Michael Burnham

Thank you for the opportunity to review the Washington Department of Ecology's draft Shoreline Management Act rulemaking. Please see the attached comments from the Washington Department of Commerce's Growth Management Services Unit.

STATE OF WASHINGTON
DEPARTMENT OF COMMERCE
1011 Plum Street SE ○ PO Box 42525 ○ Olympia, Washington 98504-2525 ○ (360) 725-4000
www.commerce.wa.gov

November 16, 2026

Rebecca Rothwell
Shoreline Planner
Washington State Department of Ecology
P.O Box 47600
Olympia, WA 98504-6000

Sent Via Electronic Mail

RE: Draft of Shoreline Management Act (SMA) Rule Amendments (CR-102)

Dear Ms. Rothwell,

Thank you for the opportunity to review and comment on the proposed amendments to Chapters 173-18, 173-20, 173-22, 173-26, and 173-27 of the Washington Administrative Code as part of the Washington Department of Ecology's (Ecology) Shoreline Management Act (SMA) rule proposal phase (CR-102). The Washington Department of Commerce **(**Commerce) recognizes the immense staff work reflected in the draft rules and the potential policy impact of the proposed changes on the built and natural environment. We appreciate the ongoing collaboration with other state agencies, local governments, tribes, members of the public, and other stakeholders.

Protection of Critical Areas and Shoreline Ecological Functions

Commerce supports the detailed policy changes to strengthen the protection of critical areas and shoreline ecological functions in local Shoreline Master Programs (SMPs). Application of Best Available Science (BAS) and ensuring no net loss of shoreline ecological functions is crucial for meeting the goals and requirements of both the SMA and the Growth Management Act (GMA). The preliminary draft adds salient guidance that specifically addresses the protection of shoreline ecological functions by encouraging ecosystem-wide analysis, assessment of long-term impacts, and impairments resulting from past actions and unregulated activities.

Commerce raised this concern early in the process, and as written, the draft would require local governments to adopt critical areas policies and regulations directly in their SMPs to achieve the goals and requirements of the SMA. This represents a substantive shift from the current standard, under which local governments adopt their critical areas ordinances by reference into their SMPs. This is not a minor implementation detail; it has direct implications for local government planning requirements and for the guidance Commerce provides.

Before advancing this approach, we strongly recommend confirming the proposed policy change with Growth Management Services and coordinating with us to fully understand its implications. Commerce will need to revise its critical areas guidance if this change is adopted, and it is essential that the agencies

provide clear, consistent, and aligned direction to local governments. We also want to emphasize the importance of continued collaboration on guidance for protecting riparian habitat, particularly in developed and urbanized areas. The proposed vegetation conservation requirements and associated guidance are important components of implementing the Riparian Task Force recommendations and will also support local government efforts to protect riparian habitat in waterbodies outside shoreline jurisdiction.

Commerce appreciates the draft's efforts to strengthen protection of shoreline ecological functions. However, given that this policy shift was identified as a concern early in the process, we expect meaningful coordination with Commerce before final adoption, rather than relying on post-adoption collaboration to resolve implementation and guidance issues. We look forward to working together to ensure the final approach is workable for local governments and that agency guidance is timely, consistent, and aligned.

Sea Level Rise Planning

Commerce supports Ecology's draft rulemaking that establishes SMP requirements for how local governments must assess sea level rise impacts and increase resilience. Consistent with Commerce's Aug. 20, 2025, letter to Ecology regarding its CR-101, Commerce's CR-102 recommendations below seek to better align the climate sea level rise assessment terminology and methodology in its draft rulemaking (WAC 173-26-246) and its forthcoming guidance (2027) with Commerce's existing comprehensive plan Climate Element Planning Guidance and statute (WAC 365-196-443). Aligning the terminology and methodology across the statute and agencies' guidance documents could mitigate potential confusion and streamline the process for local governments updating their SMP and jurisdiction-wide comprehensive plan. Our specific recommendations are numbered below, followed by an "Additional Context" section that explains the methodology and terminology used in Commerce's guidance and WAC 365-196-443:

