

CHAPTER TWO

Related Programs and Regulations

The Pierce County basin plans are implemented within a framework provided by existing federal, state, and local policies, laws, regulations, and programs. The existing regulatory framework is described in detail in Chapter 3 of Pierce County's *Guidance for Basin Planning* (Pierce County 2000). The major federal, state, county water, and local management policies and regulations are described briefly in this chapter.

2.1 FEDERAL WATER MANAGEMENT POLICIES AND REGULATIONS

Several major federal regulations guide the management of water resources and capital improvement projects that may be implemented in the basin. These are discussed in the following sections.

2.1.1 Clean Water Act

Three sections of the CWA may apply to basin planning:

National Pollutant Discharge Elimination System (NPDES)

- Stormwater discharges are subject to the NPDES permit program, which is administered by the Washington Department of Ecology (Ecology). Phase I stormwater NPDES permits cover discharges from municipalities with a population of more than 100,000, including Pierce County. Phase I permits require the implementation of a Stormwater Management Program, which is a plan to make progress toward meeting surface water, groundwater, and sediment standards. In January 2007 Ecology re-issued the Phase I municipal stormwater permit.
- In addition to the County's Phase I permit, Phase II regulations require permits for all municipalities in urban areas and some outside urban areas, and for construction sites between 1 and 5 acres. In January 2007, Ecology issued two Phase II municipal stormwater permits, one for western Washington and one for eastern Washington. The Phase II permit for western Washington covers at least 80 cities and five counties, including cities in Pierce County.
- Recommendations contained in the basin plan must be consistent with the conditions of the County's Stormwater NPDES Phase I permit. Recommendations specific to individual cities will also need to be consistent with those cities' Phase II permits, if applicable. It is possible that construction of capital improvements recommended as part of the basin plan will need to obtain Phase II stormwater NPDES permits for construction activities.

- In 1995, Pierce County was issued an NPDES Municipal Separate Storm Sewer System (MS4) permit to discharge stormwater pursuant to the CWA. To comply with its NPDES MS4 permit, the County developed and implemented a stormwater management plan, which protects water quality. In 2005, Pierce County updated its stormwater management and site development manual to comply with its NPDES stormwater permit.
- The County's NPDES MS4 stormwater permit provides for and favors basin planning as a major strategy for water quality compliance. Specific recommendations in the basin plans will result in improved compliance for the County. Also, under the stormwater NPDES MS4 Phase II program that went into effect in March 2003, numerous cities within Pierce County are required to address stormwater quality.

Section 303(d) List and Total Maximum Daily Loads

- Section 303(d) of the CWA requires Washington State to prepare a list of surface waters in the state where beneficial uses are impaired by pollutants. This list consists of water bodies that fail to meet the state's surface water quality standards and are not expected to improve within the next 2 years after application of technology-based methods to reduce effluent limits. The most current Washington State 303(d) list, which was completed in 2004, includes portions of the White River and several of its tributary streams. Most are impaired for temperature and fecal coliform bacteria, both of which can be associated with stormwater runoff. A 2006 Water Quality Assessment is in process and a revised candidate 303(d) list is expected to be submitted to EPA in the winter of 2007.
- Water bodies placed on the 303(d) list require calculation of total maximum daily loads (TMDLs), which identify the maximum amount of a pollutant allowed to be released into the water body and then allocate that amount among pollutant sources. TMDL development for the White River is ongoing for both the Upper and Lower White River, including studies on pH, nutrients, and temperature for the Lower White River and temperature, sediments, and habitat guidance for the Upper White River.
- Planned capital improvements for the White River Basin will need to recognize 303(d) listings and should anticipate development of TMDLs where they do not yet exist. Water bodies not on the 303(d) list should be managed so as to continue to meet state water quality standards. Additionally, the current Pierce County NPDES permit requires that the stormwater management program be amended to take into account TMDLs.
- Section 404 of the CWA establishes a permit program for dredge or fill within waters of the United States, including associated wetlands. Storm drainage projects that involve dredging or filling in wetlands are regulated under either nationwide general permits (for smaller projects) or individual permits. Section 404 is administered by the U.S. Army Corps of Engineers (USACE); the USACE Seattle District is responsible for Section 404 permits in Pierce County. Discharge of dredge or fill material must be in accordance with U.S. Environmental Protection Agency (EPA) guidelines, which are aimed at minimizing or eliminating adverse environmental impacts. Permits usually require compensatory mitigation for any loss of wetlands.

- Future capital improvement projects within the White River, its tributaries, or its associated wetlands will require 404 permits from USACE. Further, since this is a federal permit, such projects may trigger review under the National Environmental Policy Act (NEPA), rather than solely under Washington's SEPA, as described in Section 2.2.3.

