

SECTION 4

Regulatory Overview

Grays Harbor County regulates flood hazard management by implementing multiple federal, state, and local laws and permitting processes. While certain state and federal agencies such as the Department of Ecology (Ecology) and the U.S. Army Corps of Engineers (COE) have authority for some regulatory processes, such as compliance with the Shoreline Management Act and the Clean Water Act, the County has regulating authority for floodplain management through implementation of standards established in the local Zoning Code, Subdivision Ordinance, and Uniform Building Code. Table 4-1 summarizes the regulatory programs that have a role in flood hazard management, grouped into the following categories: floodplain management, resource management, and environmental management. A more detailed description of each regulation follows the table.

TABLE 4-1
Regulations Pertaining to Flood Hazard Management

Law	Brief Summary	Implementation
Floodplain Management		
National Flood Insurance Program (Federal)	Makes affordable flood insurance available to communities that have adopted approved floodplain management regulations.	By State and County/local through zoning and floodplain restrictions
Executive Order 11988 (Federal)	Mandates that agencies exercise to the extent permissible, the avoidance of adverse impacts from their activities in floodplains.	All levels
State Floodplain Management (State)	Adopts the NFIP minimum standards, and also prohibits new or substantially improved residential development in any designated floodway.	State (Ecology) and local through WAC Ch. 173-158, zoning and floodplain restrictions
Washington State Shoreline Management Act (SMA) (State)	Establishes priority of shoreline uses to preserve natural resources. Regulates development in shoreline area.	By State and County through WAC 173-16, 18, 20, 22, 26 and 27
Comprehensive Plan (County)	Gives long-range direction and guidance for systematic growth and development.	By County
Zoning Ordinance (County)	Regulates land uses and densities. Implements growth management policies of the Comprehensive Plan.	By County through zoning codes
Shoreline Master Program (County)	Mandated by the SMA as the principal planning tool to protect shoreline resources.	By County through WAC 173
Subdivision Ordinance (County)	Sets procedures for land division. Includes drainage plans and drainage system standards.	By County
Uniform Building Code (County adopts by ordinance)	Provides jurisdictions with an adoptable set of building regulations.	Building officials

TABLE 4-1
Regulations Pertaining to Flood Hazard Management

Law	Brief Summary	Implementation
Resource Management		
Executive Order 11990 (Federal) and Executive Order 90-40 (State)	Mandate that agencies exercise to the extent permissible, their powers to require mitigation, and condition, deny or appeal permits, for all adverse impacts to wetlands.	All levels
Section 401—Clean Water Act (Federal)	Federal permit prerequisite certification process for discharge into a water body. Important in the construction phase of flood hazard protection measures.	By Federal through 40 CFR, also State through WAC 173-201
Section 404—Clean Water Act (Federal)	Maintains the biological integrity of the nation's waters (including wetlands and adjacent tributaries) through actions such as the regulation of dredge/ fill materials.	By Federal (COE) through 40 CFR
Section 10—Rivers and Harbors Act (Federal)	Prohibits unauthorized obstruction or alteration of navigable US waters.	By Federal (COE) through 33 CFR 320-330
Endangered Species Act	To conserve and recover listed species. Designates "critical habitat" for conservation of listed species. Recovery plans developed to restore a species to health.	By Federal (USFWS, NMFS); coordinated with State, County and local.
Hydraulic Code (State)	Preserves fish and wildlife by requiring a permit for any work using, diverting, or changing the flow or bed of any waters of the State.	By State (DFW) through WAC 220-110 and Hydraulic Permit Approval
Stormwater Management Manual	Includes guidance on surface water and stormwater management Best Management Practices.	By State Dept. of Ecology
Environmental Management		
National Environmental Policy Act (Federal)	Requires Federal agencies to consider environmental impacts of projects requiring agency permits.	By Federal and CEQ through 40 CFR 1500-1508
Washington State Environmental Policy Act (State)	Requires agencies to determine (and make information available to the public about) the environmental impact of actions for which they issue permits. For significant adverse impacts, agencies mandated to require mitigation.	By State (Dept. of Ecology) through WAC 197-11 and WAC 400-04-902

CEQ	=	Council on Environmental Quality
CFR	=	Code of Federal Regulations
COE	=	Army Corp of Engineers
Ecology	=	Washington State Department of Ecology
USC	=	United States Code
WAC	=	Washington Administrative Code
WDFW	=	Washington State Department of Fish and Wildlife

Floodplain Management

This section briefly describes the federal, state, and local regulations, policies, and programs that are intended to protect life, property, and environmental resources through low-cost insurance, flood hazard management, and land use planning.

