

**Suggested Findings of Fact and Conclusions of Law**  
**Pacific County Comprehensive Update of the Shoreline Master Program**

**FINDINGS OF FACT**

1. The Washington State Legislature passed the Washington State Shorelines Management Act<sup>1</sup> (SMA) in 1971. Under the SMA, each affected county is required to adopt and administer a local Shoreline Master Program (SMP) to carry out the provisions of the SMA.
2. In 1995, the State Legislature amended the Growth Management Act (GMA)<sup>2</sup> and the SMA to partially integrate the two statutes. The amendments collectively added the goals and policies of the SMA as a 14<sup>th</sup> planning goal under the GMA and clarified that the goals and policies of an approved SMP shall constitute a shoreline element of a county's comprehensive plan. The Legislature also directed the Washington State Department of Ecology (Ecology) to update the State Shoreline Guidelines to ensure consistency with SMA and GMA. Element 1.6.5 of the County's Comprehensive Plan adopts the goals and policies of the Pacific County SMP. The County's Comprehensive Plan is scheduled for update in 2018 and will include integration of the revised SMP goals and policy language during that process.
3. The GMA allows counties and cities to amend their comprehensive land use plans no more than once each year. Amendments may be considered more frequently for a limited set of circumstances, including the amendment of a SMP.
4. The SMP Guidelines<sup>3</sup> are the standards, adopted by Ecology, which local governments must be consistent with when drafting their shoreline master programs. In December 2003, the Ecology adopted revised Guidelines<sup>4</sup>. Pursuant to Chapter 90.58.080 RCW, Pacific County is required to review and update its existing SMP and must be consistent with the required elements of the 2003 SMP Guidelines.
5. Pursuant to the SMA, Pacific County and Ecology share joint authority and responsibility for the administration of the Pacific County SMP. Through the adoption and approval of Ecology, it has the authority of state law.
6. The Pacific County SMP was originally approved by Ecology in 1975 with minor amendments in 1986 and 2000.
7. Pacific County entered into a grant contract with Ecology effective July 1, 2013, to complete the SMP update consistent with the Guidelines.
8. Pacific County contracted with Creative Community Solutions, Inc., for project coordination, facilitation services, and development of the Public Participation Plan on October 8, 2013.

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<sup>1</sup> RCW 90.58

<sup>2</sup> RCW 36.70A

<sup>3</sup> Title 173-26 WAC

<sup>4</sup> Title 173-26 WAC

An amendment extending the contract was executed on December 10, 2013, and a second agreement entered on March 25, 2014.

9. Pacific County contracted with The Watershed Company (TWC) to provide development of the science-based elements of the SMP on February 25, 2014. An amendment to extend the contract was executed March 24, 2015. A second amendment to include GIS work was executed May 12, 2015, and a third amendment to include development and writing of the SMP document and supporting documents was entered on July 25, 2015. The fourth amendment, executed November 10, 2015, repealed Amendment #3 and expanded the scope of work and project budget.
10. The Pacific County Board of County Commissioners (BOCC) appointed a Shoreline Planning Committee (SPC) consisting of 21 members of various backgrounds. The SPC worked with subcommittees made up of individuals from the SPC and technical experts.
11. The Public Participation Plan was prepared by Creative Community Solutions, Inc., consistent with the grant contract. The Plan was approved by the BOCC in Resolution No. 2014-022 on May 27, 2014, and submitted to Ecology on August 5, 2014.
12. In accordance with WAC 173-26-201, Pacific County identified and assembled the most current, accurate, and complete scientific and technical information applicable to the shoreline issues of concern in Pacific County.
13. In accordance with WAC 173-26-201(3)(c) and (3)(d), Pacific County documented existing shoreline conditions and presented a baseline inventory and characterization of ecosystem-wide processes and shoreline ecological functions within the Shoreline Inventory, Analysis, and Characterization (SIAC) Report. The SIAC Report was submitted to Ecology on June 30, 2015.
14. The SPC and subcommittees conducted 43 public workshops and two (2) open houses beginning in 2014 and ending in 2016 to review all elements of the update.
15. Notices of public workshops, public hearings, and public comment periods were distributed, posted, and published per the requirements of Pacific County Procedural Ordinance No. 164. Notices were mailed or emailed to more than 115 individuals and agencies who requested to be placed on the distribution list. For open houses, notices were also posted in all public libraries and post offices in the County.
16. All drafts, including the final draft of the SMP, were available for public review and comment on the County's website.
17. The Planning Commission received 100 comment letters, e-mails, and oral testimony during the SMP public hearing process. All comments received, and testimony taken, were reviewed and considered during the preparation of the update.

