Washington State Department of Transportation

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November 12, 2026

Rebecca Rothwell
Washington State Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503

Subject: Shoreline Management Act Rulemaking comments – September 2026 proposed rule language for Chapters 173-26, 173-27 WAC

Dear Ms. Rothwell,

The Washington State Department of Transportation (WSDOT) is pleased to offer comments to the Washington State Department of Ecology in response to the September 2, 2026 proposed Shoreline Management Act Rule Making.

As you are aware, WSDOT submitted comments in August 2025 focused on **Chapter 173-27-044(3)** (page 25 in the preliminary draft), which referenced language that had been removed from RCW 90.58.356(3). It appears that language was removed from the current draft, as requested. We appreciate your consideration of our comments and responsiveness to our concerns.

Please consider the following additional comments, in response to the current (September 2, 2026) draft:

WAC 173-27-200(2), (4) Department review of conditional use and variance permits (page 42-43)

This provision would increase the timeframe for Ecology's review of conditional use or variance permits from a maximum of 30 days to 90 days after an initial completeness review of up to 30 days. (The preliminary draft that was distributed for review in July of 2025 made no mention of this four-fold increase in the departments' review timeframe for review of local conditional use permit and variance decisions.)

In 2015, the Washington State Legislature passed second engrossed substitute senate bill 5994, relating to permits for State transportation projects (RCW 47.01.485), which provides:

> *(1) To the greatest extent practicable, a city, town, code city, or county must make a final determination on all permits required for a project on a state highway as defined in RCW 46.04.560 no later than ninety days after the department's submission of a complete permit application for a project with an estimated cost of less than five hundred million dollars.*

Although RCW 47.01.485 applies to local permit decisions, the Legislature at that time clearly recognized the need for streamlining state highway projects, "*...particularly those that occur on shorelines of the state, to achieve these* [streamlining] *opportunities."* (See **Findings—Intent—2015 3rd sp.s. c 15** under RCW 47.01.485).

The proposed Ecology review timeframe appears to counter the Legislature's intent to streamline transportation projects, as it would result in up to a four-fold increase in the review timeline that WSDOT staff would need to anticipate for final approval of shoreline conditional use and variance permits. In consideration of the above, please consider language to provide for alternative review timeframes for WSDOT transportation projects to align with RCW 47.01.485.

WAC 173-29-221(2)(e)(i)(F) Wetland protection standards and regulations (page 93)

The wetland protection standards appear to prohibit *any* grading / filling / pilings / structures in wetlands or buffers within shoreline jurisdiction unless the use is water-dependent. However, section (F)(VII) (page 95) says, "Master programs may allow buffer averaging provisions, provided they are consistent with ecology guidance."

We suggest providing clarification on whether this means that buffer averaging provisions could potentially allow for grading / fill / piling / structure placement without the need for a variance (i.e., by compensating for the lost buffer in another area, as long as no net loss and compliance with other standards are demonstrated). If not, please clarify whether the only pathway for approval of such a project (i.e., that is not water-dependent) would be to obtain a variance.

WAC 173-26-221(6) Shoreline vegetation conservation (page 120-125)

It appears that native vegetation removal, clearing, or grading would only be allowed within shoreline buffers or setbacks if necessary to: support water-oriented use/development, provide shoreline access, as part of restoration/enhancement project, or as part of ongoing/routine maintenance. We suggest clarifying whether this means that *any* native vegetation removal required for any other project type would require a variance. Additionally, please clarify if a local jurisdiction could adopt compensatory mitigation alternatives, or thresholds that could allow such a project to move forward without the need for a variance.

WAC 173-27-044(3)(e) Developments not required to obtain shoreline permits or local review (page 18)

This language appears to be derived from RCW 90.58.356. The RCW uses both "transportation facilities" and "transit facilities" as terms. We suggest providing definitions for "transportation facility" and "transit facility" within this section, or referencing RCW 47.06.140 and/or RCW 81.112.020 or other appropriate citations for clarification purposes.

We appreciate your consideration of our feedback and hope that Ecology incorporates input from WSDOT when finalizing the rule. Should you require further information or wish to discuss our comments in greater detail, please do not hesitate to contact me, at ahmer.nizam@wsdot.wa.gov.

Sincerely,



Ahmer Nizam
Environmental Services Director
Washington State Department of Transportation