2.1.2 Rivers and Harbors Act, Section 10 Permit Program

Section 10 of the Rivers and Harbors Act establishes a permit program for construction or excavation work within the waters of the United States, which would include portions of the White River. The program is administered by the USACE. Capital improvement projects within the waters of the United States requires a Section 10 permit, which, as with the CWA Section 404 permit, may trigger federal environmental review.

2.1.3 National Flood Insurance Program

The NFIP was created by Congress in 1968. Administered by FEMA, the NFIP makes flood insurance available to communities that agree to adopt and enforce floodplain ordinances designed to reduce flood damages. The NFIP sets minimum standards for floodplain regulations. It also includes the Community Rating System (CRS), which offers the potential for reduced insurance rates based on a community's rating. Pierce County received a Class 5 rating in 2000, the first county in the nation to receive this high rating, resulting in a 25% flood insurance rate discount for County landowners.

Pierce County has been a participant in the NFIP since 1988. Regulation of development within flood hazard areas is conducted through the County's Critical Areas Regulations and Site Development and Stormwater Drainage Regulations. Capital improvements within the White River Basin will need to be consistent with these regulations.

2.1.4 Safe Drinking Water Act

The Safe Drinking Water Act (SDWA) of 1974 transferred responsibility for regulation of drinking water to the EPA and called on that agency to take a number of steps to protect the quality of the nation's drinking water supplies. The EPA has set maximum contaminant levels in drinking water for more than 100 substances. When the SDWA was amended in 1986, a new provision of the act required every state to develop a wellhead protection program. A wellhead protection program is a program that seeks to protect the quality of groundwater bodies that are used for water supply so that water arrives at the wellhead uncontaminated. In Washington State, the Department of Health was designated as the lead agency for wellhead protection program development and administration, but delegated the responsibility to the counties. The Tacoma-Pierce County Health Department administers the wellhead protection program for Pierce County.

The location of new storm drainage or infiltration facilities and improvements to existing facilities must meet the requirements of the wellhead protection program. Basin plans therefore take into account the location of wells and wellhead protection requirements during siting decisions and design.

2.1.5 Endangered Species Act

The ESA seeks to conserve endangered and threatened species. It directs the U.S. Fish and Wildlife Service (USFWS) and National Oceanic and Atmospheric Administration (NOAA) Fisheries (formerly known as the National Marine Fisheries Service [NMFS]) to promulgate a list of endangered and threatened species and to designate critical habitat for these species. The species listings with the greatest potential to affect surface water management in Pierce County include the chinook salmon, which was listed as threatened in March 1999; bull trout, which was listed as threatened in October 1999; and Puget Sound steelhead, which was listed as threatened in May 2007.

The ESA regulates activities that kill, injure, or harass the listed species or destroy their habitat. It prohibits “taking” of listed species as defined in the Act, which includes harming them by significantly reducing their habitat and impairing their breeding, feeding, or sheltering patterns.

An action that involves federal funding or a federal permit, and which could have an effect on a listed species, requires that the involved federal agency consult with USFWS or NOAA Fisheries. Following consultation, USFWS or NOAA Fisheries issues a biological opinion regarding the effects of the action.

Actions by the County as part of basin planning or management cannot result in “taking” of listed species. Additionally, proposed capital improvements that require a 404 or Section 10 permit are likely to require ESA consultation and issuance of a biological opinion and must be designed to protect listed species.

2.1.6 National Environmental Policy Act

NEPA requires federal agencies to consider the environmental impacts of their proposed actions and reasonable alternatives to those actions. “Actions” may include federal funding or issuance of federal permits. There are three potential levels of environmental analysis: categorical exclusion, preparation of an environmental assessment/finding of no significant impact (EA/FONSI), and preparation of an environmental impact statement (EIS). Capital improvements that require federal permits or programs with federal funding may require environmental review under NEPA.

2.2 STATE WATER MANAGEMENT POLICIES AND REGULATIONS

A number of state laws and regulations guide the management of water resources. The most relevant laws and regulations include the Washington State Water Quality Standards (promulgated under the federal CWA delegation), the Growth Management Act (GMA), SEPA, the Shoreline Management Act (SMA), the State Hydraulic Code, the Watershed Management Act, the State Shellfish Management Regulations, and the Non-Point Rule.

2.2.1 State Water Quality Standards

Washington State has adopted water quality standards for the discharge of stormwater to surface water and groundwater. These standards carry out the federal anti-degradation policy of the CWA. Violations of water quality standards are illegal. State regulations also call for the designation of special groundwater protection areas based on unique characteristics such as aquifer recharge areas, wellhead protection areas, or sole source aquifers.

In July 2003, Washington adopted new surface water quality standards, which were submitted for approval to the EPA. In March 2006, EPA formally disapproved parts of Washington's proposed surface water quality standards after determining that the proposed standards did not go far enough to protect salmon and bull trout in certain streams and rivers. As of the date of this document, Ecology is proposing a new set of standards to address EPA's concerns.