18. The Planning Commission conducted ten (10) public meetings, workshops, and hearings during its review of the SMP Update:

<u>DATE:</u>	<u>MEETING TYPE:</u>	<u>MEETING PURPOSE:</u>
July 2, 2015	Public Meeting/Workshop	Overview of SMP Update Process
Sept. 3, 2015	Public Meeting/Workshop	Watershed Presentation SMP
Oct. 1, 2015	Public Meeting/Workshop	TNC HAT Presentation Watershed Presentation Use Matrix
Oct. 15, 2015	Public Meeting/Workshop	Review Shoreline Jurisdiction Review High Intensity Designation Review Utilities Review Vegetation Management
Dec. 3, 2015	Public Hearing	Review Section 3, Shoreline Jurisdiction Review Section 4, General Policies Review Section 7, Non-Conforming Uses
Jan. 7, 2016	Public Hearing	Review Section 5, Shoreline Uses and Modifications Review SED Maps
Jan. 21, 2016	Public Hearing	Review Section 6, Coastal Ocean
Feb. 4, 2016	Public Hearing	Review Section 1, Introduction Review Section 8, Administration
Feb. 18, 2016	Public Meeting/Workshop	Addressed Public Agency and Public Comments Review Updated HAT Data
Mar. 3, 2016	Public Hearing	Review Final Draft SMP Recommendation to the BOCC

19. The Pacific County Shoreline Master Program is consistent with the policies of the SMA as it:
- Fosters all reasonable and appropriate uses of the shoreline.
  - Provides for public access to the shoreline.
  - Protects shoreline ecological functions.
20. The Pacific County SMP is expected to result in no net loss of ecological function.
21. The Pacific County SMP is consistent with the Guidelines.
22. The Pacific County SMP advances achievement of GMA Goal 10 by regulating development on parcels with critical areas or their buffers in shoreline jurisdiction.

23. The process to develop the Pacific County SMP advanced GMA Goal 11 because it was based on early and continuous public participation. Comments were solicited through broadly disseminated informational notices, a project website, open houses, a dedicated e-mailbox, social media, and presentations to various groups, elected officials, and committee meetings.
24. Pacific County has begun an update of the Critical Areas and Resource Lands Ordinance and plans to complete the process in such time as the County completes the SMP update. The Pacific County SMP adopts the Critical Areas and Resource Lands Ordinance by reference.
25. Through the planning process, Pacific County defined ten shoreline environmental designations. Of those ten, nine are new to the existing SMP.
  - Rural Conservancy - The purpose of the “rural conservancy” environment is to protect ecological functions, conserve natural resources and valuable historic and cultural areas in order to provide for sustained resource uses, achieve natural flood plain processes, and provide recreational opportunities.
  - Shoreline Residential - The purpose of the “shoreline residential” environment is to accommodate residential development and appurtenant structures that are consistent with this Master Program. An additional purpose is to provide appropriate public access and recreational uses.
  - High Intensity - The purpose of the “high-intensity” environment is to provide for high-intensity water-oriented commercial, transportation, and industrial uses while protecting existing ecological functions and restoring ecological functions in areas that have been previously degraded.
  - Coastal Conservancy - The purpose of the “coastal conservancy” environment is to protect to the highest degree possible and, where feasible, restore coastal ocean shorelands within Pacific County; conserve wildlife; and manage the unique characteristics and resources of the shoreland areas, landward of the ordinary high water mark on the Pacific Ocean shorelines of Pacific County.
  - Willapa Bay Conservancy - The purpose of the “Willapa Bay conservancy” environment is to protect to the highest degree possible and, where feasible, restore Willapa Bay shorelands; conserve wildlife; and manage the unique characteristics and resources of the shoreland areas landward of the ordinary high water mark in Willapa Bay. Together with the Willapa Bay Estuary environment, an additional purpose of this environment is to provide for the diverse uses of the interconnected shorelines within Willapa Bay, which support aquaculture, residential, recreational, agriculture, forestry, and refuge/conservancy uses.
  - Coastal Ocean - The purpose of the “coastal ocean” environment is to recognize the biological productivity of the ocean environment and protect and conserve this environment to the highest degree possible, including but not limited to established pot, line, and net fishing grounds; migratory bird flyways; marine mammal migration

