those same areas as not at risk for SLR in 70 years using Ecology's proposed methodology. Recommendation: consider less frequent coastal flood events, like a 20-year or 100-year flood, instead of focusing on daily tides. We also recommend more clearly stating the intent behind each of the three sea level rise analyses so that local governments can propose alternative approaches to address the intent.

Other detailed comments and recommendations for this section follow.

WAC 173-26-246(3)(d) Sea level rise planning; Timing and phasing – New language states "Local governments will need to adaptively manage their response to sea level rise when thresholds are reached, conditions change, new information becomes available, and priorities evolve." This is the first mention of thresholds and it is not clear how a local government would establish such thresholds. Recommendation: provide guidance on developing thresholds.

WAC 173-26-246(5) Sea level rise planning; Equitable sea level rise adaptation – New language states that "Equitable adaptation to sea level rise requires meaningful engagement of Tribes, overburdened communities, and vulnerable populations in planning processes and requires seeking to eliminate, reduce, or mitigate the harms and equitably distribute benefits of adaptation actions." As mentioned previously, eliminating harm is not feasible and does not appear to align with the intent of HB 1811. Recommendation: remove references to eliminating harm throughout the WAC (see discussion of WAC 173-26-020 Definitions "Environmental Justice").

WAC 173-26-246(5)(b) Sea level rise planning; Equitable sea level rise adaptation – New language states that "Local governments must, to the fullest extent possible, address Tribes' priorities for sea level rise adaptation in the sea level rise provisions in master programs." This is a significant requirement that could result in potential conflicts with other priorities for local governments. Additionally, it is not clear what it means for a local government to "address" Tribes' priorities in this case, which could encompass myriad actions, many of which are beyond the control of local governments. Recommendation: clarify what is meant by "fullest extent possible" and "address" and change "must" to "should."

WAC 173-26-246(6)(b)(iii)(B) Sea level rise planning; Process to amend master programs to address sea level rise – New language directs local governments to "Evaluate a minimum of two sea level rise scenarios, including a shorter-term and a long-term scenario. Long-term means about

70 years from the deadline for completion of the next periodic review, or 2100, whichever is later. Shorter term means 20-40 years." As mentioned previously, there is some ambiguity about target years to include the analysis (see comments for WAC 173-26-020 Definitions "Future tidal inundation"). Further, beginning the analysis with future SLR scenarios instead of using current conditions as the baseline (i.e., USGS CoSMoS data has a 0 SLR scenario) omits consideration of existing flood risk and will create conflicting messaging about hazard exposure.

The process includes this step: "Sea level rise amounts evaluated for each time horizon should, for scenario-based projections, align with at least the intermediate scenario or a higher amount of sea level rise." It is unclear what the "intermediate scenario" means in this context, as there are different ways this could be interpreted across the various regional SLR planning tools. Additionally, the analysis should "use relative sea level rise amounts that incorporate local vertical land movement." The broader language in this section appears to assume that all local governments will have access to the CoSMoS data, which does not include vertical land movement, so incorporating such an analysis will likely not be feasible.

This section requires the evaluation of three scenarios: (1) changes in daily high tide in 70 years, (2) area exposed to a 20-year storm in 70 years, and (3) a shorter term of 20 to 40 years from now); however, it doesn't describe how they relate to one another or how two of the three scenarios are used in the larger process. Further, it does not provide clear direction for what flood extent (e.g., daily, annual, 20-year, or 100-year) to use for the short-term scenario.

Recommendation: provide more specific years for analysis; include analysis of current flood risk; clarify what is meant by "intermediate scenario;" consider removing requirement to include vertical land movement; and provide additional details and clarity around how the three SLR scenarios are to be constructed and how they integrate with the remaining sections.

WAC 173-26-246(6)(b)(iii)(C) Sea level rise planning; Process to amend master programs to address sea level rise – New language directs local governments to "Identify and provide maps of the area of future tidal inundation; this is the area expected to be flooded by daily high tides under the long-term sea level rise scenario described in (B)." Daily tide level data is highly variable and potentially inaccurate 70 years out. Other scenarios, such as a 20-year storm, would likely be more accurate and be more consistent with existing regulatory approaches to address flood risks. Recommendation: explain rationale for using daily high tides or use a different, more accurate scenario.

