

# **Shoreline Master Program Updates and The Department of Ecology's Role**

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Northwest Regional Office

**Washington has 28,000 miles of coastal, inland marine, lake and stream shorelines that make our state special place to live.**

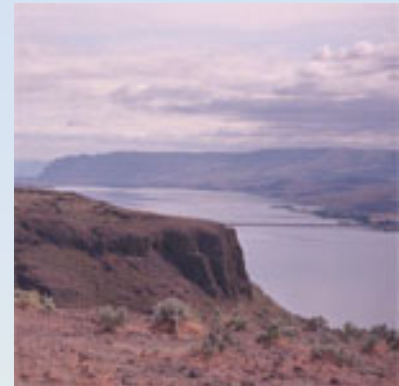
**•Our sense of place**

**•Where we live**

**•Where we play**

**•Our economy**

**•Our history**



# **Tonight's Presentation**

- **Shoreline Management**
- **Ecology's Role**
- **Key Issues**
- **Final Thoughts**
- **Q & A**

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# Shoreline Management Act

RCW 90.58



## Guidelines

WAC 173-26



## Local Shoreline Master Program

Local Ordinance

# Shoreline Management Act

RCW 90.58



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## Local Shoreline Master Program

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# **The Shoreline Management Act**

**RCW 90.58**

- **Adopted by the Washington Legislature in 1971**
- **Affirmed by a vote of the people (referendum) in 1972**
- **Reflected strong interest by the public in our shorelines that continues today**
- **Nearly 40-year track record in state and local shoreline management.**

# State Shoreline Policy

## RCW 90.58.020

### RCW 90.58.020

#### Legislative findings — State policy enunciated — Use preference.

The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefor, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

**It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.**

The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance. The department, in adopting guidelines for shorelines of statewide significance, and local government, in developing master programs for shorelines of statewide significance, shall give preference to uses in the following order of preference which:

- (1) Recognize and protect the statewide interest over local interest;
- (2) Preserve the natural character of the shoreline;
- (3) Result in long term over short term benefit;
- (4) Protect the resources and ecology of the shoreline;
- (5) Increase public access to publicly owned areas of the shorelines;
- (6) Increase recreational opportunities for the public in the shoreline;
- (7) Provide for any other element as defined in RCW [90.58.100](#) deemed appropriate or necessary.

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. Alterations of the natural condition of the shorelines and shorelands of the state shall be recognized by the department. Shorelines and shorelands of the state shall be appropriately classified and these classifications shall be revised when circumstances warrant regardless of whether the change in circumstances occurs through man-made causes or natural causes. Any areas resulting from alterations of the natural condition of the shorelines and shorelands of the state no longer meeting the definition of "shorelines of the state" shall not be subject to the provisions of chapter [90.58](#) RCW.

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

[1995 c 347 § 301; 1992 c 105 § 1; 1982 1st ex.s. c 13 § 1; 1971 ex.s. c 286 § 2.]

# State Shoreline Policy

## RCW 90.58.020

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# 3 Goals

- Priority for uses that require a shoreline location
- Protect environmental resources of state shorelines
- Promote public access and enjoyment of shorelines



# **Shoreline Management Partnership**

**The Shoreline Act sets out a cooperative  
program of shoreline management between  
local government and the state**



# Shoreline Management Partnership

## City or County

**“Primary responsibility” for:**

- **Developing Shoreline regulations (Shoreline Master Program adoption & update)**
- **Administering the regulatory program (permits, compliance)**

# Shoreline Management Partnership

## Ecology

**Support to local government. “Insuring compliance with the Act” through:**

- **Technical assistance.**
- **Formal approval of local Shoreline regulations**
- **Final action on certain Shoreline permits**
  - **conditional use**
  - **variance**

# Shoreline Management Act

RCW 90.58



## Guidelines

WAC 173-26



# Local Shoreline Master Program

Local Ordinance

# Guidelines

- **WAC 173-26 - Sets requirements for Shoreline Master Program updates**
- **Complicated History**
  - 1995 – Legislature directed Ecology to update Guidelines
  - 2000 - Ecology put forward Guidelines
  - 2001 - Appealed and invalidated
  - 2002 – Formal Negotiation & Settlement Agreement
    - Guidelines
    - Update Schedule
    - Funding
  - 2003 - Current Guidelines went into effect