routes; fish and shellfish migration routes; fish and invertebrate habitat; and beaches through sand and littoral drift management below the ordinary high water mark.

- Coastal Ocean High Intensity - The purpose of the “coastal ocean high intensity” environment is to recognize the intensely-managed and closely-monitored shipping channel connecting the Columbia River and the Pacific Ocean, and to provide for commercial and recreational vessel traffic, dredging, and the disposal of dredge materials.
  - Willapa Bay Estuary - The purpose of the “Willapa Bay Estuary” environment is to protect to the highest degree possible and, where feasible, restore Willapa Bay waters and their underlying bedlands that include vital rearing and nursery habitat for fish and shellfish, such as Dungeness crab, salmonids, and sturgeon; and which require special attention for protection and preservation; and to manage the unique characteristics and resources of the areas waterward of the ordinary high water mark in Willapa Bay. Together with the Willapa Bay conservancy environment, an additional purpose of this environment is to provide for the diverse uses of the interconnected shorelines within Willapa Bay, which support aquaculture, residential, recreational, agriculture, forestry, and refuge/conservancy uses.
  - Columbia River Estuary - The purpose of the “Columbia River Estuary” environment is to protect and restore the ecological functions of the Columbia River waterway within Pacific County, including its associated wetlands, open space, floodplain, and other sensitive lands where they exist in both urban and undeveloped settings, including vital rearing and nursery habitat for fish and shellfish, such as Dungeness crab, salmonids, and sturgeon; and which require special attention to protect and preserve; while allowing for a variety of compatible uses. An additional purpose is to recognize and provide for priority uses, including but not limited to transportation, public access, and commercial and recreational uses including fishing.
  - Freshwater Aquatic - The purpose of the “freshwater aquatic” environment is to protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high water mark.
26. A use, development and modifications matrix (Table 5-1) was incorporated into the SMP that indicates what new, expanded, or altered shoreline activities, uses, developments, and modifications may be allowed or are prohibited in shoreline jurisdiction within each shoreline environment designation.
27. To increase consistency determining setbacks, the Planning Commission determined the Highest Astronomical Tide (HAT) as recorded at Nahcotta shall be used as a benchmark to establish setbacks and buffers for the protection of the western shore reaches of Willapa Bay Conservancy shorelines (specifically the eastern Long Beach Peninsula).
28. Water-oriented uses should be given priority over nonwater-oriented uses. Of water-oriented uses, priority shall be first given to water-dependent uses, followed by water-related and water-enjoyment uses with neither being more important than the other.

