

## 1.1 LAWS AND ORDINANCES

Existing laws, ordinances and plans at the federal, state and local level can support or impact hazard mitigation initiatives identified in this plan. Hazard mitigation plans are required by 44 CFR to include a review and incorporation, if appropriate, of existing plans, studies, reports, and technical information as part of the planning process (Section 201.6.b(3)). Pertinent federal and state laws are described below. Each planning partner has individually reviewed existing local plans, studies, reports and technical information in its jurisdictional annex, presented in Volume 2.

### 1.1.1 Federal

#### *Disaster Mitigation Act*

The DMA is federal legislation addressing hazard mitigation. It emphasizes planning for disasters before they occur. It specifically addresses planning at the local level, requiring plans to be in place before Hazard Mitigation Grant Program funds are available to communities. This plan is designed to meet the requirements of DMA, improving the planning partners' eligibility for future hazard mitigation funds.

#### *Endangered Species Act*

The 1973 federal Endangered Species Act (ESA) was enacted to conserve species facing depletion or extinction and the ecosystems that support them. The act sets forth a process for determining which species are threatened and endangered and requires the conservation of the critical habitat in which those species live. The ESA provides broad protection for species of fish, wildlife and plants that are listed as threatened or endangered. Provisions are made for listing species, as well as for recovery plans and the designation of critical habitat. The ESA outlines procedures for federal agencies to follow when taking actions that may jeopardize listed species. It is the enabling legislation for the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Criminal and civil penalties are provided for violations of the ESA and the Convention. Federal agencies must seek to conserve endangered and threatened species. The ESA defines three fundamental terms:

- **Endangered** means that a species of fish, animal or plant is “in danger of extinction throughout all or a significant portion of its range.” (For salmon and other vertebrate species, this may include subspecies and distinct population segments.)
- **Threatened** means that a species “is likely to become endangered within the foreseeable future.” Regulations may be less restrictive than for endangered species.
- **Critical habitat** means “specific geographical areas that are...essential for the conservation and management of a listed species, whether occupied by the species or not.”

The following are critical sections of the ESA:

- **Section 4: Listing of a Species**—The National Oceanic and Atmospheric Administration Fisheries Service (NOAA Fisheries) is responsible for listing marine species; the U.S. Fish and Wildlife Service is responsible for listing terrestrial and freshwater aquatic species. The agencies may initiate reviews for listings, or citizens may petition for them. A listing must be made “solely on the basis of the best scientific and commercial data available.” After a listing has been proposed, agencies receive comment and conduct further scientific reviews, after which they must decide if the listing is warranted. Economic impacts cannot be considered in this decision, but it may include an evaluation of the adequacy of local and state protections.
- **Section 7: Consultation**—Federal agencies must ensure that any action they authorize, fund or carry out is not likely to jeopardize the continued existence of a listed or proposed species or adversely modify its critical habitat. This includes private and public actions that require a federal permit. Once a final listing is made, non-federal actions are subject to the same review, termed a “consultation.” If the listing agency finds that an action will “take” a species, it must propose mitigations or “reasonable and prudent” alternatives to the action; if the proponent rejects these, the action cannot proceed.
- **Section 9: Prohibition of Take**—It is unlawful to “take” an endangered species, including killing or injuring it or modifying its habitat in a way that interferes with essential behavioral patterns, including breeding, feeding or sheltering.
- **Section 10: Permitted Take**—Through voluntary agreements with the federal government that provide protections to an endangered species, a non-federal applicant may commit a take that would otherwise be

prohibited as long as it is incidental to an otherwise lawful activity (such as developing land or building a road). These agreements often take the form of a “Habitat Conservation Plan.”

- **Section 11: Citizen Lawsuits**—Civil actions initiated by any citizen can require the listing agency to enforce the ESA’s prohibition of taking or to meet the requirements of the consultation process.

With the listing of salmon and trout species as threatened or endangered, the Pacific Coast states have been impacted by mandates, programs and policies based on the presumed presence of listed species. Most West Coast jurisdictions must now take into account the impact of their programs on habitat.