Protection of surface water quality is achieved in part through NPDES permits and the TMDL process for impacted water bodies described in Section 2.1.1.

2.2.2 Growth Management Act

The GMA was adopted in 1991. The GMA requires governments of fast-growing counties, cities, and towns to prepare and adopt comprehensive plans and implementing regulations for managing growth. It also requires that all counties, cities, and towns adopt regulations protecting "critical areas" including wetlands, critical aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas. Pierce County's comprehensive plan is codified as Title 19A of the Pierce County Code. Critical areas regulations are found at Title 18E, most recently revised with major upgrades in 2005.

The GMA requires that counties make capital budget decisions in conformity with their comprehensive plans. Capital improvement projects recommended by the basin plan must therefore be consistent with the County's comprehensive plan, including the 6-year capital improvement plan. Land use decisions in the comprehensive plan will drive stormwater management needs by establishing future land uses, densities of housing, and impervious surfaces. Critical areas designations can be used to indicate potential sites for stormwater facilities such as infiltration ponds (aquifer recharge areas) or natural stormwater detention sites (wetlands and riparian corridors). Projects in the basin plan are subject to regulations to protect critical areas.

2.2.3 State Environmental Policy Act

SEPA is intended to ensure that environmental values are considered (in addition to technical and economic considerations) by state and local government officials when making decisions. Review under SEPA is triggered when a local government receives a permit application or when a public entity proposes an official action. Such an action may include adoption of a planning document such as a basin plan. SEPA determinations are made by a local lead agency and are subject to review by Ecology. A project that is determined to be likely to have "significant" environmental impact will require preparation of an EIS. Alternatively, the SEPA lead agency

may make a “mitigated determination of non-significance,” under which a defined set of mitigation measures are deemed sufficient to eliminate the need for an EIS or the impacts of an action may be determined not to be significant.

Adoption of the White River Basin Plan will be an “action” under SEPA and will require review. Additionally, most or all capital projects recommended in the plan will require state or local permits and will be subject to review.

2.2.4 Shoreline Management Act

The SMA establishes a state-local partnership to provide for the protection of Washington shorelands through coordinated planning and regulation. To this end, the SMA requires that local governments adopt shoreline management programs to balance the use and development of the shorelines for economic and residential use, public access and recreation, and preservation and restoration. The jurisdiction of the SMA is the area within 200 feet of the ordinary high water mark of a water body designated as a shoreline of the state or its associated wetlands. Within these areas, development must comply with the local Shoreline Master Program, which is adopted by the local jurisdiction and approved by Ecology. Pierce County’s shoreline regulations are at Title 20, Pierce County Code, and require permits for development within the shoreline area. Any proposed capital projects located within the area of shoreline jurisdiction will be required to comply with its requirements. Pierce County is currently updating its Shoreline Master Plan.

2.2.5 State Hydraulic Code

The Washington State Hydraulic Code regulates any activity affecting the state’s fresh or salt waters. The code, which is administered by the Washington Department of Fish and Wildlife (WDFW), requires any person, organization, or government agency whose construction project affects the bed or flow of a surface water of the state to obtain a Hydraulic Project Approval (HPA) permit. The WDFW uses the HPA permitting process to attach conditions to help ensure that construction projects are managed, sequenced, and conducted so as to protect fish, shellfish, and their habitat. Capital projects that involve construction within the waters of the White River or its tributaries will require HPA permits and compliance with their conditions. Pierce County is currently (2006) updating its Stormwater Management Plan.

2.2.6 Watershed Management Act

The Watershed Management Act provides a framework for statewide watershed planning, organized to involve local stakeholders in each of the State’s 62 water resource inventory areas (WRIAs). The White River is part of WRIA 10, the Puyallup/White Basin. Watershed planning for the basin is being conducted as part of the Shared Strategy for Puget Sound, a collaborative effort between governments including Pierce County and local stakeholders for the watersheds that comprise the Puget Sound Basin. The watershed planning process has assembled a large collection of information related to water quality and habitat conditions in the White River Basin and has made some determinations as to limiting factors for salmon productivity and priorities for recovery. Capital projects recommended in the White River Basin Plan can make use of the

location-specific information collected by the watershed planning process in their design and location.

Associated with the Watershed Management Act is the Salmon Recovery Planning Act (ESHB 2496 [1998]), which established a statewide process to identify habitat factors limiting salmon production in the state. Salmon habitat criteria developed by a technical advisory group of basin experts are used to develop the limiting factors analysis for basins. Implementation of the Salmon Recovery Act is coordinated with the Watershed Management Act in accordance with a Memorandum of Understanding among various state agencies, committees, and commissions.

