

WAC 173-26-020 Definitions. In addition to the definitions and concepts set forth in RCW 90.58.030, as amended, and the other implementing rules for the Washington State Shoreline Management Act, as used herein, the following words and phrases shall have the following meanings:

(1) "Act" means the Washington State Shoreline Management Act, chapter 90.58 RCW.

(2) "Adoption by rule" means an official action by the department to make a local government shoreline master program effective through rule consistent with the requirements of the Administrative Procedure Act, chapter 34.05 RCW, thereby incorporating the adopted shoreline master program or amendment into the state master program.

(3)(a) "Agricultural activities" means agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation;

(b) "Agricultural products" includes, but is not limited to, horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within twenty years of planting; and livestock including both the animals themselves and animal products including, but not limited to, meat, upland finfish, poultry and poultry products, and dairy products;

(c) "Agricultural equipment" and "agricultural facilities" includes, but is not limited to:

(i) The following used in agricultural operations: Equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including, but not limited to, pumps, pipes, tapes, canals, ditches, and drains;

(ii) Corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands;

(iii) Farm residences and associated equipment, lands, and facilities; and

(iv) Roadside stands and on-farm markets for marketing fruit or vegetables; and

(d) "Agricultural land" means those specific land areas on which agricultural activities are conducted (~~as of the date of adoption of a local master program pursuant to these guidelines as evidenced by aerial photography or other documentation. After the effective date of~~

~~the master program, land converted to agricultural use is subject to compliance with the requirements of the master program)).~~

(4) "Amendment" means a revision, update, addition, deletion, and/or reenactment to an existing shoreline master program.

(5) "Approval" means an official action by a local government legislative body agreeing to submit a proposed shoreline master program or amendments to the department for review and official action pursuant to this chapter; or an official action by the department to make a local government shoreline master program effective, thereby incorporating the approved shoreline master program or amendment into the state master program.

(6) "Aquaculture" means the culture or farming of fish, shellfish, or other aquatic plants and animals. Aquaculture does not include the harvest of wild geoduck associated with the state managed wildstock geoduck fishery.

(7) "Channel migration zone (CMZ)" means the area along a river within which the channel(s) can be reasonably predicted to migrate over time as a result of natural and normally occurring hydrological and related processes when considered with the characteristics of the river and its surroundings.

(8) "Critical areas" as defined under chapter 36.70A RCW includes the following areas and ecosystems:

(a) Wetlands;

(b) Areas with a critical recharging effect on aquifers used for potable waters;

(c) Fish and wildlife habitat conservation areas;

(d) Frequently flooded areas; and

(e) Geologically hazardous areas.

(9) "Department" means the state department of ecology.

(10) "Development regulations" means the controls placed on development or land uses by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, all portions of a shoreline master program other than goals and policies approved or adopted under chapter 90.58 RCW, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto.

(11) "Document of record" means the most current shoreline master program officially approved or adopted by rule by the department for a given local government jurisdiction, including any changes resulting from appeals filed pursuant to RCW 90.58.190.

(12) "Drift cell," "drift sector," or "littoral cell" means a particular reach of marine shore in which littoral drift may occur without significant interruption and which contains any natural sources of such drift and also accretion shore forms created by such drift.

(13) "Ecological functions" or "shoreline functions" means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem.

(14) "Ecosystem-wide processes" means the suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions.

(15) "Feasible" means, for the purpose of this chapter, that an action, such as a development project, mitigation, or preservation requirement, meets all of the following conditions:

(a) The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;

(b) The action provides a reasonable likelihood of achieving its intended purpose; and

(c) The action does not physically preclude achieving the project's primary intended legal use.

In cases where these guidelines require certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant.

In determining an action's infeasibility, the reviewing agency may weigh the action's relative public costs and public benefits, considered in the short- and long-term time frames.

(16) "Fill" means the addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land.

(17) "Floating home" means a single-family dwelling unit constructed on a float, that is moored, anchored, or otherwise secured in waters, and is not a vessel, even though it may be capable of being towed.

(18) "Floating on-water residence" means any floating structure other than a floating home, as defined by this chapter:

(a) That is designed or used primarily as a residence on the water and has detachable utilities; and

(b) Whose owner or primary occupant has held an ownership interest in space in a marina, or has held a lease or sublease to use space in a marina, since a date prior to July 1, 2014.

(19) "Flood plain" is synonymous with one hundred-year flood plain and means that land area susceptible to inundation with a one percent chance of being equaled or exceeded in any given year. The limit of this area shall be based upon flood ordinance regulation maps or a reasonable method which meets the objectives of the act.

~~((18))~~ (20) "Floodway" means the area, as identified in a master program, that either:

(a) Has been established in federal emergency management agency flood insurance rate maps or floodway maps; or

(b) Consists of those portions of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually. Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

~~((19))~~ (21) "Geotechnical report" or "geotechnical analysis" means a scientific study or evaluation conducted by a qualified expert

that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or geologists who have professional expertise about the regional and local shoreline geology and processes.

((+20+)) (22) "Grading" means the movement or redistribution of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land.

((+21+)) (23) "Guidelines" means those standards adopted by the department to implement the policy of chapter 90.58 RCW for regulation of use of the shorelines of the state prior to adoption of master programs. Such standards shall also provide criteria for local governments and the department in developing and amending master programs.

((+22+)) (24) "Local government" means any county, incorporated city or town which contains within its boundaries shorelines of the state subject to chapter 90.58 RCW.

((+23+)) (25) "Marine" means pertaining to tidally influenced waters, including oceans, sounds, straits, marine channels, and estuaries, including the Pacific Ocean, Puget Sound, Straits of Georgia and Juan de Fuca, and the bays, estuaries and inlets associated therewith.

((+24+)) (26)(a) "Master program" or "shoreline master program" shall mean the comprehensive use plan for a described area, the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020 and the applicable guidelines. As provided in RCW 36.70A.480, the goals and policies of a shoreline master program for a county or city approved under chapter 90.58 RCW shall be considered an element of the county or city's comprehensive plan. All other portions of the shoreline master program for a county or city adopted under chapter 90.58 RCW, including use regulations, shall be considered a part of the county or city's development regulations.

(b) "Comprehensive master program update" means a master program adopted for compliance with RCW 90.58.080(2) that fully achieves the procedural and substantive requirements of the department's shoreline master program guidelines effective January 17, 2004, as now or hereafter amended;

(c) "~~limited~~) Master program amendment" means ~~((a master program)) an~~ amendment that ~~((addresses specific procedural and/or substantive topics and which))~~ is not intended to meet the complete requirements of a comprehensive master program update. Master program amendments include locally initiated amendments to address specific procedural and/or substantive topics as well as amendments adopted to meet the periodic review requirements of RCW 90.58.080(4).

((+25+)) (27) "May" means the action is acceptable, provided it conforms to the provisions of this chapter.

((+26+)) (28) "Must" means a mandate; the action is required.

((+27+)) (29) "Nonwater-oriented uses" means those uses that are not water-dependent, water-related, or water-enjoyment.

((+28+)) (30) "Priority habitat" means a habitat type with unique or significant value to one or more species. An area classified and mapped as priority habitat must have one or more of the following attributes:

- Comparatively high fish or wildlife density;
- Comparatively high fish or wildlife species diversity;
- Fish spawning habitat;
- Important wildlife habitat;
- Important fish or wildlife seasonal range;
- Important fish or wildlife movement corridor;
- Rearing and foraging habitat;
- Important marine mammal haul-out;
- Refugia habitat;
- Limited availability;
- High vulnerability to habitat alteration;
- Unique or dependent species; or
- Shellfish bed.

A priority habitat may be described by a unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife (such as oak woodlands or eelgrass meadows). A priority habitat may also be described by a successional stage (such as, old growth and mature forests). Alternatively, a priority habitat may consist of a specific habitat element (such as a consolidated marine/estuarine shoreline, talus slopes, caves, snags) of key value to fish and wildlife. A priority habitat may contain priority and/or nonpriority fish and wildlife.

((+29+)) (31) "Priority species" means species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels. Priority species are those that meet any of the criteria listed below.

(a) Criterion 1. State-listed or state proposed species. State-listed species are those native fish and wildlife species legally designated as endangered (WAC 232-12-014), threatened (WAC 232-12-011), or sensitive (WAC 232-12-011). State proposed species are those fish and wildlife species that will be reviewed by the department of fish and wildlife (POL-M-6001) for possible listing as endangered, threatened, or sensitive according to the process and criteria defined in WAC 232-12-297.

(b) Criterion 2. Vulnerable aggregations. Vulnerable aggregations include those species or groups of animals susceptible to significant population declines, within a specific area or statewide, by virtue of their inclination to congregate. Examples include heron colonies, seabird concentrations, and marine mammal congregations.

(c) Criterion 3. Species of recreational, commercial, and/or tribal importance. Native and nonnative fish, shellfish, and wildlife species of recreational or commercial importance and recognized species used for tribal ceremonial and subsistence purposes that are vulnerable to habitat loss or degradation.

(d) Criterion 4. Species listed under the federal Endangered Species Act as either proposed, threatened, or endangered.

((+30+)) (32) "Provisions" means policies, regulations, standards, guideline criteria or environment designations.

((+31+)) (33) "Restore," "restoration" or "ecological restoration" means the reestablishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including, but not limited to, revegetation, removal of intrusive shoreline structures and removal or treatment of toxic materi-

als. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.

((+32+)) (34) "Shall" means a mandate; the action must be done.

((+33+)) (35) "Shoreline areas" and "shoreline jurisdiction" means all "shorelines of the state" and "shorelands" as defined in RCW 90.58.030.

((+34+)) (36) "Shoreline modifications" means those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, pier, weir, dredged basin, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, or application of chemicals.

((+35+)) (37) "Should" means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this chapter, against taking the action.

((+36+)) (38) "Significant vegetation removal" means the removal or alteration of trees, shrubs, and/or ground cover by clearing, grading, cutting, burning, chemical means, or other activity that causes significant ecological impacts to functions provided by such vegetation. The removal of invasive or noxious weeds does not constitute significant vegetation removal. Tree pruning, not including tree topping, where it does not affect ecological functions, does not constitute significant vegetation removal.

((+37+)) (39) "State master program" means the cumulative total of all shoreline master programs and amendments thereto approved or adopted by rule by the department.

((+38+)) (40) "Substantially degrade" means to cause significant ecological impact.

((+39+)) (41) "Water-dependent use" means a use or portion of a use which cannot exist in a location that is not adjacent to the water and which is dependent on the water by reason of the intrinsic nature of its operations.

((+40+)) (42) "Water-enjoyment use" means a recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

((+41+)) (43) "Water-oriented use" means a use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.

((+42+)) (44) "Water quality" means the physical characteristics of water within shoreline jurisdiction, including water quantity, hydrological, physical, chemical, aesthetic, recreation-related, and biological characteristics. Where used in this chapter, the term "water quantity" refers only to development and uses regulated under this chapter and affecting water quantity, such as impermeable surfaces and storm water handling practices. Water quantity, for purposes of this chapter, does not mean the withdrawal of ground water or diversion of surface water pursuant to RCW 90.03.250 through 90.03.340.

((+43+)) (45) "Water-related use" means a use or portion of a use which is not intrinsically dependent on a waterfront location but

whose economic viability is dependent upon a waterfront location because:

(a) The use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or

(b) The use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient.

AMENDATORY SECTION (Amending WSR 96-20-075, filed 9/30/96, effective 10/31/96)

WAC 173-26-030 Master programs required—State master program contents. (~~((1))~~) Chapter 90.58 RCW requires all local governments with shorelines of the state within their boundaries to develop and administer a shoreline master program. The state master program is the cumulative total of all shoreline master programs and amendments thereto approved or adopted by rule by the department, together with any changes pursuant to WAC 173-26-040. Local governments which are required to develop and administer shoreline master programs are listed in WAC 173-26-080.

~~((2) All shoreline master programs adopted by reference in chapter 173-19 WAC existing as of the effective date of this chapter, remain in full force and effect and continue to be considered part of the state master program, as defined herein.))~~

AMENDATORY SECTION (Amending WSR 11-05-064, filed 2/11/11, effective 3/14/11)

WAC 173-26-060 State master program—Records maintained by department. The department shall maintain records for all master programs currently in effect and subsequent amendments thereto. Master program records shall be organized consistent with the state master program register and shall be available for public viewing and inspection during normal business hours at the headquarters of the department.

Records of master programs no longer in effect will be relocated in accordance with the records retention schedule approved by the state records committee.

Such records should be maintained in two groups of files as follows:

(1) Shoreline master program working files corresponding to each proposed master program or amendment containing, where applicable:

(a) Initial submittal from local government per WAC 173-26-110;

~~(b) ((Record of notice to the public, interested parties, agencies and tribes;~~

~~(c) Staff reports, analysis and recommendations;~~

~~(d) Pertinent correspondence between local government and the department;~~

(e)) The department's letter denying, approving as submitted or approving alternatives together with findings and conclusions and amended text and/or maps;

((f)) (c) Documents related to any appeal of the department's action on the amendment;

((g)) (d) Supplemental materials including:

(i) Interested party mailing list;

(ii) Comment letters and exhibits from federal, state, local, and tribal agencies;

(iii) Comment letters and exhibits from the general public;

(iv) (~~Recorded tapes~~) Recordings and/or a summary of hearing oral testimony;

(v) A concise explanatory statement, if adopted by rule.

(2) State master program files, containing the master program currently in effect, with all text and map amendments incorporated, constituting the official state master program approved document of record.

AMENDATORY SECTION (Amending WSR 11-05-064, filed 2/11/11, effective 3/14/11)

WAC 173-26-080 Master programs required of local governments.

The following local governments, listed alphabetically by county, are required to develop and administer a shoreline master program:

Adams County.

Asotin County.

Asotin, city of.

Clarkston, city of.

Benton County.

Benton City, city of.

Kennewick, city of.

Prosser, city of.

Richland, city of.

West Richland, city of.

Chelan County.

Cashmere, city of.

Chelan, city of.

Entiat, town of.

Leavenworth, city of.

Wenatchee, city of.

Clallam County.

Forks, city of.

Port Angeles, city of.

Sequim, city of.

Clark County.

Battle Ground, city of.

Camas, city of.

LaCenter, (~~town~~) city of.

Ridgefield, (~~town~~) city of.

Vancouver, city of.

Washougal, city of.

Woodland, city of.

Columbia County.
Dayton, city of.
Starbuck, town of.