29. Preference is to be given to water-dependent commercial uses over non-water-dependent commercial uses. Water-related and water-enjoyment uses should be prioritized over non-water-oriented commercial uses.
30. Non-water-dependent commercial uses shall be prohibited over water except in existing structures or in the limited instances where they are auxiliary to and necessary in support of water-dependent uses, in which case they shall be considered conforming.
31. Commercial development over the water on Columbia River Estuary shorelines shall be located in areas of minimal currents and wave action. Floating structures shall be sited to prevent damage to natural vegetation and they shall not rest on the bottom during tidal cycles or periods of low flow.
32. Dredging and dredge disposal operations shall be located and conducted in a manner that will minimize interference with navigation, fishing, and other existing shoreline uses.
33. Dune modification shall be allowed only where it will not result in decreased protection of inland development from damage caused by storm surge, tsunamis, windblown sand, or flooding.
34. The width of the primary dune buffer shall be measured from the winter grass line, inland two hundred (200) feet, but not to extend beyond the landward (eastern) boundary of shoreline jurisdiction.
35. Existing sustainable uses, ecological and ecosystem functions and processes in the coastal zone, and public access to ocean waters should be protected and preserved for current and future generations.
36. Priority shall be given to shoreline uses that sustain the ecosystem or will not adversely impact renewable biological resources, public access, or existing uses or activities, or cause a net loss in ecosystem function.
37. New development on steep slopes or bluffs shall be set back sufficiently to ensure that shoreline stabilization is unlikely to be necessary during the life of the structure, as demonstrated by a geotechnical analysis.
38. New residential development adjacent to a water body supporting aquaculture operations shall install drainage and stormwater treatment facilities to prevent any adverse impacts to aquaculture operations. Such measures include but are not limited to vegetated swales, retention ponds, and the use of artificial or natural wetlands, provided no adverse impacts to the receiving wetlands would occur.
39. The 30 existing floating homes on North River are allowed to be maintained within the Open Water Moorage and Anchorage Area (OWMAA). New floating homes are prohibited.

40. In order to be more protective of existing ocean uses, including fishing, the County shall adopt a broad prohibition on fixed structures in its coastal areas, including a strict prohibition on permanent fixed structures in the Coastal Ocean environment, except for temporary structures may be permitted as a conditional use for a period of up to two years, with an option for a one year extension. The County will revisit policies and regulations regarding fixed structures in the Coastal Ocean and Willapa Bay Estuary environments to address new information and technology, including analyses and recommendations resulting from the marine spatial planning process per RCW 43.372, during scheduled periodic reviews of this Program under RCW 90.58.080.
41. All public Ports of Pacific County or other areas which support high-intensity uses related to commerce, transportation or navigation; or suitable and planned for high-intensity water oriented uses were designated as a "High-Intensity" environment.
42. Selective pruning of trees and mowing of vegetation for purposes of maintenance, invasive species management, or fire protection is allowed, provided that no vegetation shall be removed from critical areas, dunes, or their respective buffers without approval from the Administrator. Topping of trees for views is not allowed.
43. For the purposes of the SMP, the Surfside canals were evaluated and determined to be manmade structures (i.e. ditches), not formed from wetlands, and therefore, not regulated under the SMP.
44. Pacific County has complied with procedural and substantive requirements of Pacific County Environmental Review/SEPA Ordinance No. 166 and Chapter 197-11 WAC. (to be completed)
45. Pacific County issued a Threshold Determination of Non-Significance for the 2016 Pacific County Shoreline Master Program on -----.
46. The Washington State Department of Commerce was provided a 60-day notice of intent to adopt on -----.
47. The Planning Commission forwarded a recommendation of approval to the Board of County Commissioners on March 3, 2016.

## **CONCLUSIONS OF LAW**

1. The Proposed Pacific County Shoreline Master Program is consistent with and implements the goals, Policies, and requirements of the Washington State Shoreline Management Act, Washington State Growth Management Act, Washington State Shoreline Master Program Guidelines, and Pacific County Comprehensive Plan.
2. The Pacific County Shoreline Master Program as amended and the associated environmental review (forthcoming) comply with the goals and requirements of Chapter 90.58 RCW, Chapter

36.70A RCW, Chapter 365-195 WAC, Chapter 173-26 WAC, Chapter 197-11 WAC, and Pacific County Ordinance No. 166 (SEPA).

3. Legislation passed in 2004 (ESB 1933) clarified that critical areas within shorelines are to be “designated” under the GMA but “protected” by the SMP at a level that is “at least equal to” the County’s adopted Critical Areas Ordinance. This SMP responds to the environmental concerns raised during the public process, while protecting property owners from unconstitutional takings and substantive due process violations.

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