# Guidelines – Parties to the Settlement

Department of Ecology • Aggregates and Concrete Association • Association of Washington Business • Adams County • Associated General Contractors of Washington • Basta Marine • Inc. • Building Industry Association of Washington • Doug Camenzind • Chelan County • Columbia County • Ferry County • Franklin County • City of Hoquiam • Independent Business Association of Washington • Island County • Jefferson County • Mason County • National Association of Industrial and Office Properties • National Federation of Independent Business • Northwest Marine Trade Association • City of Ocean Shores • Pacific County • Pend Oreille County • Rose Ranch • Skagit County • City of South Bend • Stevens County • Thurston County • United Property Owners of Washington • Wahkiakum County • Washington Association of Realtors • Washington Cattleman's Association • Washington Contract Loggers Association • Washington State Farm Bureau • Washington State Grange • Whitman County • Washington Environmental Council • 1000 Friends of Washington • Citizens for Sensible Development • Citizens Growth Management Coalition • Clark County Natural Resources Council • Friends of Grays Harbor • Friends of the San Juans • Hood Canal Environmental Council • Kettle Range Conservation Group • Kittitas Audubon Society • People for Puget Sound • Save a Valuable Environment • Washington Conservation Voters - Island County Chapter • Washington Public Interest Research Group • Wildlife Forever of Grays Harbor • Chris Brown • Fred Ellis • Benella Caminiti • League of Women Voters of Washington • Black Hills Audubon Society • and National Audubon Society • Grant County

# Master Program Update Guidelines

**WAC 173-26 - Sets requirements for Shoreline Program updates**

- **Inventory and Characterization**
- **Designations (zoning)**
- **Policies & Regulations**
- **Cumulative Impacts Analysis**
- **Restoration Planning**

# Key Concept: “*no-net-loss*”

- Master programs shall contain policies and regulations that assure at minimum, *no net loss* of ecological functions necessary to sustain shoreline natural resources (WAC 173-26-201(2)(c)).
- Starting point is conditions as they exist today
- Recognizes new development will occur. Directs us to anticipate, avoid, minimize, and mitigate those impacts.

# Guidelines Continued

- **Prescriptive in some cases**
  - e.g. bulkhead regulations
- **“Show your work” in other cases**
  - e.g. buffer size
  - must meet *no-net-loss* standard
- **Requires extensive community involvement**
- **Requires coordination with local, state, federal, and tribal governments**

# Shoreline Management Act

RCW 90.58



## Guidelines

WAC 173-26



## Local Shoreline Master Program

Local Ordinance

# Basics of a Shoreline Master Program

- **A Shoreline Program is:**
  - **A local plan for managing shorelines**
  - **A system of designations (or zoning)**
  - **Development regulations**
  - **System of administration and permitting**
- **Must be consistent with the Shoreline Act and the Guidelines**

# Shoreline Program Updates

**The Washington Legislature . . .**

- **Directed that all Shoreline Programs state-wide shall be updated by 2014**
  - More than 260 Counties and Cities
- **Provided funding for cities and counties to do the updates - \$7.5 million this biennium.**