Cowlitz County.
Castle Rock, city of.
Kalama, city of.
Kelso, city of.
Longview, city of.
Woodland, city of.

Douglas County.
Bridgeport, town of.
Coulee Dam, city of.
East Wenatchee, city of.
Rock Island, town of.

Ferry County.
Republic, town of.

Franklin County.
Mesa, town of.
Pasco, city of.

Garfield County.
(~~(Pomeroy, city of.)~~)

Grant County.
Coulee City, city of.
Coulee Dam, city of.
Electric City, city of.
Grand Coulee, city of.
Krupp, town of.
Moses Lake, city of.
Soap Lake, city of.
Wilson Creek, town of.

Grays Harbor County.
Aberdeen, city of.
Cosmopolis, city of.
Elma, city of.
Hoquiam, city of.
McCleary, town of.
Montesano, city of.
Ocean Shores, city of.
Westport, city of.

Island County.
Coupeville, town of.
Langley, city of.
Oak Harbor, city of.

Jefferson County.
Port Townsend, city of.

King County.
Auburn, city of.
Beaux Arts Village, town of.
Bellevue, city of.
Black Diamond, city of.

Bothell, city of.
Burien, city of.
Carnation, town of.
Covington, city of.
Des Moines, city of.
Duvall, city of.
Enumclaw, city of.
Federal Way, city of.
Hunts Point, town of.
Issaquah, city of.
Kenmore, city of.
Kent, city of.
Kirkland, city of.
Lake Forest Park, city of.
Maple Valley, city of.
Medina, city of.
Mercer Island, city of.
Milton, city of.
Normandy Park, city of.
North Bend, city of.
Pacific, city of.
Redmond, city of.
Renton, city of.
Sammamish, city of.
Sea-Tac, city of.
Seattle, city of.
Shoreline, city of.
Skykomish, town of.
Snoqualmie, city of.
Tukwila, city of.
Woodinville, city of.
Yarrow Point, town of.

Kitsap County.

Bremerton, city of.
Port Orchard, city of.
Poulsbo, city of.
Bainbridge Island, city of.

Kittitas County.

Cle Elum, city of.
Ellensburg, city of.
South Cle Elum, town of.

Klickitat County.

Bingen, town of.
Goldendale, city of.
White Salmon, town of.

Lewis County.

Centralia, city of.
Chehalis, city of.
Morton, city of.
Napavine, city of.
Pe Ell, town of.
Toledo, city of.
Vader, city of.
Winlock, city of.

Lincoln County.

Odessa, town of.
Reardan, town of.
(~~Sprague, city of.~~)

Mason County.

Shelton, city of.

Okanogan County.

Brewster, town of.
Conconully, town of.
Coulee Dam, city of.
Elmer City, town of.
Okanogan, city of.
Omak, city of.
Oroville, town of.
Pateros, town of.
Riverside, town of.
Tonasket, town of.
Twisp, town of.
Winthrop, town of.

Pacific County.

Ilwaco, town of.
Long Beach, town of.
Raymond, city of.
South Bend, city of.

Pend Oreille County.

Cusick, town of.
Ione, town of.
Metaline, town of.
Metaline Falls, town of.
Newport, city of.

Pierce County.

Bonney Lake, city of.
Buckley, city of.
Dupont, city of.
Eatonville, town of.
Fife, city of.
Gig Harbor, city of.
Lakewood, city of.
Milton, city of.
Orting, city of.
Pacific, city of.
Puyallup, city of.
Roy, city of.
Ruston, town of.
South Prairie, town of.
Steilacoom, town of.
Sumner, city of.
Tacoma, city of.
University Place, city of.
Wilkeson, town of.

San Juan County.

Friday Harbor, town of.

Skagit County.

Anacortes, city of.
Burlington, city of.
Concrete, town of.
Hamilton, town of.
La Conner, town of.
Lyman, town of.
Mount Vernon, city of.
Sedro Woolley, city of.

Skamania County.

North Bonneville, city of.
Stevenson, town of.

Snohomish County.

Arlington, city of.
Bothell, city of.
Brier, city of.
Darrington, town of.
Edmonds, city of.
Everett, city of.
Gold Bar, town of.
Granite Falls, town of.
Index, town of.
Lake Stevens, city of.
Lynnwood, city of.
Marysville, city of.
Monroe, city of.
Mountlake Terrace, city of.
Mukilteo, city of.
Snohomish, city of.
Stanwood, city of.
Sultan, town of.
Woodway, town of.

Spokane County.

Latah, town of.
Liberty Lake, town of.
Medical Lake, town of.
Millwood, town of.
Rockford, town of.
Spokane, city of.
Spokane Valley, city of.
Waverly, town of.

Stevens County.

Chewelah, city of.
Kettle Falls, city of.
Marcus, town of.
Northport, town of.

Thurston County.

Bucoda, town of.
Lacey, city of.
Olympia, city of.
Tenino, town of.
Tumwater, city of.

Wahkiakum County.

Cathlamet, town of.

Walla Walla County.
Prescott, city of.
Waitsburg, town of.
Walla Walla, city of.

Whatcom County.
Bellingham, city of.
Blaine, city of.
Everson, city of.
Ferndale, city of.
Lynden, city of.
Nooksack, city of.
Sumas, city of.

Whitman County.
Albion, town of.
Colfax, city of.
Malden, town of.
Palouse, city of.
Pullman, city of.
Rosalia, town of.
Tekoa, city of.

Yakima County.
Grandview, city of.
Granger, town of.
Mabton, city of.
Naches, town of.
Selah, city of.
Toppenish, city of.
Union Gap, city of.
Wapato, city of.
Yakima, city of.
Zillah, city of.

AMENDATORY SECTION (Amending WSR 96-20-075, filed 9/30/96, effective 10/31/96)

WAC 173-26-090 Locally initiated review—Periodic review—Public involvement ((encouraged—Amendment of comprehensive plans, development regulations and master programs)) and approval procedures. (1) Locally initiated master program review.

Each local government should ((periodically)) review ((a)) its shoreline master program ((under its jurisdiction)) and make amendments ((to the master program)) deemed necessary to reflect changing local circumstances, new information or improved data. ((Each local government shall also review any master program under its jurisdiction and make amendments to the master program necessary to comply with the requirements of RCW 90.58.080 and any applicable guidelines issued by the department. When the amendment is consistent with chapter 90.58 RCW and its applicable guidelines, it may be approved by local government and the department or adopted by rule when appropriate by the department.

~~In developing master programs and amendments thereto,))~~ Local governments are encouraged to consult department guidance for applicable new information on emerging topics such as sea level rise.

(2) Periodic review requirements.

(a) Following the comprehensive updates required by RCW 90.58.080(2), each local government shall conduct a review of their master program at least once every eight years on a schedule established in the act. Following the review, local governments shall, if necessary, revise their master programs. This review and revision is referred to in this section as the periodic review.

(b) Deadlines for periodic review. Local governments must take action to review, and if necessary, revise their master programs according to the schedule established in RCW 90.58.080 (4)(b). Deadlines for completion of periodic review are as follows:

Table WAC 173-26-090.1
Deadlines for Completion of Periodic Review

<u>Reviews must be completed on or before June 30th of:</u>	<u>Affected counties and the cities and towns within:</u>
<u>2019/2027*</u>	<u>King, Pierce, Snohomish.</u>
<u>2020/2028*</u>	<u>Clallam, Clark, Island, Jefferson, Kitsap, Mason, San Juan, Skagit, Thurston, Whatcom.</u>
<u>2021/2029*</u>	<u>Benton, Chelan, Cowlitz, Douglas, Kittitas, Lewis, Skamania, Spokane, Yakima.</u>
<u>2022/2030*</u>	<u>Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, Whitman.</u>

**And every eight years thereafter.*

(c) Taking legislative action.

(i) The periodic review must be accomplished through legislative action. Legislative action means the adoption of a resolution, motion, or ordinance following notice and a public hearing including, at a minimum, findings that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefore. Legislative findings that no revisions are needed are referred to in this section as "findings of adequacy."

(ii) Legislative action includes two components. It includes a review of the shoreline master program and it includes the adoption of either findings of adequacy or any amendments necessary to bring the program into compliance with the requirements of the act.

(iii) Legislative actions concluding the periodic review must be followed by department approval.

(d) The required minimum scope of review.

(i) The purpose and scope of the periodic review as established by the act is:

(A) To assure that the master program complies with applicable law and guidelines in effect at the time of the review; and

(B) To assure consistency of the master program with the local government's comprehensive plan and development regulations adopted under chapter 36.70A RCW, if applicable, and other local requirements.

(ii) The review process provides the method for bringing shoreline master programs into compliance with the requirements of the act that have been added or changed since the last review and for responding to changes in guidelines adopted by the department, together with a review for consistency with amended comprehensive plans and regulations. Local governments should also incorporate amendments to reflect changed circumstances, new information, or improved data. The review ensures that shoreline master programs do not fall out of compliance over time through inaction.

(iii) The periodic review is distinct from the comprehensive updates required by RCW 90.58.080(2). The presumption in the comprehensive update process was that all master programs needed to be revised to comply with the full suite of ecology guidelines. By contrast, the periodic review addresses changes in requirements of the act and guidelines requirements since the comprehensive update or the last periodic review, and changes for consistency with revised comprehensive plans and regulations, together with any changes deemed necessary to reflect changed circumstances, new information or improved data. There is no minimum requirement to comprehensively revise shoreline inventory and characterization reports or restoration plans.

(3) Procedures for conducting periodic reviews.

(a) Public participation program.

(i) In conducting the periodic review, the department and local governments, pursuant to RCW 90.58.130, shall make all reasonable efforts to inform, fully involve and encourage participation of all interested persons and private entities, tribes, and agencies of the federal, state or local government having interests and responsibilities relating to shorelines of the state and the local master program. Local governments may follow the public participation procedures under either the standard local process outlined in WAC 173-26-100, or the optional joint review process outlined in WAC 173-26-104.

(ii) Counties and cities (~~(planning under chapter 36.70A RCW,)~~) shall establish and broadly disseminate to the public a public participation program identifying procedures whereby (~~proposed amendments~~) review of the (~~comprehensive plan and development regulations relating to shorelines of the state~~) shoreline master program will be considered by the local governing body consistent with RCW (~~(36.70A.130)~~) 36.70A.140. Such procedures shall provide for early and continuous public participation through broad dissemination of informative materials, proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, and consideration of and response to public comments.

The public participation program should include a schedule for the periodic review and identify when legislative action on the review and update component are proposed to occur. The public participation program should also inform the public of when to comment on the scope of the review and proposed changes to the master program. Counties and cities may adjust the public participation program to best meet the intent of the participation requirement.

(b) Review and analysis to determine need for revisions.

(i) Review amendments to the act and shoreline master program guidelines.

Local governments must review amendments to chapter 90.58 RCW and department guidelines that have occurred since the master program was

last amended, and determine if local amendments are needed to maintain compliance. The department will maintain a checklist of legislative and rule amendments to assist local governments with this review. The department will provide technical assistance to ensure local governments address applicable changes to the act and master program guidelines.

(ii) Review relevant comprehensive plans and regulations.

Local governments must review changes to the comprehensive plan and development regulations to determine if the shoreline master program policies and regulations remain consistent with them.

WAC 173-26-191 (1)(e) and 173-26-211(3) provide guidance on determining internal consistency. It is the responsibility of the local government to assure consistency between the master program and other elements of the comprehensive plan and development regulations. Local governments should document the consistency analysis to support proposed changes.

(iii) Additional review and analysis. Local governments should consider during their periodic review whether to incorporate any amendments needed to reflect changed circumstances, new information or improved data as described under subsection (1) of this section. Local governments should consider whether the significance of the changed circumstances, new information or improved data warrants amendments.

(c) Take legislative action.

(i) At the end of the review process, counties and cities must take legislative action declaring the review process complete.

(ii) The notice of hearing for legislative actions that are intended to address the periodic review process must state that the actions to be considered are part of the periodic review process under RCW 90.58.080(4).

(iii) The findings for any legislative action on the periodic review process must state that the action is intended to satisfy the requirements of RCW 90.58.080(4).

(iv) A local government that determines after review that amendments are not needed shall adopt a resolution, motion, or ordinance declaring findings of adequacy. Findings of adequacy are a local written determination that no revisions to a shoreline master program are needed to comply with the requirements of RCW 90.58.080(4).

(d) Submittal to the department.

(i) A local government that determines amendments are needed shall submit the amendments to the department consistent with WAC 173-26-110.

(ii) A local government that determines amendments are not needed shall submit the following in lieu of the requirements of WAC 173-26-110:

(A) A resolution or ordinance declaring findings of adequacy.

(B) Evidence of compliance with applicable public notice and consultation requirements.

(C) Copies of all public, agency and tribal comments received during any applicable public comment periods, or where no comments have been received, a statement to that effect.

(D) A completed checklist demonstrating review elements have been considered, and are either inapplicable or have already been addressed through previous locally initiated amendments prior to the scheduled periodic review.

(e) State process for approving periodic reviews.

(i) The department must issue a formal approval of any amendment or findings of adequacy. Department approval is necessary to affirma-

tively conclude the periodic review process, to confirm that state review of local action has occurred, and to establish a definitive appeal window consistent with RCW 90.58.190.

(ii) Where the local government final action includes master program amendments, local governments and the department shall follow applicable adoption procedures described in WAC 173-26-120.

(iii) Where the local government final action is to adopt findings of adequacy, the department shall follow applicable adoption procedures described in WAC 173-26-120. The department shall review the findings of adequacy solely for consistency with RCW 90.58.080(4) and this section.

AMENDATORY SECTION (Amending WSR 96-20-075, filed 9/30/96, effective 10/31/96)

WAC 173-26-100 Standard local process for approving/amending shoreline master programs. This section establishes local procedures for approving new master programs and preparing comprehensive master program updates required by RCW 90.58.080(2). A local government that proposes master program amendments may follow these procedures or the optional joint review process outlined in WAC 173-26-104.

Prior to submittal of a new or amended master program to the department, local government shall solicit public and agency comment during the drafting of proposed new or amended master programs. The degree of public and agency involvement sought by local government should be gauged according to the level of complexity, anticipated controversy, and range of issues covered in the draft proposal. Recognizing that the department must approve all master programs before they become effective, early and continuous consultation with the department is encouraged during the drafting of new or amended master programs. For local governments planning under chapter 36.70A RCW, local citizen involvement strategies should be implemented that (~~insure~~) ensure early and continuous public participation consistent with WAC (~~365-195-600~~) 365-196-600.

