CITY OF AUBURN WASHINGTON
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The City of Auburn appreciates the opportunity to provide comments on the Department of Ecology's proposed amendments to the Shoreline Management Act rules.

The City recognizes the importance of protecting shoreline ecological functions, maintaining water quality, conserving native vegetation, and ensuring appropriate public access. The City also recognizes the importance of providing clear, consistent, and administratively workable regulations that allow local governments to implement the Shoreline Management Act while meeting other state and federal regulatory obligations.

The City offers the following comments and requests for clarification.

1. Exemptions and reporting requirements

The City understands Ecology's interest in ensuring that shoreline development activities are consistently documented and monitored statewide. However, the proposed requirements for documenting and submitting shoreline exemptions and authorizations raise questions regarding the intended scope of Ecology's review and the responsibilities of local governments.

Specifically, the proposed rule does not clearly explain the consequences if an exemption or authorization is inadvertently not reported, or how discrepancies between a local government's determination and Ecology's interpretation will be addressed. It is also unclear whether Ecology's review of submitted information is intended solely for statewide tracking and program evaluation, or whether Ecology anticipates using this process to independently review or challenge local permitting determinations.

The City requests that Ecology clarify the purpose, scope, and consequences of these reporting requirements, including whether Ecology intends to provide feedback or require corrective action when it disagrees with a local government's determination. The rule should also establish reasonable reporting procedures, timelines, and opportunities to correct inadvertent errors without creating unnecessary enforcement exposure for local governments.

2. Nonconforming uses, developments, and lots

The City requests clarification regarding the proposed requirements for nonconforming uses and development, particularly how the rules will address changes from an existing nonconforming use to a different use that may have fewer impacts on shoreline ecological functions.

As proposed, the requirements appear to potentially discourage property owners from transitioning to a less impactful use if doing so would result in the loss of existing nonconforming status or otherwise subject the property to more restrictive requirements. This could inadvertently incentivize the continuation of an existing use with greater shoreline impacts rather than encourage redevelopment or a transition to a more environmentally compatible use.

The City recommends that the rule expressly allow changes from existing nonconforming uses to alternative uses that demonstrate equal or reduced impacts to shoreline ecological functions, subject to appropriate review and mitigation. The rules should provide flexibility to encourage

improvements in shoreline conditions rather than unintentionally preserve less desirable existing uses.

3. National Flood Insurance Program
The City maintains a separate floodplain development ordinance that complies with the National Flood Insurance Program (NFIP) and applicable FEMA requirements. The City supports Ecology's effort to distinguish floodplain regulations adopted under the NFIP from shoreline master program requirements, as these regulations serve different statutory and regulatory purposes.

However, the City's experience has been that floodplain development requirements administered by FEMA and Ecology's Floodplain Management Division can conflict with shoreline master program requirements and Washington Department of Fish and Wildlife (WDFW) Hydraulic Project Approval (HPA) requirements.

These conflicts can create significant challenges when reviewing projects involving flood hazard reduction, floodplain improvements, public infrastructure, and restoration activities. Local governments are frequently placed in the position of attempting to reconcile competing requirements from multiple agencies, each with separate regulatory objectives.

The City requests that Ecology work with FEMA, WDFW, and other applicable state and federal agencies to identify and address these conflicts. The final rule should provide clear direction on how local governments are expected to reconcile conflicting regulatory requirements and should establish a coordinated approach that allows projects to meet applicable flood protection, fish habitat, and shoreline ecological objectives without creating contradictory or infeasible requirements.

4. Vegetation conservation
The City recognizes the importance of native vegetation conservation in maintaining shoreline ecological functions and supports efforts to prevent unnecessary vegetation removal. However, the proposed requirements should clearly recognize the need for cities to construct, maintain, repair, and expand essential public infrastructure within shoreline jurisdiction. This includes transportation facilities, bridges, public utilities, stormwater infrastructure, and other critical public facilities that may require vegetation removal to accommodate necessary improvements or repairs.

As currently described, the proposed requirements raise questions about how vegetation conservation standards will be applied when vegetation removal is necessary to maintain public safety, address infrastructure deficiencies, accommodate transportation improvements, or expand essential utility services to support future growth.

The City requests that Ecology expressly clarify that the vegetation conservation requirements will allow for the reasonable maintenance, repair, replacement, and expansion of essential public infrastructure, subject to appropriate avoidance, minimization, and mitigation measures where

feasible. The rules should not inadvertently prevent or create unreasonable barriers to necessary public infrastructure improvements that serve existing and future residents.

5. Water quality
The City recognizes the importance of protecting and improving water quality within shoreline jurisdiction. The City of Auburn currently implements stormwater management requirements consistent with the Department of Ecology's Stormwater Management Manual for Western Washington (SWMMWW), along with applicable state and federal water quality requirements.