WAC 173-26-246(6)(c)(i)(A) Sea level rise planning; Process to amend master programs to address sea level rise – New language related to developing sea level rise adaptation strategies describes different categories of strategies. Specific to "prepare" strategies, it states that these include "monitoring, capacity-building, or laying the foundation for other actions." While these are not discussed further in the rules, it would be helpful to understand what Ecology means by capacity-building in this context. Recommendation: provide additional guidance for "prepare" strategies.

Part IV: Ocean Management

No comments.

Chapter 173-27 WAC Shoreline Management Permit and Enforcement Procedures

Part I: Permits for Development on Shorelines of the State

WAC 173-27-030 Definitions

"Significant vegetation removal" – A definition of "significant vegetation removal" is proposed that describes this activity as "the removal or alteration of trees, shrubs, and/or ground cover by clearing, grading, cutting, burning, chemical means, or other activity that causes significant ecological impacts to functions provided by such vegetation." It is unclear what constitutes a "significant ecological impact" in this context and thus evaluations of this could be highly variable. Recommendation: provide an objective standard for assessing what meets the definition of significant vegetation removal.

WAC 173-27-040(2)(a) Developments exempt from substantial development permit process requirements; Normal maintenance or repair of existing structures or developments – Amended language states that "'Normal maintenance' includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. 'Normal repair' means minor actions necessary to fix damage to lawfully established structures or development. These are all minor actions intended to maintain an existing useable and functional structure or development and that must be taken prior to substantial decay or destruction. Maintenance, repair, and limited replacement actions allowed through this exemption must demonstrate no net loss of shoreline ecological functions and not cause substantial adverse effects to shoreline resources or environment." Terms like "minor action" and "limited replacement action" throughout WAC 173-27-040(2) are not clear. Recommendation: provide clear, distinct descriptions of maintenance, repair, and replacement in contrast to new structures or development.

WAC 173-27-040(2)(a)(ii) Developments exempt from substantial development permit process requirements; Normal maintenance or repair of existing structures or developments – New language related to activities that are exempt from the substantial development process states that "Except for in limited circumstances, the replacement must be comparable to the original structure or development, including but not limited to its size, shape, configuration, location, and external appearance. In limited circumstances, the replacement may be relocated landward or reconfigured, provided this makes the structure more conforming to the applicable master program's protection, restoration, or hazard reduction standards." It is not clear what the "limited circumstances" would be in these cases. Recommendation: clarify the limited circumstances that would allow replacement to differ from the original structure and still be exempt, including whether bringing structures up to current code would qualify.

WAC 173-27-040(2)(b)(i)(D) and (E) Developments exempt from substantial development permit process requirements; Shoreline stabilization: new normal structures protective of single-family residences; repair and maintenance of existing shoreline stabilization; and emergency shoreline stabilization actions – New language related to new or replacement shoreline stabilization structures in subsection (i)(D) appear to potentially conflict with provisions related to locating new or replacement vertical or near-vertical walls in subsection (i)(E). Provisions in subsection (i)(D) state that "New or replacement shoreline stabilization structures shall be constructed landward of the current ordinary high water mark." Provisions in subsection (i)(E) state that "When a vertical wall fronting an existing shoreline stabilization is proposed, it shall be considered a replacement and cannot be authorized farther waterward of the existing bulkhead than is necessary for construction of new footings." While subsection (i)(D) requires all new or replacement structures to be located landward, subsection (i)(E) allows the replacement of a vertical wall fronting an existing shoreline stabilization (i.e. waterward). Recommendation: clarify if

provisions of subsection (i)(E) are intended to be an exception to subsection (i)(D) and provide the rationale.