Federal Involvement

National Flood Insurance Program (42 U.S.C. 4001-4128)

The National Flood Insurance Program (NFIP) makes affordable flood insurance available to communities that have adopted approved floodplain management regulations. The NFIP administers the regular program and the emergency program. The regular program provides full flood insurance to communities that have adopted a local floodplain management ordinance approved by FEMA. The emergency program provides limited amounts of flood insurance to communities that adopt minimum floodplain management regulations based on a Flood Hazard Boundary Map. Grays Harbor County participates in the NFIP, and uses a Flood Insurance Study conducted in 1986 as the basis for its flood insurance program.

Federal Executive Order 11988—Floodplain Management (40 CFR 6030)

Executive Order 11988 mandates that all Federal agencies avoid short-term and long-term adverse impacts, to the extent permissible, associated with occupancy and modification of floodplains. Federal agencies shall take action to reduce the risk of flood loss and hazards; plan for, evaluate alternatives for, and provide budget requests for flood hazard and floodplain management; and provide the opportunity for early public review of any plans or proposals for actions in floodplains.

State Involvement

Washington State Floodplain Management Act (RCW 86.16; WAC 173-158)

The Washington State Floodplain Management Act sets up a system of state permits for development in floodplains and establishes state coordination and oversight of local government flood management activities pursuant to the NFIP. The Act adopts the NFIP minimum standards and goes beyond those standards by prohibiting new or substantially improved residential development in any designated floodway. The requirements of the Act are implemented through local zoning and floodplain restrictions. Local floodplain management ordinances typically contain floodway designations, special flood hazard areas, and specific development regulations intended to minimize losses due to flooding. The Washington Department of Ecology reviews and approves local floodplain management regulations and ordinances for consistency with the Act.

Washington State Participation in Flood Control Maintenance (RCW 86.26, Chapter 173-145 WAC)

Through the Flood Control Assistance Account Program, Ecology provides grants to local governments for comprehensive flood hazard management planning and construction of flood damage reduction projects.

In addition to administering the above laws, Ecology:

- Reviews and approves local Comprehensive Flood Hazard Management Plans
- Inspects construction of flood damage reduction projects
- Develops and implements statewide policies on floodplain management
- Provides technical assistance to local governments and agency staff
- Coordinates with local governments on the NFIP

Washington State Shoreline Management Act (RCW 90.58; WAC 173-16, 18, 20, 22, 26 and 27)

The purpose of the Washington State Shoreline Management Act (SMA) is to protect the state's shorelines, the quality of the water, and the natural environment. The SMA establishes priority of shoreline uses and regulates development in shoreline areas to preserve natural resources.

The SMA applies to:

- All marine waters
- Streams with a mean annual flow greater than 20 cubic feet per second
- Water areas of the state larger than 20 acres
- Upland areas called "shorelands" 200 feet from the edge of these waters

The SMA also applies to the following when they are associated with one of the above:

- Biological wetlands and river deltas
- Some or all of the 100-year floodplain including all wetlands within the floodplain

The SMA requires permits for any "substantial development" within the County's Shoreline Master Program jurisdiction (see Local Involvement below).

Local Involvement

Grays Harbor County Comprehensive Plan

Although Grays Harbor County is not required to plan under the Growth Management Act (GMA), the County recognizes the importance of comprehensive planning and incorporating the aspects of the GMA that are relevant to local needs and circumstances. The Grays Harbor County Comprehensive Plan gives long-range direction and guidance for growth and development, and for cooperatively developing "county-wide planning policies" with other local jurisdictions in the County. The Plan is nonregulatory, and its purpose is to provide goals, objectives, and policy statements that are met through various ordinances. Its planning goals specifically address Resource Lands and Critical Areas including wetlands, aquifer recharge areas, fish and wildlife habitat, frequently flooded areas, and geologically hazardous areas. The Comprehensive Plan directs the County to adopt development regulations to preclude land uses or development incompatible with those critical areas. The County is in the process of updating its Comprehensive Plan.

Grays Harbor County Comprehensive Zoning Ordinance No. 38

The County's zoning ordinance implements the growth management policies of the Comprehensive Plan and regulates land uses and densities through zoning codes. Land use zones are determined by considering environmental constraints including flooding. Zoning

regulations are a useful tool in flood hazard management by setting density and development standards to minimize the effect on floodplains.