At a minimum, local government shall:

(1) Conduct at least one public hearing to consider the draft proposal;

(2) Publish notice of the hearing in one or more newspapers of general circulation in the area in which the hearing is to be held. The notice shall include:

(a) Reference to the authority(s) under which the action(s) is proposed;

(b) A statement or summary of the proposed changes to the master program;

(c) The date, time, and location of the hearing, and the manner in which interested persons may present their views; and

(d) Reference to the availability of the draft proposal for public (~~inspection at the local government office or upon request~~) review;

(3) Consult with and solicit the comments of any persons, groups, federal, state, regional, or local agency, and tribes, having interests or responsibilities relating to the subject shorelines or any special expertise with respect to any environmental impact. The con-

sultation process should include adjacent local governments with jurisdiction over common shorelines of the state;

(4) Where amendments are proposed to a county or regional master program which has been adopted by cities or towns, the county shall coordinate with those jurisdictions and verify concurrence with or denial of the proposal. For concurring jurisdictions, the amendments should be packaged and processed together. The procedural requirements of this section may be consolidated for concurring jurisdictions;

(5) Solicit comments on the draft proposal from the department prior to local approval. For local governments planning under the Growth Management Act, the local government shall notify both the department and the department of ~~((community, trade, and economic development))~~ commerce of its intent to adopt shoreline policies or regulations, ~~((at least sixty days prior to final local approval,))~~ pursuant to RCW 36.70A.106;

(6) Comply with chapter 43.21C RCW, the State Environmental Policy Act; and

(7) Approve the proposal and submit for final agency approval as outlined in WAC 173-26-110.

NEW SECTION

WAC 173-26-104 Optional joint review process for amending shoreline master programs. This section establishes an optional joint review process a local government may elect to use for master program amendments other than comprehensive updates. The process combines the local and state public comment periods required by RCW 90.58.090. Recognizing that the optional review process requires close coordination in conducting a joint public review, early and continuous consultation with the department is required during the drafting of amendments. The department and local government should work collaboratively to address local interests while ensuring proposed amendments are consistent with the policy of RCW 90.58.020 and applicable guidelines.

(1) Local government solicits early public and agency feedback.

(a) Prior to commencing the amendment process, local governments shall notify the department of intent to develop an amendment under the optional joint review process.

The department will provide shoreline master program amendment checklists to help local governments identify issues to address. The checklists will not create new or additional requirements beyond the provisions of this chapter. The checklists are intended to aid in the preparation and review of master program amendments.

(b) Prior to submittal of a master program amendment to the department, local government shall solicit public and agency comment during the drafting of proposed amendments.

(i) The degree of public and agency involvement sought by local government should be gauged according to the level of complexity, anticipated controversy, and range of issues covered in the draft proposal.

(ii) Local government shall make all reasonable effort to consult with and solicit comments of any persons, groups, federal, state, regional, or local agency, and tribes, having interests or responsibilities relating to the subject shorelines or any special expertise with respect to any environmental impact. The consultation process should

include adjacent local governments with jurisdiction over common shorelines of the state, where applicable.

(iii) For local governments planning under chapter 36.70A RCW, local citizen involvement strategies should be implemented to ensure early and continuous public participation consistent with WAC 365-196-600.

(c) Where amendments are proposed to a county or regional master program which has been adopted by cities or towns, the county shall coordinate with those jurisdictions and verify concurrence with or denial of the proposal. For concurring jurisdictions, the amendments should be packaged and processed together. The procedural requirements of this section may be consolidated for concurring jurisdictions.

(2) Local government and ecology conduct joint public comment period.

At a minimum, local governments and the department shall conduct the following steps:

(a) Local governments planning under the Growth Management Act shall notify the department of commerce of its intent to adopt shoreline policies or regulations, pursuant to RCW 36.70A.106.

(b) Local governments shall comply with chapter 43.21C RCW, the State Environmental Policy Act.

(c) Local governments and the department will provide a formal public comment period.

(i) Provide a public comment period of at least thirty days. The local government will provide reasonable notice and opportunity for written comment to all parties of record who expressed interest regarding the proposal. The department will provide notice to the state interested parties list of persons, groups, agencies, and tribes that have requested in writing notice of proposed master programs or amendments generally or for a specific subject matter.

(ii) Conduct at least one joint local/state public hearing to consider the draft proposal. The local government will publish notice of the joint local/state hearing in one or more newspapers of general circulation in the area in which the hearing is to be held. The notice shall include:

(A) Reference to the authority(s) under which the action(s) is proposed;

(B) The date, time, and location of the hearing, and the manner in which interested persons may present their views;

(C) A statement or summary of the proposed changes to the master program; and

(D) Reference to the availability of the draft proposal for public review.

(d) Local governments shall make available to the public and shall accept comment on the following materials:

(i) Amended text clearly identifying the proposed changes;

(ii) Any amended environment designation map(s), showing both existing and proposed designations, with justification for changes;

(iii) A summary of proposed amendments together with explanatory text indicating the scope and intent of the proposal; and

(iv) An initial submittal checklist and other supporting material indicating how the proposed amendment is consistent with the policy of RCW 90.58.020 and applicable guidelines.

(e) Local governments shall prepare a response to public comments.

(i) Within thirty days after the close of the joint public comment period, the local government shall document the submitted com-

ments and prepare a written response to the public comments. The response may identify changes to the proposed amendment in response to public comments. Any proposed changes shall be evaluated by the local government for consistency with the policy of RCW 90.58.020 and applicable guidelines.

(ii) A local government may request additional time to prepare responses. Such requests will be accompanied by estimates of additional time needed.

(3) Local government obtains initial determination from the department.

(a) After conducting the joint public comment period, and prior to local government adoption, the local government shall submit the proposed amendment to the department for initial review. In addition to providing the public comment record of materials, initial submittal shall include:

(i) Documentation of all public comments received during the comment period;

(ii) Local jurisdiction responses to public comments;

(iii) Description of any proposed amendments as a result of the public testimony, with findings supporting the consistency of the proposed amendments with the policy of RCW 90.58.020 and applicable guidelines;

(iv) Updated text and map amendments.

(b) The department shall provide the local government an initial determination of whether or not the proposal is consistent with the policy of RCW 90.58.020 and applicable guidelines.

(i) The department will provide the initial determination within thirty days of submittal. For complex proposals, the department may indicate to the local government that a longer review period of up to forty-five days is needed.

(ii) If the department's initial determination is that the proposal is consistent with applicable laws and rules, the department will provide a written statement of initial concurrence.

(iii) If the department concludes that the proposal is not consistent with applicable laws and rules, the department will provide a written statement describing the specific areas of concern.

(4) Approve the proposal. After receiving the initial determination from the department, the local government adopts the amendment through resolution or ordinance and submits it for final agency approval as outlined in WAC 173-26-110.

AMENDATORY SECTION (Amending WSR 11-05-064, filed 2/11/11, effective 3/14/11)

WAC 173-26-110 Submittal to department of proposed master programs/amendments. A master program or amendment proposed by local government shall be submitted to the department for its review and formal action. Submittals may be in digital format. A complete submittal shall include (~~two copies of~~) the following, where applicable:

(1) Documentation (i.e., signed resolution or ordinance) that the proposal has been approved by the local government;

(2) If the proposal includes text amending a master program document of record, it shall be submitted in a form that can replace or be easily incorporated within the existing document. Amended text shall

show strikeouts for deleted text and underlining for new text, clearly identifying the proposed changes. At the discretion of the department, strikeouts and underlined text may not be required provided the new or deleted portions of the master program are clearly identifiable;

(3) Amended environment designation map(s), showing both existing and proposed designations, together with corresponding boundaries described in text for each change of environment. All proposals for changes in environment designation and redesignation shall provide written justification for such based on existing development patterns, the biophysical capabilities and limitations of the shoreline being considered, and the goals and aspirations of the local citizenry as reflected in the locally adopted comprehensive land use plan;

(4) A summary of proposed amendments together with explanatory text indicating the scope and intent of the proposal, staff reports, records of the hearing, and/or other materials which document the necessity for the proposed changes to the master program;

(5) Evidence of compliance with chapter 43.21C RCW, the State Environmental Policy Act, specific to the proposal;

(6) Evidence of compliance with the public notice and consultation requirements of either WAC 173-26-100 or 173-26-104;

(7) Copies of all public, agency and tribal comments received, including a record of names and addresses of interested parties involved in the local government review process or, where no comments have been received, a comment to that effect.

(8) A summary of amendments made in response to comments received.

(9) A copy of the applicable master program submittal checklist:

(a) For comprehensive master program updates, a checklist completed in accordance with WAC 173-26-201 ((+2)-(f) and) (3)(a) and (h).

((+9)) (b) For periodic reviews prepared under RCW 90.58.080(4), a checklist completed in accordance with WAC 173-26-090.

(c) For locally initiated amendments, a checklist and any supporting material demonstrating consistency with RCW 90.58.020 and applicable guidelines.

(10) For comprehensive master program updates, copies of the inventory and characterization, use analysis, restoration plan and cumulative impacts analysis.

AMENDATORY SECTION (Amending WSR 96-20-075, filed 9/30/96, effective 10/31/96)

WAC 173-26-120 State process for approving/amending shoreline master programs. Review and approval of master programs and amendments by the department shall follow the procedures set forth below(~~(~~

~~FORMAL REVIEW~~)). The state public comment period under subsection (2) of this section does not apply to master programs adopted under the optional joint review process of WAC 173-26-104.

(1) Formal review for completeness:

(a) The department shall review the submitted master program or amendment for compliance with either WAC 173-26-100 or 173-26-104, and 173-26-110. The department shall notify the local government in writing when it determines that a complete submittal has been received.

(b) If the submittal is determined to be incomplete, the department will identify the deficiencies and so notify the local government in writing. The review process will not ~~((commence))~~ begin until the department determines the submittal is complete.

(2) State public comment period:

For local governments that have followed WAC 173-26-100, the department shall follow the procedures below:

(a) The department shall provide reasonable notice and opportunity for written comment to all parties of record who expressed interest regarding the local government proposal and to all persons, groups, agencies, and tribes that have requested in writing notice of proposed master programs or amendments generally or for a specific subject matter. The comment period shall be at least thirty days, unless the department determines that a lack of complexity or controversy surrounding the proposal supports a shorter period.

~~((3))~~ (b) For master program or amendment proposals involving local governments planning under chapter 36.70A RCW, the department shall provide notice to the department of ~~((community, trade, and economic development))~~ commerce of its intent to ~~((commence))~~ begin formal review of the local government proposal.

~~((4))~~ (c) At the department's discretion, it may conduct a public hearing during the comment period in the jurisdiction proposing the master program or amendment.

~~((5))~~ (d) If the department conducts a hearing pursuant to subsection ~~((4))~~ (c) of this section, it shall publish notice of the hearing in at least one newspaper of general circulation in the area affected by the master program. The public notice shall include:

~~((a))~~ (i) A description of the proposed master program or amendment;

~~((b))~~ (ii) Reference to the authority under which the action is proposed;

~~((c))~~ (iii) The dates, times, and locations of the public hearing, and the manner in which interested persons may obtain copies of the proposal and present their views.

For master program or amendment proposals involving adoption by rule, the notice of the hearing shall be published at least once in each of the three weeks immediately preceding the hearing in one or more newspapers of general circulation in the county in which the hearing is to be held.

~~((6))~~ (e) Within fifteen days after the close of the department's public comment period, the department shall request of the local government submitting the proposal a review of the issues if any, identified by the public, interested parties, groups, agencies, and tribes, and a written response as to how the proposal addresses the identified issues consistent with the policy of RCW 90.58.020 and the applicable guidelines. Local government shall submit its response to the department within forty-five days of the date of the department's letter requesting a response. If no response is received by the department within the forty-five-day period, the department may proceed with action on the proposal according to subsection ~~((7))~~ (3) of this section. Within the forty-five-day period, the local government may request in writing additional time to prepare a response.

~~((APPROVAL+))~~

~~((7))~~ (3) Approval:

(a) Within thirty days after receipt of the local government written response pursuant to subsection ~~((6+))~~ (2)(e) of this section, or for jurisdictions that followed WAC 173-26-104, after determination of completeness pursuant to subsection (1)(a) of this section, the department shall:

(i) Make written findings and conclusions regarding the consistency of the proposal with the policy of RCW 90.58.020 and the applicable guidelines;

(ii) For amendments adopted under WAC 173-26-100, provide a response to the issues identified in subsection ~~((6+))~~ (2)(e) of this section; and

(iii) Either approve the proposal as submitted, recommend specific changes necessary to make the proposal consistent with chapter 90.58 RCW policy and its applicable guidelines, or deny the proposal in those instances where no alteration of the proposal appears likely to be consistent with the policy of RCW 90.58.020 and the applicable guidelines. The written findings and conclusions shall be provided to the local government ~~((7))~~ and made available to all interested persons, parties, tribes, groups, and agencies of record on the proposal.

(A) In reaching its determination of consistency with the policy of RCW 90.58.020 and the applicable guidelines, the department shall approve those parts of a master program relating to shorelines unless it determines that the submitted parts are not consistent with the policy of RCW 90.58.020 and the applicable guidelines.

(B) The department shall approve those parts of a master program relating to shorelines of statewide significance only after determining the program provides for optimum implementation of the statewide interest as set forth in the policy of RCW 90.58.020 and the applicable guidelines.

~~((a) In cases where the proposal is approved as submitted, the effective date of the approved master program or amendment shall be the date of the department's letter to local government approving the submitted master program or amendments.))~~

(b) If the department recommends changes to the proposal, within thirty days after the department ~~((mails))~~ provides the written findings and conclusions to the local government pursuant to this subsection ~~((7))~~ (3), the local government may:

(i) Agree to the proposed changes ~~((Receipt by the department of the written notice of agreement from the local government shall constitute final action by the department approving the revised submittal.))~~ by written notice to the department. The department shall provide written notice of the local government acceptance ((shall be provided by the department)) to all parties of record((In such cases, the effective date of the approved master program or amendment is the date the department receives from local government the written notice of agreement)); or

(ii) Submit an alternative proposal. If, in the opinion of the department, the alternative is consistent with the purpose and intent of the changes originally proposed by the department in this subsection ~~((7))~~ (3) and with the policy of RCW 90.58.020 and the applicable guidelines, it shall approve the alternative changes and provide written notice to all parties of record. ~~((In such cases, the effective date of the approved master program or amendments is the date of the department's letter to local government approving the alternative proposal.))~~

If the department determines the alternative proposal is not consistent with the purpose and intent of the changes proposed by the department, the department may either deny the alternative proposal or at the request of local government start anew with the review and approval process beginning ~~((at))~~ in WAC 173-26-120.

