Critical areas in shoreline jurisdiction

Local governments may extend shoreline jurisdiction to **include lands necessary for buffers for critical areas.** There are two options:

- **OPTION 1**: Where a critical area or its buffer lies partly within the SMA jurisdictional limit, the local government may extend its shoreline jurisdiction to include the entire critical area and all lands necessary for buffers (see RCW 90.58.030 (2)(f)(ii)). If the local government extends jurisdiction in this manner, the SMP alone will provide protections for these critical areas. The Critical Areas Ordinance (CAO) will not apply within shoreline jurisdiction. Extending shoreline jurisdiction to all critical areas that lay partly in and partly out of shoreline jurisdiction can simplify the permitting process.

  For example, marine bluffs may be designated as Geological Hazard Areas under the local CAO. Bluffs and their buffers may extend beyond the usual 200 foot shoreline jurisdiction. Local governments have the option to extend shoreline jurisdiction to include the entire bluff and its buffer area – allowing the entire shoreline vicinity to be regulated under the SMP (rather than having both the CAO and SMP apply to portions of the bluff.)

- **OPTION 2**: If the local government chooses not to extend its shoreline jurisdiction under RCW 90.58.030(2)(f)(ii), the CAO will protect the entire critical area and its buffers (see RCW 36.70A.480(6)). The CAO will continue to apply to the entire critical area and its buffers, even after SMP approval. **However, the SMP will <u>also</u> apply to the portion(s) of the critical area and its buffers that lie within shoreline jurisdiction**. This means the subject critical area and some or all of its buffers will have "dual coverage" with regulation by both the SMP and the CAO.

RCW 36.70A.480(3)(b) Except as otherwise provided in (c) of this subsection, development regulations adopted under this chapter to protect critical areas within shorelines of the state apply within shorelines of the state until the department of ecology approves one of the following: A comprehensive master program update, as defined in RCW 90.58.030; a segment of a master program relating to critical areas, as provided in RCW 90.58.090; or a new or amended master program approved by the department of ecology on or after March 1, 2002, as provided in RCW 90.58.080. The adoption or update of development regulations to protect critical areas under this chapter prior to department of ecology approval of a master program update as provided in this subsection is not a comprehensive or segment update to the master program

(d) Upon department of ecology approval of a shoreline master program or critical area segment of a shoreline master program, critical areas within shorelines of the state are protected under chapter 90.58 RCW and are not subject to the procedural and substantive requirements of this chapter, except as provided in subsection (6) of this section.

(6) If a local jurisdiction's master program does not include land necessary for buffers for critical areas that occur within shorelines of the state, as authorized by RCW 90.58.030(2)(f), then the local jurisdiction shall continue to regulate those critical areas and their required buffers pursuant to RCW 36.70A.060(2).