1) Consider changing the term "sea level rise effects" to "sea level rise impacts" and using the term "impacts" throughout WAC 173-26-246.
- RCW 90.58.630 directs Ecology to adopt guidelines to "*require shoreline master programs to address the impact of sea level rise and increased storm severity on people, property, and shoreline natural resources and the environment.*"
- Relatedly, RCW 70A.05.010 tasked Ecology, Commerce, and other state agencies with updating the state's climate response strategy (Washington State Climate Resilience Strategy, 2024), to prepare for, address, and adapt to the "impacts" of climate change. The RCW also noted: "*The legislature further finds that greater cross-agency coordination on resilience, including an updated statewide climate resilience strategy, will help the state: Avoid high costs in the future; address and reduce the highest risks and greatest vulnerabilities; create more efficiencies; better leverage funding; foster more equitable outcomes; and provide for greater accountability."*
- The U.S. NCA6 and U.N. IPCCAR6 define "impacts" as the "consequences of risks" resulting from the interactions of hazards, exposure, and vulnerability.

2) Draft WAC 173-26-246 makes many references to the term "risk" but does not define it. Consider defining "risk" as a term or basic concept in subsection 4 and incorporate risk characterization into a required "vulnerability and risk assessment" in subsection 7. This could better align with the definitions above and methodology in Commerce's climate planning guidance.
- The State statute does not appear to already define climate "risk." However, IPCC's AR6 defines risk as "*the potential for adverse consequences for human or ecological systems, recognising the diversity of values and objectives associated with such systems*." The definition goes on to describe risk in the context of climate change "impacts." NCA5 defines risk as "*threats to life, health, and safety, the environment, economic well-being,*

and other things of value. Risks are evaluated in terms of how likely they are to occur (probability) and the damages that would result if they did happen (consequences)."

3) Consider referencing the State's statutory definition of climate resilience in the list of terms.
- RCW 70A.65.010: *"Climate resilience" is the ongoing process of anticipating, preparing for, and adapting to changes in climate and minimizing negative impacts to our natural systems, infrastructure, and communities. For natural systems, increasing climate resilience involves restoring and increasing the health, function, and integrity of our ecosystems and improving their ability to absorb and recover from climate-affected disturbances. For communities, increasing climate resilience means enhancing their ability to understand, prevent, adapt, and recover from climate impacts to people and infrastructure."*

4) The following section refers to "Indigenous knowledge" but presents the caveat that it will only be validated if it is provided in collaboration with tribes. Indigenous knowledge does not inherently have to come from a tribal representative, as this would exclude non-registered/non-locally registered Indigenous people and Indigenous community-based organizations, for example. Consider amending this term to "tribal knowledge" to clarify this and remove potential barriers to participation.
- *G) Indigenous knowledge, if offered in collaboration with tribe(s), explicit consent is provided, and the appropriate information stewardship agreements are in place.*

Additional Context: Commerce's comprehensive plan Climate Element Planning Guidance adapts the U.S. Climate Resilience Toolkit (NOAA) methodology for conducting a "vulnerability and risk assessment." Our planning guidance is advisory and thus makes it optional for a local government to conduct a vulnerability and risk assessment of local assets. Such an assessment can include a range of hazards (e.g., wildfire, drought, sea level rise) and a range of social, economic, and environmental assets (including those amid marine shoreline areas).

Per the NOAA methodology Commerce incorporated into its guidance, a vulnerability and risk assessment is a compound process: First, local governments assess assets' climate hazard exposure, sensitivity, and adaptive capacity to characterize vulnerability. Next, the Commerce guidance advises local governments to characterize the risks of assets deemed most vulnerable; this takes into account hazard probability (likelihood) and magnitude (consequences of impacts). Our guidance advises cities and counties to incorporate socioeconomic data and community members' lived experiences to assess the relative vulnerability and risk of local assets — who and what are most impacted by climate change, when, where, how, and why. Knowing what matters most and what's most at risk can help local governments prioritize comprehensive plan policies, development code regulations, and resilience investments in overburdened communities.

Commerce also used the NOAA assessment methodology to better align the state agency's guidance with the Federal Emergency Management Agency's local hazard mitigation plan guidance, which specifically requires a hazard risk assessment. Commerce's planning guidance and statute provide counties and cities with an option for updating a local hazard mitigation plan and adopting it by reference in a comprehensive plan in lieu of a required climate resilience subelement.