To comply with the floodplain management requirements for participation in the NFIP, the County adopted a Combining District, Chapter 13.07 of the zoning ordinance, that contains policies to guide the use and development of frequently flooded areas. The Floodplain Combining District includes all "areas of special flood hazard" (land in the floodplain subject to the 100-year flood event) identified on the FEMA Flood Insurance Rate Maps (FIRMs).

All development proposals within the Floodplain District shall be consistent with the need to minimize flood damage and shall provide adequate drainage to reduce exposure to flood hazards. Development must not "adversely affect" the flood-carrying capacity of the area of special flood hazard. "Adversely affects" means the cumulative effect of proposed development, combined with all other existing and anticipated development, will not increase the water-surface elevation of the base flood more than one foot at any point. A permit must be obtained for any construction or development within the Floodplain District. Permit applications (to be reviewed by the Planning Department, and by the County Engineer in some cases) must include:

- Structure elevation data
- Structure flood-proofing elevation (for non-residential structures)
- Certification of flood-proofing by a professional engineer or architect
- Listing of other Federal and State required permits (e.g., Section 404 of the Clean Water Act, Shoreline Management Act), and evidence of permit receipt
- Description of any proposed watercourse alteration/relocation

All new construction and substantial improvements in the Floodplain District must be constructed using methods and with materials resistant to flood damage. New residential structures must have the lowest floor, including basement, elevated to base flood elevation. New non-residential structures must have the lowest floor, including basement, elevated to base flood elevation, or have the structure flood-proofed below the base-flood level.

Fill, new construction, substantial development and other development (except for certain repair or reconstruction projects) are prohibited in the floodway.

All new construction within a coastal high-hazard area shall be located landward of the reach of mean high-tide and shall be elevated on pilings or columns.

The Board of Adjustment hears all applications for variances in the Floodplain District. Variances may be issued for new construction and substantial improvements on lots of ½-acre or less surrounded by other lots with structures below the base-flood level. Variances will not be issued within a designated floodway if any increase in flood-levels during the base-flood discharge would result. Variances shall only be issued with:

- A showing of good and sufficient cause

- A determination that failure to grant the variance would result in exceptional hardship to the applicant
- A determination that the granting of a variance will not result in increased flood-heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with local laws or ordinances

The Planning Department must maintain a record of all variances from the Floodplain District regulations, including justification for those variance decisions, and report them to the Federal Insurance Administrator.

Grays Harbor County Shoreline Master Program (implemented by the County through WAC 173-16)

The Shoreline Management Act requires that each city and county adopt a Shoreline Master Program (SMP) as an element of its comprehensive plan and development regulations to protect shoreline resources. The SMP is based on state guidelines but is tailored to the specific needs of the community. Local SMP regulations establish standards that projects in shoreline areas must meet. Ecology has the authority to review local programs and permit decisions.

Shoreline Master Programs are extremely useful in flood hazard management planning. Local SMP regulations are used in conjunction with zoning regulations and, therefore, can be used to guide future development within the floodplain and its watersheds. The SMP directs land use and activities along shorelines, sets design criteria to ensure best management practices, and provides an enforcement mechanism that will be backed by Ecology.

Substantial Development Permits are needed for shoreline projects that cost more than \$2,500, or those that materially interfere with the public's use of the waters. Local governments may issue conditional use permits or variances to allow flexibility and may give consideration to special circumstances. Ecology must approve all conditional use permits and variances from SMP regulations. The following development activities are exempted from the need for a substantial development permit, but must still comply with all other local SMP regulations:

- Single-family residences
- Normal protective bulkheads for single-family residences
- Normal maintenance and repair of existing structures
- Normal farming activities
- Emergency construction needed to protect private property

New SMA guidelines (WAC 173-26) were adopted by Ecology in November 2000. Local governments are expected to prepare updated SMPs based on the new guidelines by November 2002. The new guidelines include a two-path approach that gives cities and counties a choice in how they write and implement their updated SMP. Path A allows local governments flexibility and creativity in how they meet the standards of the SMA. Path B contains specific measures for protecting shoreline functions. The National Marine Fisheries Service and the U.S. Fish and Wildlife Service have agreed that any local SMP that complies

with Path B will automatically be in compliance with provisions of the Endangered Species Act.