~~((8))~~ (c) Department notice of final action.

(i) Promptly after approval or disapproval of a local government's shoreline master program or amendment, the department shall publish a notice consistent with RCW 36.70A.290 that the shoreline master program or amendment has been approved or disapproved. This notice must be filed for all shoreline master programs or amendments.

(ii) If the notice is for a local government that does not fully plan under RCW 36.70A.040, the department must, on the day the notice is published, notify the legislative authority of the applicable local government by telephone or electronic means, followed by written communication as necessary, to ensure that the local government has received the full written decision of the approval or disapproval.

(d) Effective date.

(i) A master program or amendment thereto takes effect ~~((when and))~~ in such form as it is approved or adopted by rule by the department ~~((except when appealed to the shorelines board as provided for in RCW 90.58.190(4) for local governments not planning under chapter 36.70A RCW. The department's approved document of record, filed at the department, constitutes the official master program.~~

~~(9) For local governments planning under chapter 36.70A RCW, after final action by the department on a local government's shoreline master program or amendment the local government shall (pursuant to RCW 90.58.090) promptly publish a notice that the department has taken final action on the master program or amendment. For purposes of this section, the date of publication for the master program adoption or amendment shall be the date on which the local government publishes the notice that the department has taken final action on the master program or amendment). The effective date is fourteen days from the date of the department's written notice of final action to the local government stating the department has approved or rejected the proposal.~~

(ii) For master programs adopted by rule, the effective date is governed by RCW 34.05.380.

(iii) The department's written notice to the local government must conspicuously and plainly state that it is the department's final decision and that there will be no further modifications to the proposal.

AMENDATORY SECTION (Amending WSR 11-05-064, filed 2/11/11, effective 3/14/11)

WAC 173-26-130 Appeal procedures for master programs. (1) For local governments planning under chapter 36.70A RCW, appeals shall be to the growth management hearings board ~~((The petition must be filed pursuant to the requirements of RCW 90.58.190. The department's (ecology's) written notice of final action will conspicuously and plainly state it is the department's final decision and there will be no further modifications under RCW 90.58.090(2))~~ as provided in RCW 36.70A.290 and 90.58.190.

(2) For local governments not planning under chapter 36.70A RCW, all petitions for review shall be filed with the state shorelines hearings board within thirty days of the ~~((written decision by the department approving or denying the master program or amendment. The department's written notice will conspicuously and plainly state it is the department's final decision and there will be no further modifications under RCW 90.58.090(2-))~~ date the department publishes notice of its final decision under RCW 90.58.090(8).

AMENDATORY SECTION (Amending WSR 96-20-075, filed 9/30/96, effective 10/31/96)

WAC 173-26-160 Local government annexation. Except as provided in WAC 173-26-150, in the event of annexation of a shoreline of the state, the local government assuming jurisdiction shall notify the department of such annexation and develop or amend a master program to include the annexed area. Such master program development or amendment shall be consistent with the policy of RCW 90.58.020 and the applicable guidelines and shall be submitted to the department for approval no later than one year from the effective date of annexation.

Until a new or amended master program is adopted or approved by the department, any decision on an application for a shoreline permit in the annexed shoreline area shall be based upon compliance with the master program in effect for the area prior to annexation.

AMENDATORY SECTION (Amending WSR 11-05-064, filed 2/11/11, effective 3/14/11)

WAC 173-26-201 Process to prepare or amend shoreline master programs. (1) **Applicability.** This section outlines the process to prepare a comprehensive shoreline master program adoption or update. This section also establishes approval criteria for ~~((limited))~~ shoreline master program amendments.

(a) All master program amendments are subject to the minimum procedural rule requirements of WAC 173-26-010 through 173-26-160, and approval by the department as provided in RCW 90.58.090.

(b) Comprehensive master program adoptions and updates shall fully achieve the procedural and substantive requirements of these guidelines. ~~((Adoption of new shoreline master programs and amendments submitted to meet the comprehensive update requirements of RCW 90.58.080 are a statewide priority over and above other amendments.))~~

(c) ~~((Limited))~~ Master program amendments may be approved by the department provided ~~((the department concludes))~~:

(i) ~~((The amendment is necessary to:~~

~~(A) Comply with state and federal laws and implementing rules applicable to shorelines of the state within the local government jurisdiction;~~

~~(B) Include a newly annexed shoreline of the state within the local government jurisdiction;~~

~~(C) Address the results of the periodic master program review required by RCW 90.58.080(4), following a comprehensive master program update;~~

~~(D) Improve consistency with the act's goals and policies and its implementing rules; or~~

~~(E) Correct errors or omissions.~~

~~(ii) The local government is not currently conducting a comprehensive shoreline master program update designed to meet the requirements of RCW 90.58.080, unless the limited amendment is vital to the public interest;~~

~~(iii)) The proposed amendment will not foster uncoordinated and piecemeal development of the state's shorelines;~~

~~((iv)) (ii) The amendment is consistent with all applicable policies and standards of the act;~~

~~((v)) (iii) All procedural rule requirements for public notice and consultation have been satisfied; and~~

~~((vi)) (iv) Master program guidelines analytical requirements and substantive standards have been satisfied, where they reasonably apply to the ((limited)) amendment. All master program amendments must demonstrate that the amendment will not result in a net loss of shoreline ecological functions.~~

~~((d) A limited amendment in process at the time a local government's comprehensive update begins will be processed to completion, unless requested otherwise by the local government.))~~

(2) Basic concepts.

(a) **Use of scientific and technical information.** To satisfy the requirements for the use of scientific and technical information in RCW 90.58.100(1), local governments shall incorporate the following two steps into their master program development and amendment process.

First, identify and assemble the most current, accurate, and complete scientific and technical information available that is applicable to the issues of concern. The context, scope, magnitude, significance, and potential limitations of the scientific information should be considered. At a minimum, make use of and, where applicable, incorporate all available scientific information, aerial photography, inventory data, technical assistance materials, manuals and services from reliable sources of science. Local governments should also contact relevant state agencies, universities, affected Indian tribes, port districts and private parties for available information. While adequate scientific information and methodology necessary for development of a master program should be available, if any person, including local government, chooses to initiate scientific research with the expectation that it will be used as a basis for master program provisions, that research shall use accepted scientific methods, research procedures and review protocols. Local governments are encouraged to work interactively with neighboring jurisdictions, state resource agencies, affected Indian tribes, and other local government entities such as port districts to address technical issues beyond the scope of existing information resources or locally initiated research.

Local governments should consult the technical assistance materials produced by the department. When relevant information is available and unless there is more current or specific information available, those technical assistance materials shall constitute an element of scientific and technical information as defined in these guidelines and the use of which is required by the act.

Second, base master program provisions on an analysis incorporating the most current, accurate, and complete scientific or technical

information available. Local governments should be prepared to identify the following:

(i) Scientific information and management recommendations on which the master program provisions are based;

(ii) Assumptions made concerning, and data gaps in, the scientific information; and

(iii) Risks to ecological functions associated with master program provisions. Address potential risks as described in WAC 173-26-201 (3)(d).

The requirement to use scientific and technical information in these guidelines does not limit a local jurisdiction's authority to solicit and incorporate information, experience, and anecdotal evidence provided by interested parties as part of the master program amendment process. Such information should be solicited through the public participation process described in WAC 173-26-201 (3)(b). Where information collected by or provided to local governments conflicts or is inconsistent, the local government shall base master program provisions on a reasoned, objective evaluation of the relative merits of the conflicting data.

(b) **Adaptation of policies and regulations.** Effective shoreline management requires the evaluation of changing conditions and the modification of policies and regulations to address identified trends and new information. Local governments should monitor actions taken to implement the master program and shoreline conditions to facilitate appropriate updates of master program provisions to improve shoreline management over time. In reviewing proposals to amend master programs, the department shall evaluate whether the change promotes achievement of the policies of the master program and the act. As provided in WAC 173-26-171 (3)(d), ecology will periodically review these guidelines, based in part on information provided by local government, and through that process local government will receive additional guidance on significant shoreline management issues that may require amendments to master programs.

(c) **Protection of ecological functions of the shorelines.** This chapter implements the act's policy on protection of shoreline natural resources through protection and restoration of ecological functions necessary to sustain these natural resources. The concept of ecological functions recognizes that any ecological system is composed of a wide variety of interacting physical, chemical and biological components, that are interdependent in varying degrees and scales, and that produce the landscape and habitats as they exist at any time. Ecological functions are the work performed or role played individually or collectively within ecosystems by these components.

As established in WAC 173-26-186(8), these guidelines are designed to assure, at minimum, no net loss of ecological functions necessary to sustain shoreline natural resources and to plan for restoration of ecological functions where they have been impaired. Managing shorelines for protection of their natural resources depends on sustaining the functions provided by:

- Ecosystem-wide processes such as those associated with the flow and movement of water, sediment and organic materials; the presence and movement of fish and wildlife and the maintenance of water quality.

- Individual components and localized processes such as those associated with shoreline vegetation, soils, water movement through the soil and across the land surface and the composition and configuration of the beds and banks of water bodies.

The loss or degradation of the functions associated with ecosystem-wide processes, individual components and localized processes can significantly impact shoreline natural resources and may also adversely impact human health and safety. Shoreline master programs shall address ecological functions associated with applicable ecosystem-wide processes, individual components and localized processes identified in the ecological systems analysis described in WAC 173-26-201 (3)(d)(i).

Nearly all shoreline areas, even substantially developed or degraded areas, retain important ecological functions. For example, an intensely developed harbor area may also serve as a fish migration corridor and feeding area critical to species survival. Also, ecosystems are interconnected. For example, the life cycle of anadromous fish depends upon the viability of freshwater, marine, and terrestrial shoreline ecosystems, and many wildlife species associated with the shoreline depend on the health of both terrestrial and aquatic environments. Therefore, the policies for protecting and restoring ecological functions generally apply to all shoreline areas, not just those that remain relatively unaltered.

Master programs shall contain policies and regulations that assure, at minimum, no net loss of ecological functions necessary to sustain shoreline natural resources. To achieve this standard while accommodating appropriate and necessary shoreline uses and development, master programs should establish and apply:

- Environment designations with appropriate use and development standards; and
- Provisions to address the impacts of specific common shoreline uses, development activities and modification actions; and
- Provisions for the protection of critical areas within the shoreline; and
- Provisions for mitigation measures and methods to address unanticipated impacts.

When based on the inventory and analysis requirements and completed consistent with the specific provisions of these guidelines, the master program should ensure that development will be protective of ecological functions necessary to sustain existing shoreline natural resources and meet the standard. The concept of "net" as used herein, recognizes that any development has potential or actual, short-term or long-term impacts and that through application of appropriate development standards and employment of mitigation measures in accordance with the mitigation sequence, those impacts will be addressed in a manner necessary to assure that the end result will not diminish the shoreline resources and values as they currently exist. Where uses or development that impact ecological functions are necessary to achieve other objectives of RCW 90.58.020, master program provisions shall, to the greatest extent feasible, protect existing ecological functions and avoid new impacts to habitat and ecological functions before implementing other measures designed to achieve no net loss of ecological functions.

Master programs shall also include policies that promote restoration of ecological functions, as provided in WAC 173-26-201 (2)(f), where such functions are found to have been impaired based on analysis described in WAC 173-26-201 (3)(d)(i). It is intended that local government, through the master program, along with other regulatory and nonregulatory programs, contribute to restoration by planning for and fostering restoration and that such restoration occur through a combination of public and private programs and actions. Local government should identify restoration opportunities through the shoreline inven-

tory process and authorize, coordinate and facilitate appropriate publicly and privately initiated restoration projects within their master programs. The goal of this effort is master programs which include planning elements that, when implemented, serve to improve the overall condition of habitat and resources within the shoreline area of each city and county.

(d) **Preferred uses.** As summarized in WAC 173-26-176, the act establishes policy that preference be given to uses that are unique to or dependent upon a shoreline location. Consistent with this policy, these guidelines use the terms "water-dependent," "water-related," and "water-enjoyment," as defined in WAC 173-26-020, when discussing appropriate uses for various shoreline areas.

Shoreline areas, being a limited ecological and economic resource, are the setting for competing uses and ecological protection and restoration activities. Consistent with RCW 90.58.020 and WAC 173-26-171 through 173-26-186, local governments shall, when determining allowable uses and resolving use conflicts on shorelines within their jurisdiction, apply the following preferences and priorities in the order listed below, starting with (d)(i) of this subsection. For shorelines of statewide significance, also apply the preferences as indicated in WAC 173-26-251(2).

(i) Reserve appropriate areas for protecting and restoring ecological functions to control pollution and prevent damage to the natural environment and public health. In reserving areas, local governments should consider areas that are ecologically intact from the uplands through the aquatic zone of the area, aquatic areas that adjoin permanently protected uplands, and tidelands in public ownership. Local governments should ensure that these areas are reserved consistent with constitutional limits.

(ii) Reserve shoreline areas for water-dependent and associated water-related uses. Harbor areas, established pursuant to Article XV of the state Constitution, and other areas that have reasonable commercial navigational accessibility and necessary support facilities such as transportation and utilities should be reserved for water-dependent and water-related uses that are associated with commercial navigation unless the local governments can demonstrate that adequate shoreline is reserved for future water-dependent and water-related uses and unless protection of the existing natural resource values of such areas preclude such uses. Local governments may prepare master program provisions to allow mixed-use developments that include and support water-dependent uses and address specific conditions that affect water-dependent uses.

(iii) Reserve shoreline areas for other water-related and water-enjoyment uses that are compatible with ecological protection and restoration objectives.

(iv) Locate single-family residential uses where they are appropriate and can be developed without significant impact to ecological functions or displacement of water-dependent uses.

(v) Limit nonwater-oriented uses to those locations where the above described uses are inappropriate or where nonwater-oriented uses demonstrably contribute to the objectives of the Shoreline Management Act.

Evaluation pursuant to the above criteria, local economic and land use conditions, and policies and regulations that assure protection of shoreline resources, may result in determination that other uses are considered as necessary or appropriate and may be accommoda-

ted provided that the preferred uses are reasonably provided for in the jurisdiction.