Housing and Residential Development

Commerce supports Ecology's draft rulemaking effort to address how to regulate accessory dwelling units and middle housing. Aligning the terminology across the SMA and GMA statutes and agencies' guidance

documents could mitigate confusion and streamline applications and decision-making. Our specific recommendations are:

1. WAC 173-26-020 adds the statutory definition of middle housing. We recommend you consider including the statutory definition for an Accessory Dwelling Unit (ADU) and a Dwelling Unit in RCW 36.70A.696:

   a. "ADU" means a dwelling unit located on the same lot as a single-family housing unit, duplex, triplex, townhome, or other housing unit.

   b. "Dwelling unit" means a residential living unit that provides complete independent living facilities for one or more persons and that includes permanent provisions for living, sleeping, eating, cooking and sanitation.

2. Consider defining multi-unit as 2-3 units, and multifamily as 4 or more units to better align with housing terminology in the GMA. While single-family housing has special protections, the impact of 2-3 units vs. multifamily housing should be weighed differently. Additionally, this will better align with the middle housing provisions in RCW 36.70A.635 and the ADU provisions in RCW 36.70A.680.

3. WAC 173-26-241(3)(j)(v) describes the requirements for multiunit residential development. It states: *Multiunit residential development includes middle housing and any other scales of condos, townhomes, or apartments or multifamily residential use and development.*

   We recommend removing condos from the list of housing typologies, as condos are not a housing type but an **ownership type**. Further, if Ecology chooses to define both multiunit and multifamily in WAC 173-26-020, we recommend removing additional text in this section and retaining only the title "Multiunit development and middle housing."

4. WAC 173-26-241(3)(j)(v)(A) speaks to middle housing requirements and states that: *Growth Management Act middle housing requirements (RCW 36.70A.635) do not apply to master program provisions or development within shoreline jurisdiction. Local government may decide which types of smaller lot or middle housing, ADUs or other housing types may be appropriate in urban shoreline designations.*

   This appears to include urban shoreline designations. However, middle housing and multiunit housing could be appropriate uses in an urban area, outside the buffer. We recommend considering adjusting the policy to state: *"Growth Management Act requirements (including RCW 36.70A.635 for middle housing) do not <u>automatically</u> apply to master program provisions or development within shoreline jurisdiction. <u>Where a parcel is bisected by the shoreline jurisdiction, middle housing requirements defined in RCW 36.0A.635 could apply on that portion of land not in the shoreline jurisdiction."</u>*

   With the above changes, middle housing would not be regulated under items B, C, and D. We recommend the following changes: moving item D up to B and placing the remaining items as a subset of B to read as follows:

   (<u>B</u>) New multiunit residential development <u>and middle housing</u> shall be permitted only within shoreline environment designations that can support the proposed density and level of intensity of these residential uses and developments as demonstrated through a cumulative impacts assessment <u>and:</u>

(I) Multiunit residential development is not a preferred water-oriented use, or a priority single-family residential use under the act and shall not be allowed unless the public interest is served through increased public access and ecological benefits:
(II) New multiunit residential development shall provide public access in conformance to the local government's public access planning WAC 173-26-221(3), and (ii) New multiunit residential development shall include components that increase the shoreline ecological function within the shoreline buffer provided throughout the project site.
(III) New multiunit residential development may also provide community water or recreational access in addition to the required public access. Private recreational or residential piers and docks serving individual parcels, lots, units, or developable tracts shall be prohibited associated with multiunit residential development.

5. We recommend clarifying the provisions for ADUs in WAC 173-26-241(3)(j)(vii)(A)(I) by adding the statement: Where an existing residence is located, ADUs may be allowed within existing single-family residential structures through the conversion of existing space to create an ADU if no expansion of the footprint, or additional impervious surface is added.

We appreciate your continued coordination with our agency as you undertake these important updates to your administrative rules. Please feel free to contact our housing, climate change, and ecosystem services planners who are copied below if you have questions about our comments. Thank you again for the opportunity to comment.

Sincerely,

Ashley Arai

Ashley Arai,
Managing Director
Growth Management Services
Washington State Department of Commerce

cc:

Misty Blair, Shoreline Management Policy Lead, Department of Ecology
Rebecca Ponzio, Senior Policy Advisor, Department of Commerce
Sarah Fox, Climate and Ecosystem Section Manager, Department of Commerce
Anne Fritzel, Housing Section Manager, Department of Commerce
Angela San Filippo, Ecosystem Program Manager, Department of Commerce
Michael Burnham, Climate Policy Team Manager, Department of Commerce
William Simpson, Senior Planner, Department of Commerce
Lilith Vespier, Infill Housing Manager, Department of Commerce