**Kitsap County & Cities are due in 2012. Kitsap County will receive \$650,000 to support the effort**

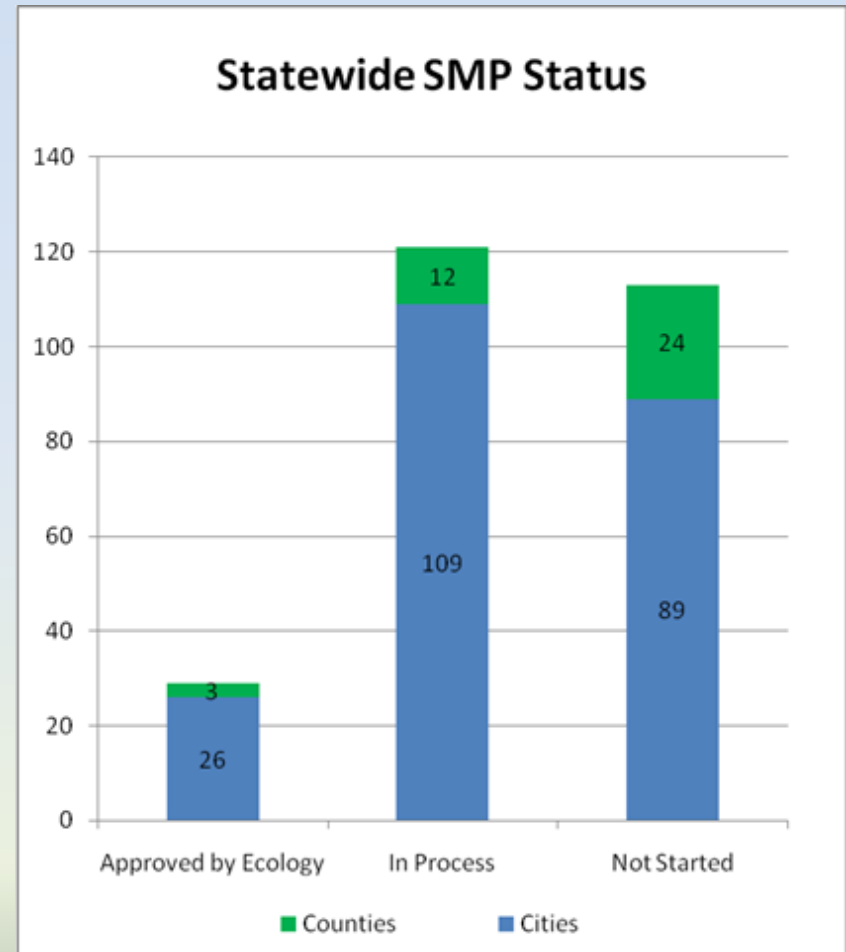
# Shoreline Program Updates so far

State-wide effort well under way

29 updates done so far

121 In various stages of the process

Many more to come



# Tonight's Presentation

- Shoreline Management
- Ecology's Role
- Key Issues
- Final Thoughts
- Q & A

# **How Ecology will be involved**

- **Manage State Funding - \$650,000 to Kitsap Co.**
- **Technical & Policy assistance**
- **Bring in other state and federal perspectives**
- **Share information between local governments**

# **Ecology involvement, Cont**

- **Stay engaged throughout the planning effort**
- **Clear & timely communication**
- **Final review and approval of the Shoreline Program**

# **Ecology's Role**

**Ensure the planning process and the Shoreline Program:**

- Meet the policy and goals of the Shoreline Act**
- Meet the requirements in the guidelines**
- Engage the community**
- Reflect local character & vision**

# **Ecology's Role**

**Ensure the planning process and the Shoreline Program:**

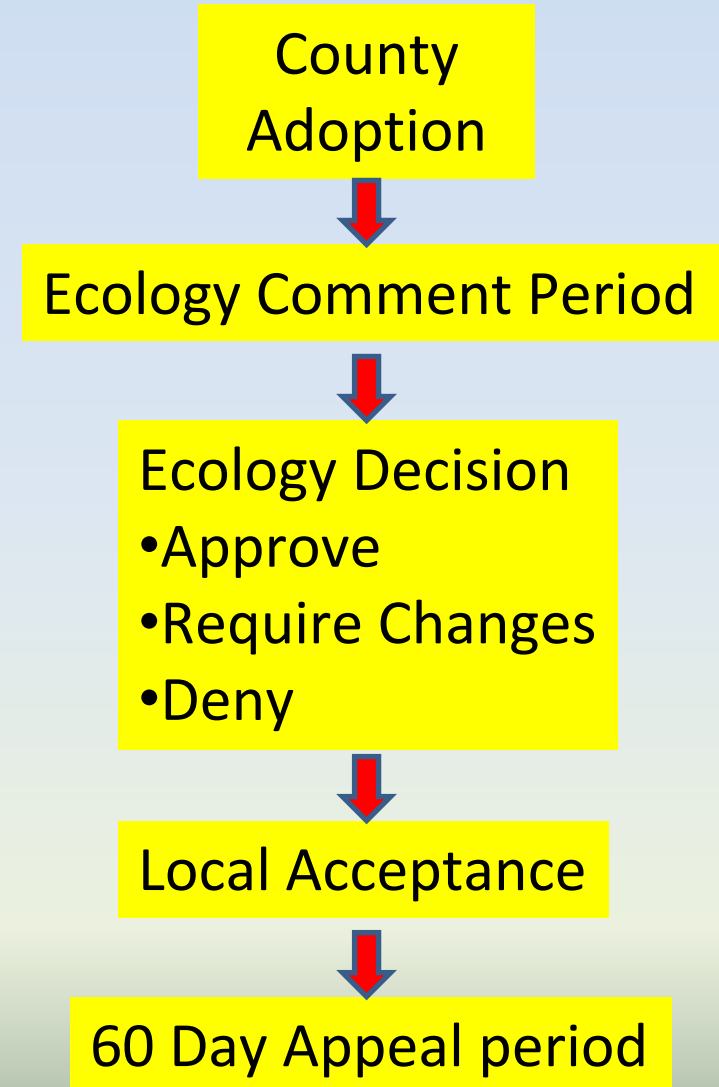
- Transparent**
- Realistic and manageable development regulations**
- Learning**
- Proper administration of state funds**

# Ecology's Final Approval

**Ecology approval required by the Shoreline Act**

**Our Goals:**

- **Engaged throughout**
- **Clearly communicate expectations**
- **Avoid surprises**
- **Work through disagreements early**



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# Existing and New Shoreline Development



# Shoreline Development

- The Shoreline Program starts from the conditions as they exist today.
- The Program is crafted around existing development.
- The focus of the Shoreline Program is to ensure *no-net-loss* from new or expanded development.
- Normal repair and maintenance are recognized in the Shoreline Act and will be provided for in the Shoreline Program.