### ***The Clean Water Act***

The federal Clean Water Act (CWA) employs regulatory and non-regulatory tools to reduce direct pollutant discharges into waterways, finance municipal wastewater treatment facilities, and manage polluted runoff. These tools are employed to achieve the broader goal of restoring and maintaining the chemical, physical and biological integrity of the nation’s surface waters so that they can support “the protection and propagation of fish, shellfish, and wildlife and recreation in and on the water.”

Evolution of CWA programs has included a shift to more holistic watershed-based strategies. Under the watershed approach, equal emphasis is placed on protecting healthy waters and restoring impaired ones. A full array of issues are addressed, not just those subject to CWA regulatory authority. Involvement of stakeholder groups in the development and implementation of strategies for achieving and maintaining water quality and other environmental goals is a hallmark of this approach.

### ***National Flood Insurance Program***

The National Flood Insurance Program (NFIP) provides federally backed flood insurance in exchange for communities enacting floodplain regulations. Participation and good standing under NFIP are prerequisites to grant funding eligibility under the Robert T. Stafford Act. The County and most of the partner cities for this plan participate in the NFIP and have adopted regulations that meet the NFIP requirements. At the time of the preparation of this plan, all participating jurisdictions in the partnership were in good standing with NFIP requirements.

## **1.1.2 State**

### ***Washington State Enhanced Mitigation Plan***

The Washington State Enhanced Hazard Mitigation Plan approved by FEMA in 2010 provides guidance for hazard mitigation throughout Washington. The plan identifies hazard mitigation goals, objectives, actions and initiatives for state government to reduce injury and damage from natural hazards. By meeting federal requirements for an enhanced state plan (44 CFR parts 201.4 and 201.5), the plan allows the state to seek significantly higher funding from the Hazard Mitigation Grant Program following presidential declared disasters (20 percent of federal disaster expenditures vs. 15 percent with a standard plan).

### ***Growth Management Act***

The 1990 Washington State Growth Management Act (RCW 36.70A) mandates that local jurisdictions adopt land use ordinances protect the following critical areas:

- Wetlands
- Critical aquifer recharge areas
- Fish and wildlife habitat conservation areas
- Frequently flooded areas
- Geologically hazardous areas.

The Growth Management Act (GMA) regulates development in these areas, and therefore has the potential to affect hazard vulnerability and exposure at the local level.

### ***Shoreline Management Act***

The 1971 Shoreline Management Act (RCW 90.58) was enacted to manage and protect the shorelines of the state by regulating development in the shoreline area. A major goal of the act is to prevent the “inherent harm in an uncoordinated and piecemeal development of the state’s shorelines.” Its jurisdiction includes the Pacific Ocean shoreline and the shorelines

of Puget Sound, the Strait of Juan de Fuca, and rivers, streams and lakes above a certain size. It also regulates wetlands associated with these shorelines.

### ***Washington State Building Code***

The Washington State Building Code Council adopted the 2006 editions of national model codes, with some amendments. The Council also adopted changes to the Washington State Energy Code and Ventilation and Indoor Air Quality Code. Washington's state-developed codes are mandatory statewide for residential and commercial buildings. The residential code exceeds the 2006 International Energy Conservation Code standards for most homes, and the commercial code meets or exceeds standards of the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE 90.1-2004). For residential construction covered by ASHRAE 90.1-2007 (buildings with four or more stories), the state code is more stringent. The 2009 IBC went into effect as the Washington model code on July 1, 2010.