(e) **Environmental impact mitigation.**

(i) To assure no net loss of shoreline ecological functions, master programs shall include provisions that require proposed individual uses and developments to analyze environmental impacts of the proposal and include measures to mitigate environmental impacts not otherwise avoided or mitigated by compliance with the master program and other applicable regulations. To the extent Washington's State Environmental Policy Act of 1971 (SEPA), chapter 43.21C RCW, is applicable, the analysis of such environmental impacts shall be conducted consistent with the rules implementing SEPA, which also address environmental impact mitigation in WAC 197-11-660 and define mitigation in WAC 197-11-768. Master programs shall indicate that, where required, mitigation measures shall be applied in the following sequence of steps listed in order of priority, with (e)(i)(A) of this subsection being top priority.

(A) Avoiding the impact altogether by not taking a certain action or parts of an action;

(B) Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;

(C) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

(D) Reducing or eliminating the impact over time by preservation and maintenance operations;

(E) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and

(F) Monitoring the impact and the compensation projects and taking appropriate corrective measures.

(ii) In determining appropriate mitigation measures applicable to shoreline development, lower priority measures shall be applied only where higher priority measures are determined to be infeasible or inapplicable.

Consistent with WAC 173-26-186 (5) and (8), master programs shall also provide direction with regard to mitigation for the impact of the development so that:

(A) Application of the mitigation sequence achieves no net loss of ecological functions for each new development and does not result in required mitigation in excess of that necessary to assure that development will result in no net loss of shoreline ecological functions and not have a significant adverse impact on other shoreline functions fostered by the policy of the act.

(B) When compensatory measures are appropriate pursuant to the mitigation priority sequence above, preferential consideration shall be given to measures that replace the impacted functions directly and in the immediate vicinity of the impact. However, alternative compensatory mitigation within the watershed that addresses limiting factors or identified critical needs for shoreline resource conservation based on watershed or comprehensive resource management plans applicable to the area of impact may be authorized. Authorization of compensatory mitigation measures may require appropriate safeguards, terms or conditions as necessary to ensure no net loss of ecological functions.

(f) **Shoreline restoration planning.** Consistent with principle WAC 173-26-186 (8)(c), master programs shall include goals, policies and actions for restoration of impaired shoreline ecological functions. These master program provisions should be designed to achieve overall

improvements in shoreline ecological functions over time, when compared to the status upon adoption of the master program. The approach to restoration planning may vary significantly among local jurisdictions, depending on:

- The size of the jurisdiction;
- The extent and condition of shorelines in the jurisdiction;
- The availability of grants, volunteer programs or other tools for restoration; and
- The nature of the ecological functions to be addressed by restoration planning.

Master program restoration plans shall consider and address the following subjects:

(i) Identify degraded areas, impaired ecological functions, and sites with potential for ecological restoration;

(ii) Establish overall goals and priorities for restoration of degraded areas and impaired ecological functions;

(iii) Identify existing and ongoing projects and programs that are currently being implemented, or are reasonably assured of being implemented (based on an evaluation of funding likely in the foreseeable future), which are designed to contribute to local restoration goals;

(iv) Identify additional projects and programs needed to achieve local restoration goals, and implementation strategies including identifying prospective funding sources for those projects and programs;

(v) Identify timelines and benchmarks for implementing restoration projects and programs and achieving local restoration goals;

(vi) Provide for mechanisms or strategies to ensure that restoration projects and programs will be implemented according to plans and to appropriately review the effectiveness of the projects and programs in meeting the overall restoration goals.

(3) Steps in preparing and amending a master program.

(a) **Process overview.** This section provides a generalized process to prepare or comprehensively amend a shoreline master program. Local governments may modify the timing of the various steps, integrate the process into other planning activities, add steps to the process, or work jointly with other jurisdictions or regional efforts, provided the provisions of this chapter are met.

The department will provide a shoreline master program amendment checklist to help local governments identify issues to address. The checklist will not create new or additional requirements beyond the provisions of this chapter. The checklist is intended to aid the preparation and review of master program amendments. Local governments shall submit the completed checklist with the proposed master program amendments.

(b) Participation process.

(i) **Participation requirements.** Local government shall comply with the provisions of RCW 90.58.130 which states:

"To insure that all persons and entities having an interest in the guidelines and master programs developed under this chapter are provided with a full opportunity for involvement in both their development and implementation, the department and local governments shall:

(1) Make reasonable efforts to inform the people of the state about the shoreline management program of this chapter and in the performance of the responsibilities provided in this chapter, shall not only invite but actively encourage participation by all persons and private groups and entities showing an interest in shoreline management programs of this chapter; and

(2) *Invite and encourage participation by all agencies of federal, state, and local government, including municipal and public corporations, having interests or responsibilities relating to the shorelines of the state. State and local agencies are directed to participate fully to insure that their interests are fully considered by the department and local governments."*

Additionally, the provisions of WAC 173-26-100 apply and include provisions to assure proper public participation and, for local governments planning under the Growth Management Act, the provisions of RCW 36.70A.140 also apply.

At a minimum, all local governments shall be prepared to describe and document their methods to ensure that all interested parties have a meaningful opportunity to participate.

(ii) **Communication with state agencies.** Before undertaking substantial work, local governments shall notify applicable state agencies to identify state interests, relevant regional and statewide efforts, available information, and methods for coordination and input. Contact the department for a list of applicable agencies to be notified.

(iii) **Communication with affected Indian tribes.** Prior to undertaking substantial work, local governments shall notify affected Indian tribes to identify tribal interests, relevant tribal efforts, available information and methods for coordination and input. Contact the individual tribes or coordinating bodies such as the Northwest Indian Fisheries Commission, for a list of affected Indian tribes to be notified.

(c) **Inventory shoreline conditions.** Gather and incorporate all pertinent and available information, existing inventory data and materials from state and federal agencies, individuals and nongovernmental entities with expertise, affected Indian tribes, watershed management planning, port districts and other appropriate sources. Ensure that, whenever possible, inventory methods and protocols are consistent with those of neighboring jurisdictions and state efforts. The department will provide, to the extent possible, services and resources for inventory work. Contact the department to determine information sources and other relevant efforts. Map inventory information at an appropriate scale. The department may provide an inventory of shoreline conditions to the local jurisdiction.

Local governments shall be prepared to demonstrate how the inventory information was used in preparing their local master program amendments.

Collection of additional inventory information is encouraged and should be coordinated with other watershed, regional, or statewide inventory and planning efforts in order to ensure consistent methods and data protocol as well as effective use of fiscal and human resources. Local governments should be prepared to demonstrate that they have coordinated with applicable interjurisdictional shoreline inventory and planning programs where they exist. Two or more local governments are encouraged to jointly conduct an inventory in order to increase the efficiency of data gathering and comprehensiveness of inventory information. Data from interjurisdictional, watershed, or regional inventories may be substituted for an inventory conducted by an individual jurisdiction, provided it meets the requirements of this section.

Local government shall, at a minimum, and to the extent such information is relevant and reasonably available, collect the following information:

(i) Shoreline and adjacent land use patterns and transportation and utility facilities, including the extent of existing structures, impervious surfaces, vegetation and shoreline modifications in shoreline jurisdiction. Special attention should be paid to identification of ecologically intact blocks of upland vegetation, developed areas with largely intact riparian vegetation, water-oriented uses and related navigation, transportation and utility facilities.

(ii) Existing aquatic and terrestrial wildlife habitats; native aquatic vegetation; riparian and associated upland plant communities; and critical areas, including wetlands, aquifer recharge areas, fish and wildlife habitat conservation areas, geologically hazardous areas, and frequently flooded areas. See also WAC 173-26-221.

(iii) Altered and degraded areas and sites with potential for ecological restoration.

(iv) Areas of special interest, such as priority habitats, ecologically intact late successional native plant communities, developing or redeveloping harbors and waterfronts, previously identified toxic or hazardous material clean-up sites, dredged material disposal sites, or eroding shorelines, to be addressed through new master program provisions.

(v) Conditions and regulations in shoreland and adjacent areas that affect shorelines, such as surface water management and land use regulations. This information may be useful in achieving mutual consistency between the master program and other development regulations.

(vi) Existing and potential shoreline public access sites, including public rights of way and utility corridors.

(vii) General location of channel migration zones, and flood plains.

(viii) Gaps in existing information. During the initial inventory, local governments should identify what additional information may be necessary for more effective shoreline management.

(ix) If the shoreline is rapidly developing or subject to substantial human changes such as clearing and grading, past and current records or historical aerial photographs may be necessary to identify cumulative impacts, such as bulkhead construction, intrusive development on priority and critical habitats, and conversion of harbor areas to nonwater-oriented uses.

(x) If archaeological or historic resources have been identified in shoreline jurisdiction, consult with the state historic preservation office and local affected Indian tribes regarding existing archaeological and historical information.

(xi) Information specific to the aquatic environment for siting in-water uses and development, such as sediment contamination, intertidal property ownership, aquaculture operations, shellfish beds, shellfish protection districts, and areas that meet department of health shellfish water quality certification requirements.

(d) **Analyze shoreline issues of concern.** Before establishing specific master program provisions, local governments shall analyze the information gathered in (c) of this subsection and as necessary to ensure effective shoreline management provisions, address the topics below, where applicable.

(i) **Characterization of functions and ecosystem-wide processes.**

(A) Prepare a characterization of shoreline ecosystems and their associated ecological functions. The characterization consists of three steps:

(I) Identify the ecosystem-wide processes and ecological functions based on the list in (d)(i)(C) of this subsection that apply to the shoreline(s) of the jurisdiction.

(II) Assess the ecosystem-wide processes to determine their relationship to ecological functions present within the jurisdiction and identify which ecological functions are healthy, which have been significantly altered and/or adversely impacted and which functions may have previously existed and are missing based on the values identified in (d)(i)(D) of this subsection; and

(III) Identify specific measures necessary to protect and/or restore the ecological functions and ecosystem-wide processes.

(B) The characterization of shoreline ecological systems may be achieved by using one or more of the approaches below:

(I) If a regional environmental management plan, such as a watershed plan or coastal erosion study, is ongoing or has been completed, then conduct the characterization either within the framework of the regional plan or use the data provided in the regional plan. This methodology is intended to contribute to an in-depth and comprehensive assessment and characterization.

(II) If a regional environmental management plan has not been completed, use available scientific and technical information, including flood studies, habitat evaluations and studies, water quality studies, and data and information from environmental impact statements. This characterization of ecosystem-wide processes and the impact upon the functions of specific habitats and human health and safety objectives may be of a generalized nature.

(III) One or more local governments may pursue a characterization which includes a greater scope and complexity than listed in (d)(i)(B)(I) and (II) of this subsection.

(C) Shoreline ecological functions include, but are not limited to:

In rivers and streams and associated flood plains:

Hydrologic: Transport of water and sediment across the natural range of flow variability; attenuating flow energy; developing pools, riffles, gravel bars, nutrient flux, recruitment and transport of large woody debris and other organic material.

Shoreline vegetation: Maintaining temperature; removing excessive nutrients and toxic compound, sediment removal and stabilization; attenuation of high stream flow energy; and provision of woody debris and other organic matter.

Hyporheic functions: Removing excessive nutrients and toxic compound, water storage, support of vegetation, and sediment storage and maintenance of base flows.

Habitat for native aquatic and shoreline-dependent birds, invertebrates, mammals; amphibians; and anadromous and resident native fish: Habitat functions may include, but are not limited to, space or conditions for reproduction; resting, hiding and migration; and food production and delivery.

In lakes:

Hydrologic: Storing water and sediment, attenuating wave energy, removing excessive nutrients and toxic compounds, recruitment of large woody debris and other organic material.

Shoreline vegetation: Maintaining temperature; removing excessive nutrients and toxic compound, attenuating wave energy, sediment removal and stabilization; and providing woody debris and other organic matter.

Habitat for aquatic and shoreline-dependent birds, invertebrates, mammals; amphibians; and anadromous and resident native fish: Habitat functions may include, but are not limited to, space or conditions for reproduction, resting, hiding and migration; and food production and delivery.

In marine waters:

Hydrologic: Transporting and stabilizing sediment, attenuating wave and tidal energy, removing excessive nutrients and toxic compounds; recruitment, redistribution and reduction of woody debris and other organic material.

Vegetation: Maintaining temperature; removing excessive nutrients and toxic compound, attenuating wave energy, sediment removal and stabilization; and providing woody debris and other organic matter.

Habitat for aquatic and shoreline-dependent birds, invertebrates, mammals; amphibians; and anadromous and resident native fish: Habitat functions may include, but are not limited to, space or conditions for reproduction, resting, hiding and migration; and food production and delivery.

Wetlands:

Hydrological: Storing water and sediment, attenuating wave energy, removing excessive nutrients and toxic compounds, recruiting woody debris and other organic material.

Vegetation: Maintaining temperature; removing excessive nutrients and toxic compound, attenuating wave energy, removing and stabilizing sediment; and providing woody debris and other organic matter.

Hyporheic functions: Removing excessive nutrients and toxic compound, storing water and maintaining base flows, storing sediment and support of vegetation.

Habitat for aquatic and shoreline-dependent birds, invertebrates, mammals; amphibians; and anadromous and resident native fish: Habitat functions may include, but are not limited to, space or conditions for reproduction, resting, hiding and migration; and food production and delivery.

(D) The overall condition of habitat and shoreline resources are determined by the following ecosystem-wide processes and ecological functions:

The distribution, diversity, and complexity of the watersheds, marine environments, and landscape-scale features that form the aquatic systems to which species, populations, and communities are uniquely adapted.

The spatial and temporal connectivity within and between watersheds and along marine shorelines. Drainage network connections include flood plains, wetlands, upslope areas, headwater tributaries, and naturally functioning routes to areas critical for fulfilling life history requirements of aquatic and riverine-dependent species.

The shorelines, beaches, banks, marine near-shore habitats, and bottom configurations that provide the physical framework of the aquatic system.

The timing, volume, and distribution of woody debris recruitment in rivers, streams and marine habitat areas.

The water quality necessary to maintain the biological, physical, and chemical integrity of the system and support survival, growth, reproduction, and migration of individuals composing aquatic, riverine and lacustrine communities.

The sediment regime under which aquatic ecosystems evolved. Elements of the sediment regime include the timing, volume, rate, and character of sediment input, storage, and transport.

The range of flow variability sufficient to create and sustain lacustrine, fluvial, aquatic, and wetland habitats, the patterns of sediment, nutrient, and wood routing. The timing, magnitude, duration, and spatial distribution of peak, high, and low flows, and duration of flood plain inundation and water table elevation in meadows and wetlands.