# Shoreline Development

***Restoration* is an important part of the Master Program**

- **It is not required for existing shoreline development**
- **It may be required to offset impacts from new development**
- **The Guidelines require the Shoreline Program to have a restoration plan to guide restoration work.**

# Shoreline Buffers and Setbacks



# **Buffers and Setbacks**

**The Shoreline Program must include (per the guidelines):**

- Buffers to protect wetlands**
- Setbacks for views**
- Vegetation conservation standards such as buffers**

# Buffers and Setbacks

The Shoreline Program must include (per the guidelines), continued:

- Standards to prevent impacts to water quality and stormwater quantity
- Setbacks and buffers in *Shoreline Residential* areas
- Setbacks to protect houses from unstable shorelines

# Buffers and setbacks, cont.

- Ecology does not have a pre-determined buffer size
- Buffer/setback sizes will depend on many things:
  - current ecological conditions
  - current development patterns
  - future planned development.
- Guidelines require that buffers working together with other development standards achieve *no-net-loss*

# Non-conforming (grandfathered) Buildings



# Grandfathered Buildings

- **Buildings that don't conform with the new regulations are grandfathered.**
- **State code explicitly recognizes the grandfathered status (WAC 173-27-080)**
- **Grandfathered buildings can be maintained and repaired**
- **There are limits on expansion or rebuilding of grandfathered buildings.**

# Grandfathered Buildings, Cont.

## WAC 173-27-080

No agency filings affecting this section since 2003 **Nonconforming use and development standards.**

When nonconforming use and development standards do not exist in the applicable master program, the following definitions and standards shall apply:

(1) "Nonconforming use or development" means a shoreline use or development which was lawfully constructed or established prior to the effective date of the act or the applicable master program, or amendments thereto, but which does not conform to present regulations or standards of the program.

(2) Structures that were legally established and are used for a conforming use but which are nonconforming with regard to setbacks, buffers or yards; area; bulk; height or density may be maintained and repaired and may be enlarged or expanded provided that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses.

(3) Uses and developments that were legally established and are nonconforming with regard to the use regulations of the master program may continue as legal nonconforming uses. Such uses shall not be enlarged or expanded, except that nonconforming single-family residences that are located landward of the ordinary high water mark may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances as defined in WAC [173-27-040](#) (2)(g) upon approval of a conditional use permit.

(4) A use which is listed as a conditional use but which existed prior to adoption of the master program or any relevant amendment and for which a conditional use permit has not been obtained shall be considered a nonconforming use. A use which is listed as a conditional use but which existed prior to the applicability of the master program to the site and for which a conditional use permit has not been obtained shall be considered a nonconforming use.

(5) A structure for which a variance has been issued shall be considered a legal nonconforming structure and the requirements of this section shall apply as they apply to preexisting nonconformities.

(6) A structure which is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a conditional use permit. A conditional use permit may be approved only upon a finding that:

(a) No reasonable alternative conforming use is practical; and

(b) The proposed use will be at least as consistent with the policies and provisions of the act and the master program and as compatible with the uses in the area as the preexisting use.

In addition such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of the master program and the Shoreline Management Act and to assure that the use will not become a nuisance or a hazard.

(7) A nonconforming structure which is moved any distance must be brought into conformance with the applicable master program and the act.

(8) If a nonconforming development is damaged to an extent not exceeding seventy-five percent of the replacement cost of the original development, it may be reconstructed to those configurations existing immediately prior to the time the development was damaged, provided that application is made for the permits necessary to restore the development within six months of the date the damage occurred, all permits are obtained and the restoration is completed within two years of permit issuance.

(9) If a nonconforming use is discontinued for twelve consecutive months or for twelve months during any two-year period, the nonconforming rights shall expire and any subsequent use shall be conforming. A use authorized pursuant to subsection (6) of this section shall be considered a conforming use for purposes of this section.

(10) An undeveloped lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was established in accordance with local and state subdivision requirements prior to the effective date of the act or the applicable master program but which does not conform to the present lot size standards may be developed if permitted by other land use regulations of the local government and so long as such development conforms to all other requirements of the applicable master program and the act.

