

Shoreline Study Consensus
Due to State Board: **January 16, 2023**

Introduction

The Shoreline study was adopted at the 2019 LWVWA convention. It is now ready for member study and discussion. The consensus derived from this process will be used to develop a LWVWA position which both the state and local Leagues can use to advocate for changes to public policy.

Consensus is member agreement reached after study and discussion. It is not a simple majority, nor is it necessarily unanimity; rather, it is the overall sense of the group as expressed through the exchange of ideas and opinions. Consensus is not a vote or a poll. However, a show of hands may be used to determine the sense of the group. Local League boards submit a single consensus statement to LWVWA that captures the responses to the consensus questions from their members.

We have added discussion questions to help get the conversation started. While the responses to the consensus questions are the basis for a League position, consensus may arise from the discussion questions as well. Discussion questions are optional. Note any major points related to the discussion question in the box provided if you wish. Place comments related to the consensus questions in the Comments box. All of this information will be used to draft a LWVWA position.

To assist in the discussion, we have noted where in the study you can find information pertaining to the question.

Thank you!

ENVIRONMENTAL PROTECTION

One of the issues that some interviewees raised is whether the goal of environmental protection should outweigh the other policy goals of public access, fostering all reasonable and appropriate uses and a preference for certain shoreline uses. The Legislative Findings, RCW 90.58.020, set forth policy goals for the Shoreline Management Act. These include:

- (1) planning and fostering all reasonable and appropriate uses, in a manner that protects against adverse impacts;
- (2) ensuring public access to the shorelines; and
- (3) creating a preference for water-dependent uses.

The Ecology Guidelines note: "Through numerous references to and emphasis on the maintenance, protection, restoration, and preservation of "fragile" shoreline "natural resources," "public health," "the land and its vegetation and wildlife," "the waters and their aquatic life," "ecology," and "environment," the act makes protection of the shoreline environment an essential statewide policy goal consistent with the other policy goals of the act." WAC 173-26-186(8).

However, the guidelines also state: "To the extent consistent with the policy and use preference of RCW 90.58.020, this chapter (chapter 173-26 WAC), and these principles, local governments have reasonable discretion to balance the various policy goals of this chapter, in light of other relevant local, state, and federal regulatory and

nonregulatory programs, and to modify master programs to reflect changing circumstances.” WAC 173-26-186(9). See pages 32-37; 24-28; 42-43.

Discussion question #1: How would you balance the policy goals for the Shoreline Management Act? Why? If the goals are weighted, what is most important? How do other laws (e.g., State Environmental Policy Act) fit in?

Consensus question #1: Should the LWVWA take a position that the policy goals do not have equal weight, and that the protection of the shoreline environment is more important than the policies of public access and fostering reasonable and appropriate uses and preferred uses?

Strongly Agree Agree No opinion Disagree Strongly Disagree

Comments:

CLIMATE CHANGE

Currently no requirement exists that local shoreline master plans consider or plan for climate change effects. While there is a requirement for a program element regarding the prevention and minimization of flood damages, there is no corollary requirement for other impacts of climate change, including sea level rise. Ecology has issued guidance for planning for climate change and some local jurisdictions are incorporating it in their plans, but there is no mandate to do so. See pages 52-54.

Discussion question #2: What is the cost/benefit of a mandate for local governments to comply with Ecology guidelines? Are there other vehicles to address climate change?

Consensus question #2: The League should take a position that the SMA, its implementing regulations and guidelines require that all local master plans include an element to address and plan for climate change impacts.

Strongly agree Agree No opinion Disagree Strongly disagree

Comments:

NO NET LOSS/NET GAIN

The governing principles of the SMA include a requirement that local master programs shall include policies and regulations that meet a standard of “no net loss” of ecological functions. Simply stated, the no net loss standard is designed to halt the introduction of new impacts to shoreline ecological functions resulting from new development and the existing condition of shoreline ecological functions should remain the same. Both protection and restoration are needed to achieve no net loss.

When the Department of Ecology approves a local shoreline master program, it is presumed that all actions approved under that plan will result in No Net Loss of ecological functions. Local programs are required to include restoration and monitoring plans, but there is no requirement to review or document whether a no net loss standard is being achieved over time, even in periodic updates. See pages 17-20; 43-44.

Discussion question #3: How does the cumulative effects analysis factor in? Should current projects be made to create gain where others' prior projects have created a loss (fairness)?

Consensus question #3: Should the LWVWA take a position that local governments must periodically assess and report whether the no net loss standard is being achieved?

Strongly Agree Agree No opinion Disagree Strongly disagree

Comments:

NO NET LOSS/NET GAIN Continued

The governing principles of the SMA include a requirement that local master programs shall include policies and regulations that meet a standard of "no net loss" of ecological functions. Despite this standard, many of the stakeholders interviewed believed that shoreline ecological systems have continued to degrade and that restoration efforts are not keeping up with the loss of ecological functions. See pages 39-40.