WAC 173-27-040(2)(b)(ii)(C) Developments exempt from substantial development permit process requirements; Shoreline stabilization: new normal structures protective of single-family residences; repair and maintenance of existing shoreline stabilization; and emergency shoreline stabilization actions – New language related to shoreline stabilization maintenance and repair states that "Shoreline maintenance and repair actions must be taken prior to substantial decay or destruction." It is not clear how to assess if "substantial decay" of shoreline stabilization has occurred. Recommendation: clarify what is meant by "substantial decay."

WAC 173-27-040(2)(e) Developments exempt from substantial development permit process requirements; Construction or modification of navigational aids such as channel markers and anchor buoys – New language related to channel markers and anchor buoys states that "Channel markers and anchor buoys are navigational tools indicating the location of a line or marking the channel to facilitate vessel traffic. This exemption does not apply to buoys used for moorage." It is not clear what other types of buoys may or may not be permit exempt. Recommendation: clarify if anchor buoys include those used in aquaculture facilities (e.g., kelp farms), which are neither used for marking channels or moorage.

WAC 173-27-040(2)(m) Developments exempt from substantial development permit process requirements; Watershed restoration projects – Amended language regarding wetland restoration projects could use some clarification about requirements for restoration projects that demonstrate a net improvement of shoreline ecological function. Recommendation: add a provision clarifying that restoration projects that demonstrate a net improvement of shoreline ecological function are not required to provide compensatory mitigation.

WAC 173-27-040(3)(g) Developments exempt from substantial development permit process requirements – New language describing application requirements for an exemption from the substantial development permit process states that applicants must provide "Demonstration of the application of the mitigation sequence to the project, including specific avoidance and minimization measures applied to the project design or construction; any identified impacts to shoreline ecological functions or critical areas; and compensatory mitigation measures, if necessary." Restoration projects should be exempt from compensatory mitigation requirements because they are inherently designed to improve ecological function. Recommendation: exclude watershed restoration projects from requiring compensatory mitigation measures.

WAC 173-27-044(4)(e) Developments not required to obtain shoreline permits or local reviews; Fish hatchery maintenance and operation – New language related to fish hatcheries states that "The proponent of a project undertaken pursuant to this section must ensure compliance with the substantive requirements of the Shoreline Management Act and ensure that the project will not adversely affect public access or shoreline ecological functions." It is not clear how local jurisdictions will be able to determine if such projects are in compliance as they are not required to obtain permits or be subject to local review. Additionally, these projects are required to meet a different standard than others as they must not "adversely affect public access or shoreline ecological functions." Other development in the shoreline jurisdiction is required to result in no net loss. Recommendation: clarify intent and rationale.

WAC 173-27-044(6) Developments not required to obtain shoreline permits or local reviews; Projects to improve fish or wildlife habitat or fish passage approved pursuant to RCW

77.55.181 – New language related to projects that improve fish or wildlife habitat or fish passage states that "Fish habitat enhancement projects that conform to the provisions of RCW 77.55.181 are expected to result in beneficial impacts to the environment and are determined to be consistent with local shoreline master programs." The intent of this subsection is clear, but RCW 77.55.181(1)(a)(ii) states that "Restoration of an eroded or unstable stream bank 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."

Measures to restore eroded or unstable stream banks should not be classified as fish habitat enhancement projects as their intended purpose is to protect structures, not improve habitat. Furthermore, such measures do not align with Ecology's guidance for shoreline stabilization, which prioritize nature-based solutions. Recommendation: exclude projects that meet the description of RCW 77.55.181(1)(a)(ii) from this subsection.

WAC 173-27-170(2) Review criteria for variance permits – New language states "Variance permit applications for development and/or uses that will be located on shorelands (landward of the ordinary high water mark) and without any direct impacts to wetlands may be authorized provided the applicant can demonstrate all of the following…" This is overly restrictive and would essentially prohibit any impacts to wetlands in the shoreline jurisdiction even with a reasonable use exception or variance. The list that follows (i.e., subsections (2)(a) through 2(h)) provides sufficient criteria for determining when a variance is appropriate. Recommendation: change to "Variance permit applications for development and/or uses that will be located on shorelands (landward of the ordinary high water mark) and wetlands may be authorized provided the applicant can demonstrate all of the following…"

Part II: Shoreline Management Act Enforcement

No comments.