The species composition and structural diversity of plant communities in river and stream areas and wetlands that provides summer and winter thermal regulation, nutrient filtering, appropriate rates of surface erosion, bank erosion, and channel migration and to supply amounts and distributions of woody debris sufficient to sustain physical complexity and stability.

(E) Local governments should use the characterization and analysis called for in this section to prepare master program policies and regulations designed to achieve no net loss of ecological functions necessary to support shoreline resources and to plan for the restoration of the ecosystem-wide processes and individual ecological functions on a comprehensive basis over time.

(ii) **Shoreline use analysis and priorities.** Conduct an analysis to estimate the future demand for shoreline space and potential use conflicts. Characterize current shoreline use patterns and projected trends to ensure appropriate uses consistent with chapter 90.58 RCW and WAC 173-26-201 (2)(d) and 173-26-211(5).

If the jurisdiction includes a designated harbor area or urban waterfront with intensive uses or significant development or redevelopment issues, work with the Washington state department of natural resources and port authorities to ensure consistency with harbor area statutes and regulations, and to address port plans. Identify measures and strategies to encourage appropriate use of these shoreline areas in accordance with the use priorities of chapter 90.58 RCW and WAC 173-26-201 (2)(d) while pursuing opportunities for ecological restoration.

(iii) **Addressing cumulative impacts in developing master programs.** The principle that regulation of development shall achieve no net loss of ecological function requires that master program policies and regulations address the cumulative impacts on shoreline ecological functions that would result from future shoreline development and uses that are reasonably foreseeable from proposed master programs. To comply with the general obligation to assure no net loss of shoreline ecological function, the process of developing the policies and regulations of a shoreline master program requires assessment of how proposed policies and regulations cause and avoid such cumulative impacts.

Evaluating and addressing cumulative impacts shall be consistent with the guiding principle in WAC 173-26-186 (8)(d). An appropriate evaluation of cumulative impacts on ecological functions will consider the factors identified in WAC 173-26-186 (8)(d)(i) through (iii) and the effect on the ecological functions of the shoreline that are caused by unregulated activities, development and uses exempt from permitting, effects such as the incremental impact of residential bulkheads, residential piers, or runoff from newly developed properties. Accordingly, particular attention should be paid to policies and regulations that address platting or subdividing of property, laying of utilities, and mapping of streets that establish a pattern for future development that is to be regulated by the master program.

There are practical limits when evaluating impacts that are prospective and sometimes indirect. Local government should rely on the

assistance of state agencies and appropriate parties using evaluation, measurement, estimation, or quantification of impact consistent with the guidance of RCW 90.58.100(1) and WAC 173-26-201 (2)(a). Policies and regulations of a master program are not inconsistent with these guidelines for failing to address cumulative impacts where a purported impact is not susceptible to being addressed using an approach consistent with RCW 90.58.100(1).

Complying with the above guidelines is the way that master program policies and regulations should be developed to assure that the commonly occurring and foreseeable cumulative impacts do not cause a net loss of ecological functions of the shoreline. For such commonly occurring and planned development, policies and regulations should be designed without reliance on an individualized cumulative impacts analysis. Local government shall fairly allocate the burden of addressing cumulative impacts.

For development projects and uses that may have unanticipatable or uncommon impacts that cannot be reasonably identified at the time of master program development, the master program policies and regulations should use the permitting or conditional use permitting processes to ensure that all impacts are addressed and that there is no net loss of ecological function of the shoreline after mitigation.

Similarly, local government shall consider and address cumulative impacts on other functions and uses of the shoreline that are consistent with the act. For example, a cumulative impact of allowing development of docks or piers could be interference with navigation on a water body.

(iv) **Shorelines of statewide significance.** If the area contains shorelines of statewide significance, undertake the steps outlined in WAC 173-26-251.

(v) **Public access.** Identify public access needs and opportunities within the jurisdiction and explore actions to enhance shoreline recreation facilities, as described in WAC 173-26-221(4).

(vi) **Enforcement and coordination with other regulatory programs.** Local governments planning under the Growth Management Act shall review their comprehensive plan policies and development regulations to ensure mutual consistency. In order to effectively administer and enforce master program provisions, local governments should also review their current permit review and inspection practices to identify ways to increase efficiency and effectiveness and to ensure consistency.

(vii) **Water quality and quantity.** Identify water quality and quantity issues relevant to master program provisions, including those that affect human health and safety. Review data and information specific to shellfish areas. Identify measures to protect water quality for human health as described in WAC 173-26-221(6). At a minimum, consult with appropriate federal, state, tribal, and local agencies.

(viii) **Vegetation conservation.** Identify how existing shoreline vegetation provides ecological functions and determine methods to ensure protection of those functions. Identify important ecological functions that have been degraded through loss of vegetation. Consider the amount of vegetated shoreline area necessary to achieve ecological objectives. While there may be less vegetation remaining in urbanized areas than in rural areas, the importance of this vegetation, in terms of the ecological functions it provides, is often as great or even greater than in rural areas due to its scarcity. Identify measures to ensure that new development meets vegetation conservation objectives.

(ix) **Special area planning.** Some shoreline sites or areas require more focused attention than is possible in the overall master program

development process due to complex shoreline ecological issues, changing uses, or other unique features or issues. In these circumstances, the local government is encouraged to undertake special area planning. Special area planning also may be used to address: Public access, vegetation conservation, shoreline use compatibility, port development master planning, ecological restoration, or other issues best addressed on a comprehensive basis.

The resultant plans may serve as the basis for facilitating state and local government coordination and permit review. Special area planning shall provide for public and affected Indian tribe participation and compliance with all applicable provisions of the act and WAC 173-26-090 through 173-26-120.

(e) **Establish shoreline policies.** Address all of the elements listed in RCW 90.58.100(2) and all applicable provisions of these guidelines in policies. These policies should be reviewed for mutual consistency with the comprehensive plan policies. If there are shorelines of statewide significance, ensure that the other comprehensive plan policies affecting shoreline jurisdiction are consistent with the objectives of RCW 90.58.020 and 90.58.090(4).

(f) **Establish environment designations.** Establish environment designations and identify permitted uses and development standards for each environment designation.

Based on the inventory in (c) of this subsection and the analysis in (d) of this subsection, assign each shoreline segment an environment designation.

Prepare specific environment designation policies and regulations.

Review the environment designations for mutual consistency with comprehensive plan land use designations as indicated in WAC 173-26-211(3).

In determining the boundaries and classifications of environment designations, adhere to the criteria in WAC 173-26-211(5).

(g) **Prepare other shoreline regulations.** Prepare other shoreline regulations based on the policies and the analyses described in this section as necessary to assure consistency with the guidelines of this chapter. The level of detail of inventory information and planning analysis will be a consideration in setting shoreline regulations. As a general rule, the less known about existing resources, the more protective shoreline master program provisions should be to avoid unanticipated impacts to shoreline resources. If there is a question about the extent or condition of an existing ecological resource, then the master program provisions shall be sufficient to reasonably assure that the resource is protected in a manner consistent with the policies of these guidelines.

(h) **Submit for review and approval.** Local governments are encouraged to work with department personnel during preparation of the master program and to submit draft master program provisions to the department for informal advice and guidance prior to formal submittal.

Local governments shall submit the completed checklist, as described in WAC 173-26-201 (3)(a), with their master program amendments proposed for adoption. Master program review and formal adoption procedures are described in Parts I and II of this chapter.

WAC 173-26-211 Environment designation system. (1) **Applicability.** This section applies to the establishment of environment designation boundaries and provisions as described in WAC 173-26-191 (1)(d).

(2) **Basic requirements for environment designation classification and provisions.**

(a) Master programs shall contain a system to classify shoreline areas into specific environment designations. This classification system shall be based on the existing use pattern, the biological and physical character of the shoreline, and the goals and aspirations of the community as expressed through comprehensive plans as well as the criteria in this section. Each master program's classification system shall be consistent with that described in WAC 173-26-211 (4) and (5) unless the alternative proposed provides equal or better implementation of the act.

(b) An up-to-date and accurate map of the shoreline area delineating the environment designations and their boundaries shall be prepared and maintained in the local government office that administers shoreline permits. If it is not feasible to accurately designate individual parcels on a map, the master program text shall include a clear basis for identifying the boundaries, physical features, explicit criteria, or "common" boundary descriptions to accurately define and distinguish the environments on the ground. The master program should also make it clear that in the event of a mapping error, the jurisdiction will rely upon common boundary descriptions and the criteria contained in RCW 90.58.030(2) and chapter 173-22 WAC pertaining to determinations of shorelands, as amended, rather than the incorrect or outdated map.

(c) To facilitate consistency with land use planning, local governments planning under chapter 36.70A RCW are encouraged to illustrate shoreline designations on the comprehensive plan future land use map as described in WAC (~~(365-195-300)~~) 365-196-400 (2)(d).

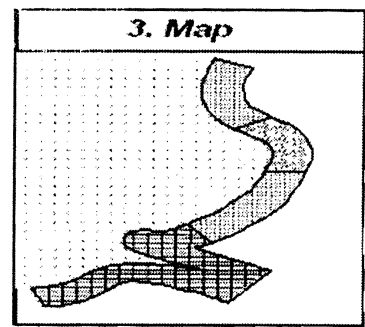
(d) Pursuant to RCW 90.58.040, the map should clearly illustrate what environment designations apply to all shorelines of the state as defined in RCW 90.58.030 (2)(c) within the local government's jurisdiction in a manner consistent with WAC 173-26-211 (4) and (5).

(e) The map and the master program should note that all areas within shoreline jurisdiction that are not mapped and/or designated are automatically assigned a "rural conservancy" designation, or "urban conservancy" designation if within a municipality or urban growth area, or the comparable environment designation of the applicable master program until the shoreline can be redesignated through a master program amendment.

(f) The following diagram summarizes the components of the environment designation provisions.

1. List of Designations
Aquatic
Shoreline Residential
Rural Conservancy
Natural
Others

2. Common Legal Descriptions



4. For Each Designation
Purpose of Designation
Designation Criteria
Management Policies

5. Matrices (Optional)		Environment			
Use Category	Use	Regulation			
	Provision				
	P	C			
	P	C			
	X	P			
Activities					
	P	P			
	C	P			
	C	P			
Height	20'	30'			
Setback	100'	120'			
Etc.					

6. Environment Specific Regulations
Site Development
Vegetation Management
Public Access
Etc.

Diagram summarizing the components of the environment designation provisions.
 (This is for illustration purposes only and does not supplement or add to the language in the chapter text.)

(3) **Consistency between shoreline environment designations and the local comprehensive plan.** As noted in WAC 173-26-191 (1)(e), RCW 90.58.340 requires that policies for lands adjacent to the shorelines be consistent with the Shoreline Management Act, implementing rules, and the applicable master program. Conversely, local comprehensive plans constitute the underlying framework within which master program provisions should fit. The Growth Management Act, where applicable, designates shoreline master program policies as an element of the comprehensive plan and requires that all elements be internally consistent. Chapter 36.70A RCW also requires development regulations to be consistent with the comprehensive plan.

The following criteria are intended to assist local governments in evaluating the consistency between master program environment designation provisions and the corresponding comprehensive plan elements and development regulations. In order for shoreline designation provisions, local comprehensive plan land use designations, and development regulations to be internally consistent, all three of the conditions below should be met:

(a) **Provisions not precluding one another.** The comprehensive plan provisions and shoreline environment designation provisions should not preclude one another. To meet this criteria, the provisions of both the comprehensive plan and the master program must be able to be met. Further, when considered together and applied to any one piece of property, the master program use policies and regulations and the local zoning or other use regulations should not conflict in a manner that all viable uses of the property are precluded.

(b) **Use compatibility.** Land use policies and regulations should protect preferred shoreline uses from being impacted by incompatible

uses. The intent is to prevent water-oriented uses, especially water-dependent uses, from being restricted on shoreline areas because of impacts to nearby nonwater-oriented uses. To be consistent, master programs, comprehensive plans, and development regulations should prevent new uses that are not compatible with preferred uses from locating where they may restrict preferred uses or development.

(c) **Sufficient infrastructure.** Infrastructure and services provided in the comprehensive plan should be sufficient to support allowed shoreline uses. Shoreline uses should not be allowed where the comprehensive plan does not provide sufficient roads, utilities, and other services to support them. Infrastructure plans must also be mutually consistent with shoreline designations. Where they do exist, utility services routed through shoreline areas shall not be a sole justification for more intense development.

(4) **General environment designation provisions.**

(a) **Requirements.** For each environment designation, the shoreline master program shall describe:

(i) **Purpose statement.** The statement of purpose shall describe the shoreline management objectives of the designation in a manner that distinguishes it from other designations.

(ii) **Classification criteria.** Clearly stated criteria shall provide the basis for classifying or reclassifying a specific shoreline area with an environment designation.

(iii) **Management policies.** These policies shall be in sufficient detail to assist in the interpretation of the environment designation regulations and, for jurisdictions planning under chapter 36.70A RCW, to evaluate consistency with the local comprehensive plan.

(iv) **Regulations.** Environment-specific regulations shall address the following where necessary to account for different shoreline conditions:

(A) Types of shoreline uses permitted, conditionally permitted, and prohibited;

(B) Building or structure height and bulk limits, setbacks, maximum density or minimum frontage requirements, and site development standards; and

(C) Other topics not covered in general use regulations that are necessary to assure implementation of the purpose of the environment designation.

(b) **The recommended classification system.** The recommended classification system consists of six basic environments: "High-intensity," "shoreline residential," "urban conservancy," "rural conservancy," "natural," and "aquatic" as described in this section and WAC 173-26-211(5). Local governments should assign all shoreline areas an environment designation consistent with the corresponding designation criteria provided for each environment. In delineating environment designations, local government should assure that existing shoreline ecological functions are protected with the proposed pattern and intensity of development. Such designations should also be consistent with policies for restoration of degraded shorelines.

(c) **Alternative systems.**

(i) Local governments may establish a different designation system or may retain their current environment designations, provided it is consistent with the purposes and policies of this section and WAC 173-26-211(5).

(ii) Local governments may use "parallel environments" where appropriate. Parallel environments divide shorelands into different sections generally running parallel to the shoreline or along a physical

feature such as a bluff or railroad right of way. Such environments may be useful, for example, to accommodate resource protection near the shoreline and existing development further from the shoreline. Where parallel environments are used, developments and uses allowed in one environment should not be inconsistent with the achieving the purposes of the other.