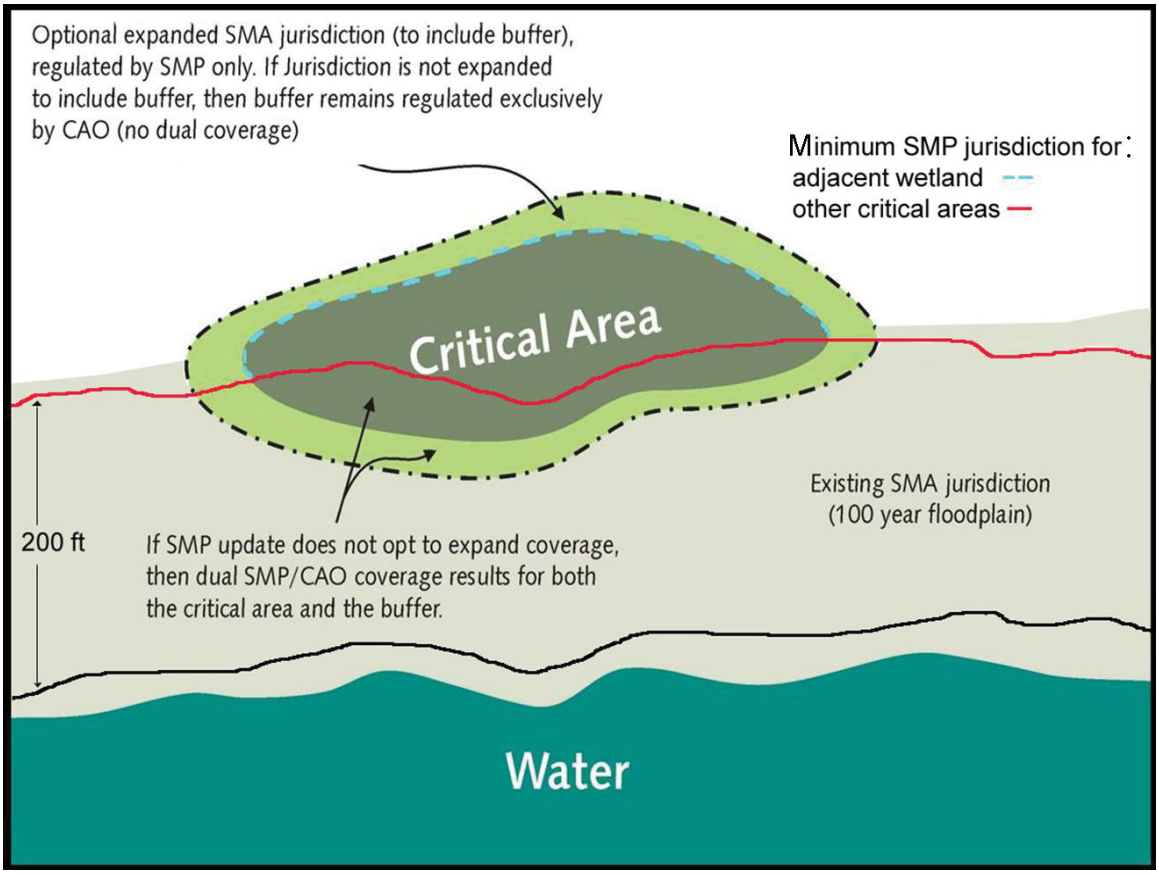

Figure 5-16: Local governments have the option to expand SMA jurisdiction to include lands necessary for buffers for critical areas.

To minimize confusion about what regulations apply to shoreline critical areas, Ecology recommends that local governments resolve the issue early during their SMP update process. Extending jurisdiction as described in Option 1 would eliminate overlapping regulations and streamline the shoreline permitting process. Local governments can extend SMA jurisdiction per critical area. In this manner, you can extend jurisdiction to specific critical areas where dual regulatory coverage would be confusing.

Associated wetlands and river deltas

RCW 90.58.030(2)(f: "Shorelands" or "shoreland areas" (includes)… all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter;

"Associated wetlands" are those wetlands that are in proximity to and either influence or are influenced by tidal waters or a lake or stream subject to the SMA. River deltas associated with shorelines of the state are also subject to the SMA, except for those lands protected from floodwaters by authorized flood control devices. Deltas are created at the mouth of a river where it enters a larger water body.

The **entire** wetland or natural river delta is "associated" **if any part** of it lies within the area 200 feet from the ordinary

high water mark or within the floodplain landward 200 feet of the floodway, including wetlands that extend above, or upstream of, the 20cfs point. From an ecological standpoint, it makes sense to manage a wetland as a single system.

Factors used to determine whether wetlands meet the "proximity and influence" test include but are not limited to one or more of the following:

- Periodic inundation.
- Hydraulic continuity.
- On marine waters, formation by tidally influenced geohydraulic processes, or a surface connection through a culvert or tide gate.

On streams, the entire wetland is associated if any part is located within the 100-year floodplain of a shoreline or within 200 feet of the OHWM or floodway.