The proposed amendments to WAC 173-26-221(7) reference additional water quality information and considerations that local governments must incorporate into their shoreline master programs. However, it is unclear what additional regulatory requirements Ecology expects local governments to adopt beyond those already implemented through existing stormwater management regulations and applicable water quality programs.

The City requests that Ecology clarify the specific additional requirements anticipated under this provision and explain how they are intended to work in conjunction with existing stormwater management regulations, water quality standards, and applicable total maximum daily load (TMDL) requirements.

The final rule should avoid duplicative or conflicting regulatory requirements and should provide clear direction regarding when existing stormwater management requirements are sufficient to satisfy shoreline water quality objectives and when additional shoreline-specific standards are necessary.

6. Multiunit residential development and consistency with the Growth Management Act
The City has concerns regarding the proposed restrictions on multiunit residential development within shoreline jurisdiction and how these requirements will be reconciled with the Growth Management Act (GMA), adopted comprehensive plans, and state and regional housing objectives.

The GMA requires cities to plan for and accommodate anticipated population and employment growth through comprehensive planning and the designation of appropriate areas for future development. Multiunit residential development is an important component of accommodating housing growth, particularly within urban areas where infrastructure and services are available. While the City recognizes the Shoreline Management Act's preference for water-oriented uses and the importance of protecting shoreline ecological functions, the proposed language appears to establish additional limitations on multiunit residential development that may not adequately account for adopted comprehensive plan policies, designated urban growth areas, existing urban development patterns, or the availability of public infrastructure.

The City requests that Ecology clarify how the proposed restrictions are intended to be reconciled with the GMA and applicable comprehensive plan requirements.

The City also requests that Ecology provide additional flexibility for multiunit residential development in appropriate urban locations where projects can demonstrate consistency with shoreline ecological protection requirements, achieve no net loss of ecological functions, and provide appropriate public benefits.
The rules should recognize that appropriately located and designed residential development can support state and local growth objectives while still protecting shoreline resources.

7. Ecology review timelines and coordination with local permitting requirements
The City has concerns regarding the proposed extensions to Ecology's review timelines under WAC 173-27-200 and WAC 173-26-104(3)(b), particularly as they relate to the State's broader efforts to establish predictable and timely permitting processes.

SB 5290 (Chapter 338, Laws of 2023), which amended the Local Project Review Act, established decision timelines for local governments under RCW 36.70B.080. While the City recognizes that Ecology's review responsibilities are separate from local government project review requirements, extending Ecology's review period for conditional use and variance permits to 90 days could result in additional delays between the City's local decision and the applicant receiving final state approval.

The City requests that Ecology clarify how its proposed review timelines will coordinate with the timelines established under RCW 36.70B.080 and identify opportunities to streamline concurrent state and local review processes.

Additionally, the City requests that Ecology explain the justification for extending its initial consistency determination for shoreline master program amendments from 30 to 60 days under WAC 173-26-104(3)(b), and consider whether shorter review periods or other procedural efficiencies can be maintained to support timely local planning and regulatory updates.

The City's preference is that state review requirements complement, rather than unnecessarily extend, the permitting and planning timelines established by the Legislature.

8. Local Agency Transportation Facility Maintenance
The City requests that Ecology expand the proposed exemption for WSDOT facility maintenance and safety improvements under WAC 173-27-044(3) to include comparable maintenance, repair, replacement, and safety improvement activities undertaken by local government transportation agencies.
Cities and counties have similar responsibilities to WSDOT for maintaining transportation infrastructure, including roadways, bridges, pedestrian facilities, bicycle facilities, and associated transportation infrastructure located within shoreline jurisdiction. These agencies must routinely perform maintenance, repairs, and safety improvements to preserve the functionality of existing facilities, protect public safety, and maintain reliable transportation networks.
The proposed rule provides specific exemptions for WSDOT activities, including maintenance within the roadway prism, maintenance within the right-of-way, and certain safety improvements.

The City recommends extending these provisions to local government transportation facilities when the activities are comparable in scope and purpose to those identified for WSDOT. The City recognizes that these activities should remain consistent with the substantive requirements of the Shoreline Management Act and applicable shoreline master programs. However, comparable maintenance and safety activities should not be subject to different permitting requirements solely based on whether the transportation facility is owned or maintained by the state or a local government.

The City requests that Ecology revise WAC 173-27-044(3) to expressly include local government transportation agencies and their comparable facility maintenance, repair, replacement, and safety improvement activities.

Conclusion

The City appreciates Ecology's work to update and clarify the Shoreline Management Act rules. The City supports the underlying objectives of shoreline protection and recognizes the importance of consistent statewide implementation.

However, the City encourages Ecology to consider the practical implications of these proposed requirements on local governments, particularly those experiencing continued population growth and increasing demands for housing, transportation, utilities, and other essential public infrastructure.

The City requests that Ecology consider the comments above and incorporate additional clarification and flexibility into the final rule to ensure that shoreline protection objectives can be achieved while allowing local governments to effectively plan for and serve their communities.