(5) **The designations.**

(a) **"Natural" environment.**

(i) **Purpose.** The purpose of the "natural" environment is to protect those shoreline areas that are relatively free of human influence or that include intact or minimally degraded shoreline functions intolerant of human use. These systems require that only very low intensity uses be allowed in order to maintain the ecological functions and ecosystem-wide processes. Consistent with the policies of the designation, local government should include planning for restoration of degraded shorelines within this environment.

(ii) **Management policies.**

(A) Any use that would substantially degrade the ecological functions or natural character of the shoreline area should not be allowed.

(B) The following new uses should not be allowed in the "natural" environment:

- Commercial uses.
- Industrial uses.
- Nonwater-oriented recreation.
- Roads, utility corridors, and parking areas that can be located outside of "natural" designated shorelines.

(C) Single-family residential development may be allowed as a conditional use within the "natural" environment if the density and intensity of such use is limited as necessary to protect ecological functions and be consistent with the purpose of the environment.

(D) Commercial forestry may be allowed as a conditional use in the "natural" environment provided it meets the conditions of the State Forest Practices Act and its implementing rules and is conducted in a manner consistent with the purpose of this environment designation.

(E) Agricultural uses of a very low intensity nature may be consistent with the natural environment when such use is subject to appropriate limitations or conditions to assure that the use does not expand or alter practices in a manner inconsistent with the purpose of the designation.

(F) Scientific, historical, cultural, educational research uses, and low-intensity water-oriented recreational access uses may be allowed provided that no significant ecological impact on the area will result.

(G) New development or significant vegetation removal that would reduce the capability of vegetation to perform normal ecological functions should not be allowed. Do not allow the subdivision of property in a configuration that, to achieve its intended purpose, will require significant vegetation removal or shoreline modification that adversely impacts ecological functions. That is, each new parcel must be able to support its intended development without significant ecological impacts to the shoreline ecological functions.

(iii) **Designation criteria.** A "natural" environment designation should be assigned to shoreline areas if any of the following characteristics apply:

(A) The shoreline is ecologically intact and therefore currently performing an important, irreplaceable function or ecosystem-wide process that would be damaged by human activity;

(B) The shoreline is considered to represent ecosystems and geologic types that are of particular scientific and educational interest; or

(C) The shoreline is unable to support new development or uses without significant adverse impacts to ecological functions or risk to human safety.

Such shoreline areas include largely undisturbed portions of shoreline areas such as wetlands, estuaries, unstable bluffs, coastal dunes, spits, and ecologically intact shoreline habitats. Shorelines inside or outside urban growth areas may be designated as "natural."

Ecologically intact shorelines, as used here, means those shoreline areas that retain the majority of their natural shoreline functions, as evidenced by the shoreline configuration and the presence of native vegetation. Generally, but not necessarily, ecologically intact shorelines are free of structural shoreline modifications, structures, and intensive human uses. In forested areas, they generally include native vegetation with diverse plant communities, multiple canopy layers, and the presence of large woody debris available for recruitment to adjacent water bodies. Recognizing that there is a continuum of ecological conditions ranging from near natural conditions to totally degraded and contaminated sites, this term is intended to delineate those shoreline areas that provide valuable functions for the larger aquatic and terrestrial environments which could be lost or significantly reduced by human development. Whether or not a shoreline is ecologically intact is determined on a case-by-case basis.

The term "ecologically intact shorelines" applies to all shoreline areas meeting the above criteria ranging from larger reaches that may include multiple properties to small areas located within a single property.

Areas with significant existing agriculture lands should not be included in the "natural" designation, except where the existing agricultural operations involve very low intensity uses where there is no significant impact on natural ecological functions, and where the intensity or impacts associated with such agriculture activities is unlikely to expand in a manner inconsistent with the "natural" designation.

(b) "Rural conservancy" environment.

(i) **Purpose.** The purpose of the "rural conservancy" environment is to protect ecological functions, conserve existing natural resources and valuable historic and cultural areas in order to provide for sustained resource use, achieve natural flood plain processes, and provide recreational opportunities. Examples of uses that are appropriate in a "rural conservancy" environment include low-impact outdoor recreation uses, timber harvesting on a sustained-yield basis, agricultural uses, aquaculture, low-intensity residential development and other natural resource-based low-intensity uses.

(ii) Management policies.

(A) Uses in the "rural conservancy" environment should be limited to those which sustain the shoreline area's physical and biological resources and uses of a nonpermanent nature that do not substantially degrade ecological functions or the rural or natural character of the shoreline area.

Except as noted, commercial and industrial uses should not be allowed. Agriculture, commercial forestry, and aquaculture when consis-

tent with provisions of this chapter may be allowed. Low-intensity, water-oriented commercial and industrial uses may be permitted in the limited instances where those uses have located in the past or at unique sites in rural communities that possess shoreline conditions and services to support the use.

Water-dependent and water-enjoyment recreation facilities that do not deplete the resource over time, such as boating facilities, angling, hunting, wildlife viewing trails, and swimming beaches, are preferred uses, provided significant adverse impacts to the shoreline are mitigated.

Mining is a unique use as a result of its inherent linkage to geology. Therefore, mining and related activities may be an appropriate use within the rural conservancy environment when conducted in a manner consistent with the environment policies and the provisions of WAC 173-26-241 (3)(h) and when located consistent with mineral resource lands designation criteria pursuant to RCW 36.70A.170 and WAC 365-190-070.

(B) Developments and uses that would substantially degrade or permanently deplete the biological resources of the area should not be allowed.

(C) Construction of new structural shoreline stabilization and flood control works should only be allowed where there is a documented need to protect an existing structure or ecological functions and mitigation is applied, consistent with WAC 173-26-231. New development should be designed and located to preclude the need for such work.

(D) Residential development standards shall ensure no net loss of shoreline ecological functions and should preserve the existing character of the shoreline consistent with the purpose of the environment. As a general matter, meeting this provision will require density, lot coverage, vegetation conservation and other provisions.

Scientific studies support density or lot coverage limitation standards that assure that development will be limited to a maximum of ten percent total impervious surface area within the lot or parcel, will maintain the existing hydrologic character of the shoreline. However, an alternative standard developed based on scientific information that meets the provisions of this chapter and accomplishes the purpose of the environment designation may be used.

Master programs may allow greater lot coverage to allow development of lots legally created prior to the adoption of a master program prepared under these guidelines. In these instances, master programs shall include measures to assure protection of ecological functions to the extent feasible such as requiring that lot coverage is minimized and vegetation is conserved.

(E) New shoreline stabilization, flood control measures, vegetation removal, and other shoreline modifications should be designed and managed consistent with these guidelines to ensure that the natural shoreline functions are protected. Such shoreline modification should not be inconsistent with planning provisions for restoration of shoreline ecological functions.

(iii) **Designation criteria.** Assign a "rural conservancy" environment designation to shoreline areas outside incorporated municipalities and outside urban growth areas, as defined by RCW 36.70A.110, if any of the following characteristics apply:

(A) The shoreline is currently supporting lesser-intensity resource-based uses, such as agriculture, forestry, or recreational uses, or is designated agricultural or forest lands pursuant to RCW 36.70A.170;

(B) The shoreline is currently accommodating residential uses outside urban growth areas and incorporated cities or towns;

(C) The shoreline is supporting human uses but subject to environmental limitations, such as properties that include or are adjacent to steep banks, feeder bluffs, or flood plains or other flood-prone areas;

(D) The shoreline is of high recreational value or with unique historic or cultural resources; or

(E) The shoreline has low-intensity water-dependent uses.

Areas designated in a local comprehensive plan as "limited areas of more intensive rural development," as provided for in chapter 36.70A RCW, may be designated an alternate shoreline environment, provided it is consistent with the objectives of the Growth Management Act and this chapter. "Master planned resorts" as described in RCW 36.70A.360 may be designated an alternate shoreline environment, provided the applicable master program provisions do not allow significant ecological impacts.

Lands that may otherwise qualify for designation as rural conservancy and which are designated as "mineral resource lands" pursuant to RCW 36.70A.170 and WAC 365-190-070 may be assigned a designation within the "rural conservancy" environment that allows mining and associated uses in addition to other uses consistent with the rural conservancy environment.

(c) **"Aquatic" environment.**

(i) **Purpose.** The purpose of the "aquatic" environment is to protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high-water mark.

(ii) **Management policies.**

(A) Allow new over-water structures only for water-dependent uses, public access, or ecological restoration.

(B) The size of new over-water structures should be limited to the minimum necessary to support the structure's intended use.

(C) In order to reduce the impacts of shoreline development and increase effective use of water resources, multiple use of over-water facilities should be encouraged.

(D) All developments and uses on navigable waters or their beds should be located and designed to minimize interference with surface navigation, to consider impacts to public views, and to allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.

(E) Uses that adversely impact the ecological functions of critical saltwater and freshwater habitats should not be allowed except where necessary to achieve the objectives of RCW 90.58.020, and then only when their impacts are mitigated according to the sequence described in WAC 173-26-201 (2)(e) as necessary to assure no net loss of ecological functions.

(F) Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions.

(G) Local governments should reserve shoreline space for shoreline preferred uses. Such planning should consider upland and in-water uses, water quality, navigation, presence of aquatic vegetation, existing shellfish protection districts and critical habitats, aesthetics, public access and views.

(iii) **Designation criteria.** Assign an "aquatic" environment designation to lands waterward of the ordinary high-water mark.

Local governments may designate submerged and intertidal lands with shoreland designations (e.g., "high-intensity" or "rural conservancy") if the management policies and objectives for aquatic areas are met. In this case, the designation system used must provide regulations for managing submerged and intertidal lands that are clear and consistent with the "aquatic" environment management policies in this chapter. Additionally, local governments may assign an "aquatic" environment designation to wetlands.

(d) **"High-intensity" environment.**

(i) **Purpose.** The purpose of the "high-intensity" environment is to provide for high-intensity water-oriented commercial, transportation, and industrial uses while protecting existing ecological functions and restoring ecological functions in areas that have been previously degraded.

(ii) **Management policies.**

(A) In regulating uses in the "high-intensity" environment, first priority should be given to water-dependent uses. Second priority should be given to water-related and water-enjoyment uses. Nonwater-oriented uses should not be allowed except as part of mixed use developments. Nonwater-oriented uses may also be allowed in limited situations where they do not conflict with or limit opportunities for water-oriented uses or on sites where there is no direct access to the shoreline. Such specific situations should be identified in shoreline use analysis or special area planning, as described in WAC (~~(173-26-200 (3)(d))~~) 173-26-201 (3)(d)(ii) and (ix).

If an analysis of water-dependent use needs as described in WAC 173-26-201 (3)(d)(ii) demonstrates the needs of existing and envisioned water-dependent uses for the planning period are met, then provisions allowing for a mix of water-dependent and nonwater-dependent uses may be established. If those shoreline areas also provide ecological functions, apply standards to assure no net loss of those functions.

(B) Full utilization of existing urban areas should be achieved before further expansion of intensive development is allowed. Reasonable long-range projections of regional economic need should guide the amount of shoreline designated "high-intensity." However, consideration should be given to the potential for displacement of nonwater-oriented uses with water-oriented uses when analyzing full utilization of urban waterfronts and before considering expansion of such areas.

(C) Policies and regulations shall assure no net loss of shoreline ecological functions as a result of new development. Where applicable, new development shall include environmental cleanup and restoration of the shoreline to comply in accordance with any relevant state and federal law.

(D) Where feasible, visual and physical public access should be required as provided for in WAC 173-26-221 (4)(d).

(E) Aesthetic objectives should be implemented by means such as sign control regulations, appropriate development siting, screening and architectural standards, and maintenance of natural vegetative buffers.

(iii) **Designation criteria.** Assign a "high-intensity" environment designation to shoreline areas within incorporated municipalities, urban growth areas, and industrial or commercial "limited areas of more intensive rural development," as described by RCW 36.70A.070, if they currently support high-intensity uses related to commerce, transportation or navigation; or are suitable and planned for high-intensity water-oriented uses.

(e) **"Urban conservancy" environment.**

(i) **Purpose.** The purpose of the "urban conservancy" environment is to protect and restore ecological functions of open space, flood plain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses.

(ii) **Management policies.**

(A) Uses that preserve the natural character of the area or promote preservation of open space, flood plain or sensitive lands either directly or over the long term should be the primary allowed uses. Uses that result in restoration of ecological functions should be allowed if the use is otherwise compatible with the purpose of the environment and the setting.

(B) Standards should be established for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications within the "urban conservancy" designation. These standards shall ensure that new development does not result in a net loss of shoreline ecological functions or further degrade other shoreline values.

(C) Public access and public recreation objectives should be implemented whenever feasible and significant ecological impacts can be mitigated.

(D) Water-oriented uses should be given priority over nonwater-oriented uses. For shoreline areas adjacent to commercially navigable waters, water-dependent uses should be given highest priority.

(E) Mining is a unique use as a result of its inherent linkage to geology. Therefore, mining and related activities may be an appropriate use within the urban conservancy environment when conducted in a manner consistent with the environment policies and the provisions of WAC (~~(173-26-240 (3)(h) [173-26-241 (3)(h)]~~) 173-26-241 (3)(h) and when located consistent with mineral resource lands designation criteria pursuant to RCW 36.70A.170 and WAC 365-190-070.

(iii) **Designation criteria.** Assign an "urban conservancy" environment designation to shoreline areas appropriate and planned for development that is compatible with maintaining or restoring of the ecological functions of the area, that are not generally suitable for water-dependent uses and that lie in incorporated municipalities, urban growth areas, or commercial or industrial "limited areas of more intensive rural development" if any of the following characteristics apply:

(A) They are suitable for water-related or water-enjoyment uses;

(B) They are open space, flood plain or other sensitive areas that should not be more intensively developed;

(C) They have potential for ecological restoration;

(D) They retain important ecological functions, even though partially developed; or

(E) They have the potential for development that is compatible with ecological restoration.

Lands that may otherwise qualify for designation as urban conservancy and which are designated as "mineral resource lands" pursuant to RCW 36.70A.170 and WAC 365-190-070 may be assigned a designation within the "urban conservancy" environment that allows mining and associated uses in addition to other uses consistent with the urban conservancy environment.

(f) **"Shoreline residential" environment.**

(i) **Purpose.** The purpose of the "shoreline residential" environment is to accommodate residential development and appurtenant struc-

tures that are consistent with this chapter. An additional purpose is to provide appropriate public access and recreational uses.