### ***Comprehensive Emergency Management Planning***

Washington's Comprehensive Emergency Management Planning law (RCW 38.52) establishes parameters to ensure that preparations of the state will be adequate to deal with disasters, to ensure the administration of state and federal programs providing disaster relief to individuals, to ensure adequate support for search and rescue operations, to protect the public peace, health and safety, and to preserve the lives and property of the people of the state. It achieves the following:

- Provides for emergency management by the state, and authorizes the creation of local organizations for emergency management in political subdivisions of the state.
- Confers emergency powers upon the governor and upon the executive heads of political subdivisions of the state.
- Provides for the rendering of mutual aid among political subdivisions of the state and with other states and for cooperation with the federal government with respect to the carrying out of emergency management functions.
- Provides a means of compensating emergency management workers who may suffer any injury or death, who suffer economic harm including personal property damage or loss, or who incur expenses for transportation, telephone or other methods of communication, and the use of personal supplies as a result of participation in emergency management activities.
- Provides programs, with intergovernmental cooperation, to educate and train the public to be prepared for emergencies.

It is policy under this law that emergency management functions of the state and its political subdivisions be coordinated to the maximum extent with comparable functions of the federal government and agencies of other states and localities, and of private agencies of every type, to the end that the most effective preparation and use may be made of manpower, resources, and facilities for dealing with disasters.

### ***Washington Administrative Code 118-30-060(1)***

Washington Administrative Code (WAC) 118-30-060 (1) requires each political subdivision to base its comprehensive emergency management plan on a hazard analysis, and makes the following definitions related to hazards:

- Hazards are conditions that can threaten human life as the result of three main factors:
  - Natural conditions, such as weather and seismic activity
  - Human interference with natural processes, such as a levee that displaces the natural flow of floodwaters
  - Human activity and its products, such as homes on a floodplain.
- The definitions for hazard, hazard event, hazard identification, and flood hazard include related concepts:
  - A hazard may be connected to human activity.
  - Hazards are extreme events.

Hazards generally pose a risk of damage, loss, or harm to people and/or their property

### ***Washington State Floodplain Management Law***

Washington's floodplain management law (RCW 86.16, implemented through WAC 173-158) states that prevention of flood damage is a matter of statewide public concern and places regulatory control with the Department of Ecology. RCW 86.16 is cited in floodplain management literature, including FEMA's national assessment, as one of the first and strongest

in the nation. A major challenge to the law in 1978, *Maple Leaf Investors v. Ecology*, is cited in legal references to floodplain management issues. The court upheld the law, declaring that denial of a permit to build residential structures in the floodway is a valid exercise of police power and did not constitute a taking. RCW Chapter 86.12 (Flood Control by Counties) authorizes county governments to levy taxes, condemn properties and undertake flood control activities directed toward a public purpose.

### ***Flood Control Assistance Account Program***

Washington's first flood control maintenance program was passed in 1951, and was called the Flood Control Maintenance Program. In 1984, RCW 86.26 (State Participation in Flood Control Maintenance) established the Flood Control Assistance Account Program (FCAAP), which provides funding for local flood hazard management. FCAAP rules are found in WAC 173-145. Ecology distributes FCAAP matching grants to cities, counties and other special districts responsible for flood control. This is one of the few state programs in the U.S. that provides grant funding to local governments for floodplain management. The program has been funded for \$4 million per Biennium since its establishment, with additional amounts provided after severe flooding events.

To be eligible for FCAAP assistance, flood hazard management activities must be approved by Ecology in consultation with the Washington Department of Fish and Wildlife. A comprehensive flood hazard management plan must have been completed and adopted by the appropriate local authority or be in the process of being prepared in order to receive FCAAP flood damage reduction project funds. This policy evolved through years of the Flood Control Maintenance Program and early years of FCAAP in response to the observation that poor management in one part of a watershed may cause flooding problems in another part.

Local jurisdictions must participate in the NFIP and be a member in good standing to qualify for an FCAAP grant. Grants up to 75 percent of total project cost are available for comprehensive flood hazard management planning. Flood damage reduction projects can receive grants up to 50 percent of total project cost, and must be consistent with the comprehensive flood hazard management plan. Emergency grants are available to respond to unusual flood conditions. FCAAP can also be used for the purchase of flood prone properties, for limited flood mapping and for flood warning systems. Funding currently is running about 60 percent for planning and 40 percent for projects.

### **1.1.3 Cities and County**