Discussion question #4: What do you see as key differences between 'no net loss' and 'net gain'? What concerns do you have about degradation of shoreline ecological systems? Do you think the no net loss standard is adequate? Is it being implemented correctly?

Consensus question #4: Should the League take the position that the standard for "no net loss" of ecological functions is inadequate and that the standard for local master programs should be a "net gain" standard for protection of ecological functions?

Strongly agree Agree No Opinion Disagree Strongly disagree

Comments:

LOCAL GOVERNMENT FUNDING

Funding for local shoreline programs is always limited. Local governments have many concerns regarding unfunded mandates. Adequate funding would enhance shoreline programs in the areas of training and enforcement, which are often cut when revenue is short. See pages 44-45; 49-52; 55-58.

Discussion question #5: What are the costs and benefits of funding shoreline management mandates? Where should this funding come from?

Consensus question #5: Should the League take a position that the state must provide more funding sources dedicated specifically for training and enforcement?

Strongly agree Agree No opinion 4 Disagree Strongly disagree

Comments:

EXEMPTIONS

The SMA includes a number of “exemptions” for shoreline permits. Exemptions are to be construed narrowly and exempt projects must still comply with the SMA. A letter of exemption is required to be issued only where there is also a federal Army Corps of Engineers permit or a Section 404 permit involved. WAC 173-27-050. Although the Ecology Shoreline Permitting Manual recommends that local governments document all granted exemptions in a letter of exemption and encourages submittal to Ecology, it is not required. See pages 21-22; 40-41.

Discussion question #6: How will requiring local governments to document exemptions help protect our shorelines?

Consensus Question # 6: Should the League take a position that local governments should be required to prepare and submit letters of exemption to Ecology for tracking purposes?

Strongly Agree Agree No opinion Disagree Strongly disagree

Comments:

STATE OVERSIGHT

The SMA is administered jointly by the state Department of Ecology and local governments. Ecology must approve all local shoreline master programs. At the permitting level, Ecology must approve conditional use permits (CUPs) and variances, but not exemptions or shoreline substantial development permits (SDPs). Some local governments have sought to streamline permit processes by reducing requirements for conditional use permits and allowing more exemptions and administrative permits. Such streamlining could lead to a less thorough review by the local government and less oversight by Ecology. See pages 20-21; 55.

Discussion Question #7: Is DOE oversight an appropriate tool for protecting state shorelines? Are there any other ways to ensure consistency among local jurisdictions implementation of their SMPs? What would an expanded oversight role look like?

Consensus question #7: Should the LWVWA take a position that Ecology’s oversight role should be expanded to require periodic checks or “audits” on local governments shoreline programs, particularly the implementation through the granting of permits and exemptions?

Strongly agree Agree No opinion Disagree Strongly disagree

Comments:

PREFERRED USES

The Legislature stated that preferred uses are those that are “consistent with control of pollution and prevention of damage to the natural environment or are unique to or dependent upon the use of the shoreline” RCW 90.58.020. Priority must be given to

single-family residences, ports, and shoreline recreational uses including but not limited to, parks, marinas, and piers. Priority must also be given to other improvements facilitating the following:

- 1) public access to shorelines of the state,
- 2) industrial and commercial developments that are particularly dependent on their location on, or use of, the shorelines of the state, and
- 3) other development providing opportunities for people to enjoy the shorelines of the state. Dramatic changes have occurred to the types of uses dependent on the shoreline over the years, yet the language in the preferred uses statute has been in place since 1971 and has not changed.

See pages 14; 35-57; 46-49.

Discussion question #8: What are some non-preferred uses? Are there some water-dependent uses that should no longer be considered “preferred”?

Consensus question #8: Should the League take the position that Ecology review and amend its guidelines, if warranted, regarding “preferred uses”?

Strongly agree Agree No opinion Disagree Strongly disagree

Comments:

PUBLIC ACCESS

It is difficult for local governments to require the provision of public access as a condition of a permit, due to constitutional limitations. Therefore, most public access points are publicly owned, and expansion of shoreline access points can be expensive. Population growth has, and will continue to, limit existing public access opportunities. See pages 50-52.

Discussion question #9: How have you enjoyed public access to Washington state shorelines? How does public access as a priority fit into other priorities?

Consensus question #9: Should the League take a position that the state must provide additional funding sources dedicated specifically for the state and local governments to provide more public access to shorelines?

Strongly agree Agree No opinion Disagree Strongly disagree

Comments:

Are there any other issues that your League believes the LWVWA should address as part of the consensus process leading to a position on Shorelines. Please explain.