# Grandfathered Buildings, Cont.

## WAC 173-27-080

No agency filings affecting this section since 2003 **Nonconforming use and development standards.**

When nonconforming use and development standards do not exist in the applicable master program, the following definitions and standards shall apply:

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# Grandfathered Buildings, cont

- As shoreline regulations are developed we encourage the county to consider how many buildings may become non-conforming
- We encourage the county to customize how they deal with grandfathered buildings to consider community needs
- Must meet *no-net-loss* standard

# **Grandfathered Buildings, cont.**

## **Whatcom County example**

- **County customized their standards for expanding grandfathered buildings in the buffer**
- **So far, the county has received more than 20 applications to make improvements to an existing home, including making additions and building garages.**
- **Every homeowner's permit request was approved and issued in a timely manner**

# Private Property Rights



# Property Rights

. . . coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, **at the same time, recognizing and protecting private property rights consistent with the public interest.** RCW 90.58.020

# Property Rights

**The Guidelines provide  
property rights safeguards  
173-26-186 (5)**

**Guidelines point to a State  
Attorney General's Office  
Advisory Memorandum**

**Ecology works with the  
Attorney General's Office and  
follows this memorandum in  
our review.**

ROB MCKENNA  
ATTORNEY GENERAL

ADVISORY MEMORANDUM:  
AVOIDING UNCONSTITUTIONAL  
TAKINGS OF PRIVATE PROPERTY



DECEMBER 2006

# Property Rights, cont

Property rights also considered at the permitting stage.

- If a proposed development cannot meet the standards in the Shoreline Regulations a variance may be granted to provide “reasonable use” of the property

# Bulkheads & Shoreline Armoring



# Bulkheads

- **Vigorous scientific and policy review of bulkheads at the time the guidelines were developed**
- **Guidelines very specific on avoiding unnecessary armoring (WAC 173-26-231)**
- **New development should be located to avoid the need for stabilization**

# Bulkheads, cont.

- **New or enlarged structural stabilization**
  - Only to protect primary structure (i.e. residence)
  - Conclusive evidence of need demonstrated by geotechnical report
  - Timeframe for risk defined as three years
  - Other options such as drainage have been addressed
  - *No net loss* of ecological functions

# Bulkheads, cont.

- **Replacement stabilization (no enlargement)**
  - Only with demonstrated need to protect principle use or structure
  - The local Shoreline Program can define what can be protected and the level of risk
  - *No net loss* of ecological functions
- **A Shoreline Program should point to a range of options for protecting existing structures**

# Use of Science



# Use of Science

- Guidelines describe intended *Use of science and technical information* (WAC 173-26-201.2.a)
- Shoreline Master Program updates make use of science to:
  - Characterize the shoreline ecological conditions
  - To inform which shoreline ecological functions may require protection and/or restoration to maintain *no net loss*.

# Use of Science

- **Credible scientific information typically:**
  - uses peer-reviewed methods,
  - presents proper context,
  - has references
  - leads to logical conclusions.
- **Lots of work going on to help make scientific information available**
- **Knowledge about our shorelines by local residents is valued and should be considered.**

# State Requirements and Local Conditions and Character



# **Local Conditions & Character**

- **The Shoreline Act and the Guidelines intend for the Master Programs to reflect local conditions, character, and desires**
- **Three examples of completed or nearly-completed Shoreline Program updates**



# Lake Washington

- **Current urbanized pattern the starting point**
- **Anticipate and manage redevelopment**
- **Focus on a flexible set of options for reducing the impacts from redevelopment**



# Coupeville

- Embrace historic waterfront
- Flexibility in the ongoing use of historic buildings
- Limits future expansion over water



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# **Final Thoughts – Key Points**

- **The starting point is conditions as they exist today**
- **New shoreline development is anticipated and is planned for in the Shoreline Program**
- **New development should be managed to prevent an overall loss of ecological resources**
- **Ecology does not have a one-size-fits-all set of expectations**

# **Final Thoughts - Opportunity**

- **Decide how the community wants shorelines to develop**
- **Give focused attention in key areas**
- **Correct problems in current Shoreline Program?**
- **Tailor regulations to anticipated needs**
- **Seek greater efficiency and predictability in regulating shoreline development**


# Final Thoughts

**Shoreline Stewardship is more than planning and regulation**

- Seek out the knowledge and desires of shoreline residents**
- Provide information, training, and assistance**
- Find examples and demonstration projects**
- Create incentives**

**Opportunity to work in these areas also**

# Tonight's Presentation

- Shoreline Management
  - Ecology's Role
  - Key Issues
  - Final Thoughts
  - Q & A
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# More information

<http://www.ecy.wa.gov/programs/sea/shorelines>

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