Path A allows local governments to use buffer requirements as one way to protect ecological functions of shorelines. Path B is more specific in how local governments protect these functions. New structures or activities that are not "water dependent" must be set back from the edge of water bodies to protect the quality and natural functions of the shoreline, and to protect people and businesses from floods. Natural vegetation along shorelines must be preserved to help prevent erosion and to provide habitat for aquatic life, such as endangered salmon.

Both Path A and Path B require local governments to maintain records of project review actions in shoreline areas. In addition, Path B also requires Ecology and participating local governments to conduct a program of site inspections and reporting for all developments. Both Path A and Path B of the 2000 guidelines rely on existing enforcement provisions (WAC 173-27) for shoreline permits.

The new Shoreline Management guidelines have been challenged. However, at the time of this printing, the new guidelines remain official.

Grays Harbor County Subdivision Ordinance

The County's subdivision code sets procedures for dividing land into smaller parcels. Subdivision standards include drainage plans and drainage system standards that specify the criteria for collection, storage, and discharge of runoff from subdivisions. The code's standards are linked to the County's zoning code and are similarly limited by environmental constraints including flood hazards. The County's subdivision ordinance has stormwater management regulations that limit the effects of new development. These regulations apply to long-, short-, and large-lot subdivision developments, as well as to mobile home parks, recreational vehicle parks, and commercial and industrial developments.

Grays Harbor County Uniform Building Code

The Uniform Building Code (UBC) provides the County with a set of building regulations that are enforced by Building Officials, in conjunction with other regulations such as zoning. In low-lying areas prone to flooding, the UBC regulates excavation and filling on private property and ensures proper floodproofing of new construction.

Resource Management

Various federal, state, and local regulations are used to preserve and protect sensitive natural resources from degradation. Wetlands that serve important functions, such as flood storage, groundwater recharge, water quality maintenance, and fish and wildlife habitat, are under the jurisdiction of local, state, and federal permitting agencies. The federal, state, and local programs that affect resource management are discussed briefly below.

Federal Involvement

Federal Executive Order 11990—Protection of Wetlands

Executive Order 11990 is intended to prevent new construction in wetlands wherever there is a practicable alternative. The order mandates that agencies require mitigation, to the extent permissible, and condition, deny, or appeal permits for all short-term and long-term adverse effects associated with destruction or modification of wetlands.

Section 401—Clean Water Act (40 CFR, implemented by Ecology through WAC 173-201)

Section 401 requires a federal permit prerequisite certification process for discharges into a water body. Section 401 certifications are an important part of the permitting process required through Section 404 of the Clean Water Act. Ecology certifies the discharge materials, ensuring compliance with discharge limitations, water quality standards, and any other applicable conditions of state law. This permit process is important in the construction phase of flood hazard protection measures. Typical structural flood control measures have the potential to temporarily create excess instream turbidity that will require a Temporary Modification of Water Quality Criteria from Ecology before a water quality certification will be issued.

Section 404 of the Federal Clean Water Act (40 CFR)

Section 404 requires a permit from the COE for any project that alters or degrades the waters of the United States. This includes projects that propose to discharge dredge or fill material in navigable waters and their adjacent wetlands and tributaries.

Section 10—Rivers and Harbors Act (33 CFR 320-330)

The Rivers and Harbors Act prohibits unauthorized obstruction or alteration of navigable U.S. waters without a permit from the COE. Section 10 review often occurs simultaneously with the Section 404 permitting process and includes consideration of navigable waters, flood control, fish and wildlife management, and environmental effects.

Endangered Species Act (7 U.S.C. 136; 16 U.S.C. 460 et seq.)

The purpose of the Endangered Species Act (ESA) is to conserve "the ecosystems upon which endangered and threatened species depend" and to conserve and recover listed species. The U.S. Fish and Wildlife Service, in the Department of the Interior, and the National Marine Fisheries Service, in the Department of Commerce, share responsibility for administration of the ESA. Before a plant or animal species can receive protection under the ESA, it must first be placed on the Federal list of endangered and threatened wildlife and plants. The listing program follows a strict legal process to determine whether to list a species, depending on the degree of threat it faces. An "endangered" species is one that is in danger of extinction throughout all or a significant portion of its range. A "threatened" species is one that is likely to become endangered in the foreseeable future. The Services also maintain a list of species that are candidates or proposed for possible addition to the Federal list. All of the Services' actions, from proposals to listings to removals ("delisting"), are announced in the *Federal Register*.