Consider all factors together when determining “association.” A wetland's hydrology does not have to be in a defined channel to be considered “associated.” Hydraulic continuity clues include undrained hydric soils contiguous with the water body, and sheet flow from the site during or following precipitation events.

In some cases, wetlands *outside* the 100-year floodplain *may* be “associated” if they are hydraulically connected with shoreline waters through surface or subsurface flows.

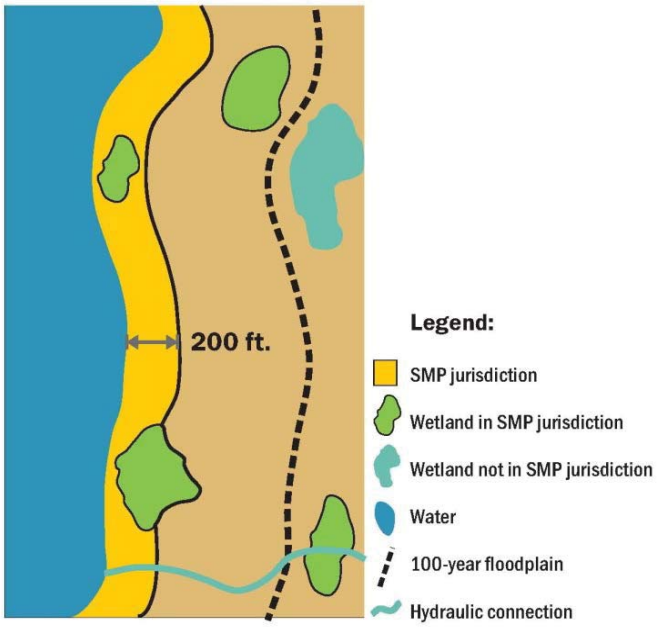

Figure 5-17: Wetlands in shoreline jurisdiction are either fully or partially within 200 feet of the OHWM, within the floodplain, or associated through hydraulic continuity.

In coastal systems, all wetlands behind the primary dune are “associated” with the larger water body (e.g., ocean, bay). Wetlands behind the second dune must have direct hydrologic (surface) connection or be part of a continuum of associated wetlands to be associated.

A road, dike or other barrier between the shoreline and the wetland does not necessarily preclude hydraulic continuity. If there is an *obvious topographic break* from the elevation of the water body (excluding natural or man-made berms), the wetland is probably *not* “associated.”

Ecology's Wetland Rating System and other technical reports provide additional guidance on determining appropriate hydrologic boundaries on wetlands. See http://www.ecy.wa.gov/biblio/wetlands.html

Non SMA streams flowing into SMA water bodies

In many municipalities, non SMA streams with a mean annual flow under 20 cfs flow into water bodies such as rivers, lakes and marine waters that are regulated under the SMA. The portion of streams within a shoreland as defined by the SMP will be subject to SMP regulations.

Shoreline jurisdiction for these streams will vary, depending on the immediate circumstances.

- The portion of the stream within 200 feet of the OHWM of the SMA water body will be in shoreline jurisdiction, and the SMP will apply.
- Portions of non-SMA streams that flow through floodplains within shoreline jurisdiction would be regulated by the SMP.
- If the non-SMA stream flows into the delta of a river under the SMA, the non-SMA stream within the river delta shoreland would be regulated by the SMP.
- For-non-SMA streams that flow into marine waters. For these streams, the extension of the marine tidal waters upstream will affect shoreline jurisdiction. "*Where a stream enters the tidal water, the tidal water is bounded by the extension of the elevation of the marine ordinary high water mark within the stream"* [WAC 173-22-030(16)]. The extension of the elevation of the marine OHWM might extend a short distance to a mile or more upstream. In such cases, shoreline jurisdiction would include the area within 200 feet of the OHWM of the section of the stream with tidal water as defined above.

Outside of shoreline jurisdiction, buffers established by the critical areas ordinance would apply.