2.2.7 Non-Point Rule

The purpose of the Non-Point Rule (WAC) is to reduce pollutant loading from non-point sources, prevent new sources from being created, enhance water quality, and protect beneficial uses. The Non-Point Rule establishes criteria and procedures for ranking watersheds in Washington State and for developing and implementing action plans for watersheds in need of corrective or preventive actions to address non-point source pollution in watersheds. The planning process encourages collaborative problem solving among local, state, tribal, and federal interests. It relies on voluntary actions, local ordinances, and state and federal laws, regulations, and programs for implementation. Each lead entity (usually a county) convenes a committee to review and/or re-rank the watersheds wholly or partly within the county boundaries, using criteria specified by the state. Local watershed management committees are then formed to develop action plans for the ranked watersheds. Pierce County has prepared an action plan for the Lower Puyallup River, which includes the White River Basin. Recommendations in the White River Basin Plan should be consistent with the implementation and monitoring strategies for reducing non-point pollution in this plan.

House Bill 2496 created the Governor's Salmon Recovery Office to lead Washington State's effort and to coordinate local recovery efforts. It establishes a local process for prioritizing and recommending habitat restoration projects and creates a Science Panel to review salmon recovery plans.

2.3 PIERCE COUNTY WATER MANAGEMENT POLICIES AND REGULATIONS

Pierce County must manage surface waters in a manner that protects lives and property and complies with the federal and state water and wildlife management laws and regulations described above. Local water management plans and regulations include the *Pierce County Stormwater Management and Site Development Manual* (Pierce County 2005) and ordinances enacted pursuant to the state's GMA.

The state's GMA requires that communities identify critical natural resources and enact ordinances that protect them. Pierce County has passed a critical areas ordinance that prevents construction within a specified distance of a stream, lake, or wetland in order to comply with the GMA. Construction is not permitted within 150 feet of the ordinary high water mark along

streams, rivers, or lakes that support critical fish species or are adjacent to landslide areas. For all other streams, rivers, and lakes, the construction setback depends on the stream type, ranging from 35 to 115 feet from the ordinary high water mark. Wetlands construction is not permitted within 25 to 150 feet of the wetland edge, based on the wetland category.

2.4 LOCAL PROGRAMS AND PLANS

2.4.1 Upper Puyallup Watershed Characterization and Action Plan

The UPWC plan (2002) covers most of the White River Basin study area. It provides a baseline characterization of physical and ecological conditions of the White River system. The mission of the plan is “to protect and enhance water quality and beneficial uses of water by reducing water pollution from non-point sources.” The plan is the result of Washington State’s Non-Point Rule.

2.4.2 Lake Tapps Boat Management Plan

The purpose of this plan is to have a strategy for ensuring safe boating activity and protecting the long-term recreational use of Lake Tapps. The plan specifically addresses community concerns regarding boat safety, law enforcement, noise, and quality of life on Lake Tapps.

The Lake Tapps Boat Management Plan is a response to a variety of events. Originally, Puget Sound Energy (PSE), which currently owns the lake, was tasked with preparing a boat management plan as part of their Federal Energy Regulatory Commission (FERC) requirements to generate hydropower at the White River facility. PSE ceased hydropower operations in January 2004 and the FERC licensing requirements were no longer applicable. On March 31, 2004, an agreement was signed between PSE, Pierce County, and the Lake Tapps Community (Friends of Lake Tapps, the Save Lake Tapps Coalition, Church Lake Maintenance Association, West Tapps Maintenance Company, Tapps Island Association, Tacoma Point Improvement Club, Snag Island Maintenance Company, Driftwood Point Maintenance Company, and Inlet Island Association). This agreement contained provisions regarding maintenance and water levels in Lake Tapps and also a requirement for the Lake Tapps Community to complete a draft boat management plan for review by PSE. The agreement stipulated that the planning process include appropriate law enforcement agencies and could include local government. The increase in recreational boating activity on Lake Tapps and related boating safety and conflict issues were also to be addressed.

To help facilitate development of the Lake Tapps Boat Management Plan, the Pierce County Council enacted Resolution 2004-91 on July 6, 2004, establishing an ad hoc advisory committee (referred to as the Lake Tapps Boat Management Plan Team). Team members were drawn from lakefront property owners, recreation users who don’t live on the lake, the boat sales and repair industry, PSE, Bonney Lake Police, and East Pierce Fire and Rescue. This resolution also tasked the Pierce County Planning and Land Services Department, Sheriff’s Department, and Park and Recreation Services Department to provide support and facilitation for this planning process. The plan was adopted by Pierce County in 2005.

2.4.3 Bonney Lake Comprehensive Plan

The City of Bonney Lake updated its comprehensive plan in 2004 (City of Bonney Lake 2004). Although the White River Basin includes only a small portion of the city, the plan provides relevant information on land use, habitat, and projected growth patterns.