Only one fish species has been formally listed to date within the County. Bull trout have been listed as a threatened species in the Chehalis River and its tributary rivers. Coastal

cutthroat trout have been proposed as a threatened species, and Coho salmon have been identified as a candidate species for listing. Other fish species may be identified by the agencies for listing in the future.

The ESA designates "critical habitat" areas for conservation of listed species. These areas may require special management considerations or protection. Section 9 of the ESA makes it unlawful to "take" a listed species. A "take" of listed fish species may include any activity that significantly modifies or degrades habitat for that species. The ESA's ultimate goal is to "recover" species so they no longer need protection under the Act. The law provides for recovery plans to be developed describing the steps needed to restore a species to health. NMFS has published rules under Section 4 of the ESA (the "4(d) rule") that would offer protection to local jurisdictions' programs by authorizing certain activities that do not threaten listed species. The County's regulations and ordinances related to surface water and stormwater management are subject to review for compliance with the 4(d) rule. The County may choose to revise some of these regulations and ordinances to ensure 4(d) compliance.

State Involvement

Washington State Executive Order 90-40—Protection of Wetlands

Executive Order 90-40 mandates that all state agencies rigorously enforce their existing authorities to protect wetland functions and values. Mitigation for all agency actions affecting wetlands is required under SEPA authority, to the extent permissible.

Ecology conducts the following activities for wetlands management:

- Assisting and coordinating with local, state, and federal agencies in reviewing projects involving wetlands
- Assisting local governments in developing and supporting Critical Area Ordinances
- Providing technical assistance to sustain multiple environmental benefits, including aquifer recharge, water quality, flood reduction, and fish and wildlife habitat protection
- Developing new approaches and methods for managing and restoring wetlands and other aquatic resources (i.e., wetland restoration programs, watershed-based management plans, voluntary landowner restoration)
- Developing a wetlands stewardship program to provide multi-agency expertise and non-regulatory alternatives for wetlands protection to communities
- Enhancing public awareness and understanding of the benefits of preserving and restoring wetlands

Washington State Hydraulic Code (RCW 75.20.100-103; WAC 220-110)

The purpose of the Hydraulic Code is to preserve fish and wildlife habitat by regulating activities within the state's salt and fresh waters. The Washington Department of Fish and Wildlife requires a Hydraulic Project Approval permit for any work using, diverting, obstructing, or changing the flow or bed of any waters of the State, including many wetlands.

Stormwater Management Manual for the Puget Sound Basin

The Manual includes Best Management Practices for surface water and stormwater management, including water quality and water quantity controls. Although not required to implement the Manual, Grays Harbor County refers to the manual's recommended practices for guidance.

Local Involvement

Counties and cities are required by the GMA to classify and designate wetlands as critical areas. Local regulations with authority over wetlands include the County's SMP, subdivision regulations, on-site septic system standards, UBC, and SEPA review (RCW 43.21).

Environmental Management

Federal and state programs provide a strong foundation for management of the environment, including natural resources, fish and wildlife and their habitats, and recreational resources. Landmark laws such as the National Environmental Policy Act (NEPA) and the State Environmental Policy Act (SEPA) ensure rigorous examination of proposed development projects to minimize adverse environmental impacts.

Federal Involvement

National Environmental Policy Act (NEPA) (40 CFR 1500-1508)

NEPA requires Federal agencies to consider the environmental impacts of development projects that require agency permits and approval. The NEPA process stresses full disclosure of environmental impacts along with technical and economic considerations of a development project. Prior to an agency decision, NEPA activities include managing the preparation of environmental impact statements for major projects that consider alternative ways to mitigate, reducing or avoiding harmful environmental impacts. Generally, all structural and bioengineering flood control projects are federally funded and must comply with NEPA requirements.

State Involvement

State Environmental Policy Act (SEPA) (RCW 43.21, WAC 197-11, WAC 400-04-902)

SEPA, similar to NEPA, directs state and local agency decisionmakers to consider the environmental impacts of development projects. SEPA requires full disclosure of likely significant adverse impacts of a proposed action and a mitigation plan for those impacts.

Environmental Permit Assistance Act (RCW 90.60)

The Environmental Permit Assistance Act establishes the Permit Assistance Center to help businesses, citizens, and government agencies comply with environmental permitting requirements. The Permit Assistance Center works with federal, state, and local permitting agencies to facilitate timely and coordinated project permitting.