(ii) **Management policies.**

(A) Standards for density or minimum frontage width, setbacks, lot coverage limitations, buffers, shoreline stabilization, vegetation conservation, critical area protection, and water quality shall be set to assure no net loss of shoreline ecological functions, taking into account the environmental limitations and sensitivity of the shoreline area, the level of infrastructure and services available, and other comprehensive planning considerations.

Local governments may establish two or more different "shoreline residential" environments to accommodate different shoreline densities or conditions, provided both environments adhere to the provisions in this chapter.

(B) Multifamily and multilot residential and recreational developments should provide public access and joint use for community recreational facilities.

(C) Access, utilities, and public services should be available and adequate to serve existing needs and/or planned future development.

(D) Commercial development should be limited to water-oriented uses.

(iii) **Designation criteria.** Assign a "shoreline residential" environment designation to shoreline areas inside urban growth areas, as defined in RCW 36.70A.110, incorporated municipalities, "rural areas of more intense development," or "master planned resorts," as described in RCW 36.70A.360, if they are predominantly single-family or multifamily residential development or are planned and platted for residential development.

AMENDATORY SECTION (Amending WSR 11-05-064, filed 2/11/11, effective 3/14/11)

WAC 173-26-221 General master program provisions. The provisions of this section shall be applied either generally to all shoreline areas or to shoreline areas that meet the specified criteria of the provision without regard to environment designation. These provisions address certain elements as required by RCW 90.58.100(2) and implement the principles as established in WAC 173-26-186.

(1) **Archaeological and historic resources.**

(a) **Applicability.** The following provisions apply to archaeological and historic resources that are either recorded at the department of archaeology and historic preservation ((office)) and/or by local jurisdictions or have been inadvertently uncovered. Archaeological sites located both in and outside shoreline jurisdiction are subject to chapter 27.44 RCW (Indian graves and records) and chapter 27.53 RCW (Archaeological sites and records) and development or uses that may impact such sites shall comply with chapter 25-48 WAC as well as the provisions of this chapter.

(b) **Principles.** Due to the limited and irreplaceable nature of the resource(s), prevent the destruction of or damage to any site having historic, cultural, scientific, or educational value as identified by the appropriate authorities, including affected Indian tribes, and the ((office)) department of archaeology and historic preservation.

(c) **Standards.** Local shoreline master programs shall include policies and regulations to protect historic, archaeological, and cultural features and qualities of shorelines and implement the following standards. A local government may reference historic inventories or regulations. Contact the ((office)) department of archaeology and historic preservation and affected Indian tribes for additional information.

(i) Require that developers and property owners immediately stop work and notify the local government, the ((office)) department of archaeology and historic preservation and affected Indian tribes if archaeological resources are uncovered during excavation.

(ii) Require that permits issued in areas documented to contain archaeological resources require a site inspection or evaluation by a professional archaeologist in coordination with affected Indian tribes.

(2) **Critical areas.**

(a) **Applicability.** Pursuant to the provisions of RCW 90.58.090(4) and 36.70A.480(3) as amended by chapter 107, Laws of 2010 (EHB 1653), shoreline master programs must provide for management of critical areas designated as such pursuant to RCW 36.70A.170 (1)(d) located within the shorelines of the state with policies and regulations that:

(i) Are consistent with the specific provisions of this subsection (2) critical areas and subsection (3) of this section flood hazard reduction, and these guidelines; and

(ii) Provide a level of protection to critical areas within the shoreline area that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources.

The provisions of this section and subsection (3) of this section, flood hazard reduction, shall be applied to critical areas within the shorelines of the state. RCW 36.70A.030 defines critical areas as:

"Critical areas" include the following areas and ecosystems:

(a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable waters; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas."

The provisions of WAC 365-190-080 through 365-190-130, to the extent standards for certain types of critical areas are not provided by this section and subsection (3) of this section flood hazard reduction, and to the extent consistent with these guidelines are also applicable to and provide further definition of critical area categories and management policies.

As provided in RCW 90.58.030 (2)(f)(ii) and 36.70A.480, as amended by chapter 321, Laws of 2003 (ESHB 1933), any city or county may also include in its master program land necessary for buffers for critical areas, as defined in chapter 36.70A RCW, that occur within shorelines of the state, provided that forest practices regulated under chapter 76.09 RCW, except conversions to nonforest land use, on lands subject to the provision of WAC 173-26-241 (3)(e) are not subject to additional regulations. If a local government does not include land necessary for buffers for critical areas that occur within shorelines of the state, as authorized above, then the local jurisdiction shall continue to regulate those critical areas and required buffers pursuant to RCW 36.70A.060(2).

In addition to critical areas defined under chapter 36.70A RCW and critical saltwater and freshwater habitats as described in these guidelines, local governments should identify additional shoreline

areas that warrant special protection necessary to achieve no net loss of ecological functions.

(b) **Principles.** Local master programs, when addressing critical areas, shall implement the following principles:

(i) Shoreline master programs shall adhere to the standards established in the following sections, unless it is demonstrated through scientific and technical information as provided in RCW 90.58.100(1) and as described in WAC 173-26-201 (2)(a) that an alternative approach provides better resource protection.

(ii) In addressing issues related to critical areas, use scientific and technical information, as described in WAC 173-26-201 (2)(a). The role of ecology in reviewing master program provisions for critical areas in shorelines of the state will be based on the Shoreline Management Act and these guidelines.

(iii) In protecting and restoring critical areas within shoreline jurisdiction, integrate the full spectrum of planning and regulatory measures, including the comprehensive plan, interlocal watershed plans, local development regulations, and state, tribal, and federal programs.

(iv) The planning objectives of shoreline management provisions for critical areas shall be the protection of existing ecological functions and ecosystem-wide processes and restoration of degraded ecological functions and ecosystem-wide processes. The regulatory provisions for critical areas shall protect existing ecological functions and ecosystem-wide processes.

(v) Promote human uses and values that are compatible with the other objectives of this section, such as public access and aesthetic values, provided that impacts to ecological functions are first avoided, and any unavoidable impacts are mitigated.

(c) **Standards.** When preparing master program provisions for critical areas, local governments should implement the following standards and use scientific and technical information, as provided for in WAC 173-26-201 (2)(a).

Provisions for frequently flooded areas are included in WAC 173-26-221(3).

(i) **Wetlands.**

(A) **Wetland use regulations.** Local governments should consult the department's technical guidance documents on wetlands.

Regulations shall address the following uses to achieve, at a minimum, no net loss of wetland area and functions, including lost time when the wetland does not perform the function:

- The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;

- The dumping, discharging, or filling with any material, including discharges of storm water and domestic, commercial, or industrial wastewater;

- The draining, flooding, or disturbing of the water level, duration of inundation, or water table;

- The driving of pilings;

- The placing of obstructions;

- The construction, reconstruction, demolition, or expansion of any structure;

- Significant vegetation removal, provided that these activities are not part of a forest practice governed under chapter 76.09 RCW and its rules;

- Other uses or development that results in an ecological impact to the physical, chemical, or biological characteristics of wetlands; or

- Activities reducing the functions of buffers described in (c)(i)(D) of this subsection.

(B) **Wetland rating or categorization.** Wetlands shall be categorized based on the rarity, irreplaceability, or sensitivity to disturbance of a wetland and the functions the wetland provides. Local governments should either use the Washington state wetland rating system, Eastern or Western Washington version as appropriate, or they should develop their own, regionally specific, scientifically based method for categorizing wetlands. Wetlands should be categorized to reflect differences in wetland quality and function in order to tailor protection standards appropriately. A wetland categorization method is not a substitute for a function assessment method, where detailed information on wetland functions is needed.

(C) **Alterations to wetlands.** Master program provisions addressing alterations to wetlands shall be consistent with the policy of no net loss of wetland area and functions, wetland rating, scientific and technical information, and the mitigation priority sequence defined in WAC 173-26-201 (2)(e).

(D) **Buffers.** Master programs shall contain requirements for buffer zones around wetlands. Buffer requirements shall be adequate to ensure that wetland functions are protected and maintained in the long term. Requirements for buffer zone widths and management shall take into account the ecological functions of the wetland, the characteristics and setting of the buffer, the potential impacts associated with the adjacent land use, and other relevant factors.

(E) **Mitigation.** Master programs shall contain wetland mitigation requirements that are consistent with WAC 173-26-201 (2)(e) and which are based on the wetland rating.

(F) **Compensatory mitigation.** Compensatory mitigation shall be allowed only after mitigation sequencing is applied and higher priority means of mitigation are determined to be infeasible.

Requirements for compensatory mitigation must include provisions for:

(I) Mitigation replacement ratios or a similar method of addressing the following:

- The risk of failure of the compensatory mitigation action;
- The length of time it will take the compensatory mitigation action to adequately replace the impacted wetland functions and values;
- The gain or loss of the type, quality, and quantity of the ecological functions of the compensation wetland as compared with the impacted wetland.

(II) Establishment of performance standards for evaluating the success of compensatory mitigation actions;

(III) Establishment of long-term monitoring and reporting procedures to determine if performance standards are met; and

(IV) Establishment of long-term protection and management of compensatory mitigation sites.

Credits from a certified mitigation bank may be used to compensate for unavoidable impacts.

(ii) **Geologically hazardous areas.** Development in designated geologically hazardous areas shall be regulated in accordance with the following:

(A) Consult designation criteria for geologically hazardous areas, WAC 365-190-120.

(B) Do not allow new development or the creation of new lots that would cause foreseeable risk from geological conditions to people or improvements during the life of the development.

(C) Do not allow new development that would require structural shoreline stabilization over the life of the development. Exceptions may be made for the limited instances where stabilization is necessary to protect allowed uses where no alternative locations are available and no net loss of ecological functions will result. The stabilization measures shall conform to WAC 173-26-231.

(D) Where no alternatives, including relocation or reconstruction of existing structures, are found to be feasible, and less expensive than the proposed stabilization measure, stabilization structures or measures to protect existing primary residential structures may be allowed in strict conformance with WAC 173-26-231 requirements and then only if no net loss of ecological functions will result.

(iii) **Critical saltwater habitats.**

(A) **Applicability.** Critical saltwater habitats include all kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as herring, smelt and sandlance; subsistence, commercial and recreational shellfish beds; mudflats, intertidal habitats with vascular plants, and areas with which priority species have a primary association. Critical saltwater habitats require a higher level of protection due to the important ecological functions they provide. Ecological functions of marine shorelands can affect the viability of critical saltwater habitats. Therefore, effective protection and restoration of critical saltwater habitats should integrate management of shorelands as well as submerged areas.

(B) **Principles.** Master programs shall include policies and regulations to protect critical saltwater habitats and should implement planning policies and programs to restore such habitats. The inclusion of commercial aquaculture in the critical saltwater habitat definition does not limit its regulation as a use. Reserving shoreline areas for protecting and restoring ecological functions should be done prior to reserving shoreline areas for uses described in WAC 173-26-201 (2)(d)(i) through (v). Planning for critical saltwater habitats shall incorporate the participation of state resource agencies to assure consistency with other legislatively created programs in addition to local and regional government entities with an interest such as port districts. Affected Indian tribes shall also be consulted. Local governments should review relevant comprehensive management plan policies and development regulations for shorelands and adjacent lands to achieve consistency as directed in RCW 90.58.340. Local governments should base management planning on information provided by state resource agencies and affected Indian tribes unless they demonstrate that they possess more accurate and reliable information.

The management planning should include an evaluation of current data and trends regarding the following:

- Available inventory and collection of necessary data regarding physical characteristics of the habitat, including upland conditions, and any information on species population trends;
- Terrestrial and aquatic vegetation;
- The level of human activity in such areas, including the presence of roads and level of recreational types (passive or active recreation may be appropriate for certain areas and habitats);
- Restoration potential;
- Tributaries and small streams flowing into marine waters;

- Dock and bulkhead construction, including an inventory of bulkheads serving no protective purpose;
- Conditions and ecological functions in the near-shore area;
- Uses surrounding the critical saltwater habitat areas that may negatively impact those areas, including permanent or occasional upland, beach, or over-water uses; and
- An analysis of what data gaps exist and a strategy for gaining this information.

The management planning should address the following, where applicable:

- Protecting a system of fish and wildlife habitats with connections between larger habitat blocks and open spaces and restoring such habitats and connections where they are degraded;
- Protecting existing and restoring degraded riparian and estuarine ecosystems, especially salt marsh habitats;
- Establishing adequate buffer zones around these areas to separate incompatible uses from the habitat areas;
- Protecting existing and restoring degraded near-shore habitat;
- Protecting existing and restoring degraded or lost salmonid, shorebird, waterfowl, or marine mammal habitat;
- Protecting existing and restoring degraded upland ecological functions important to critical saltwater habitats, including riparian and associated upland native plant communities;
- Improving water quality;
- Protecting existing and restoring degraded sediment inflow and transport regimens; and
- Correcting activities that cause excessive sediment input where human activity has led to mass wasting.

Local governments, in conjunction with state resource agencies and affected Indian tribes, should classify critical saltwater habitats and protect and restore seasonal ranges and habitat elements with which federal-listed and state-listed endangered, threatened, and priority species have a primary association and which, if altered, may reduce the likelihood that a species will maintain its population and reproduce over the long term.

Local governments, in conjunction with state resource agencies and affected Indian tribes, should determine which habitats and species are of local importance.

Local governments shall protect kelp and eelgrass beds, forage fish spawning and holding areas, and priority species habitat identified by the department of natural resources' aquatic resources division, the department of fish and wildlife, the department, and affected Indian tribes as critical saltwater habitats.

Comprehensive saltwater habitat management planning should identify methods for monitoring conditions and adapting management practices to new information.

(C) **Standards.** Docks, piers, bulkheads, bridges, fill, floats, jetties, utility crossings, and other human-made structures shall not intrude into or over critical saltwater habitats except when all of the conditions below are met:

- The public's need for such an action or structure is clearly demonstrated and the proposal is consistent with protection of the public trust, as embodied in RCW 90.58.020;
- Avoidance of impacts to critical saltwater habitats by an alternative alignment or location is not feasible or would result in unreasonable and disproportionate cost to accomplish the same general purpose;

- The project including any required mitigation, will result in no net loss of ecological functions associated with critical saltwater habitat.

- The project is consistent with the state's interest in resource protection and species recovery.

Private, noncommercial docks for individual residential or community use may be authorized provided that:

- Avoidance of impacts to critical saltwater habitats by an alternative alignment or location is not feasible;

- The project including any required mitigation, will result in no net loss of ecological functions associated with critical saltwater habitat.

Until an inventory of critical saltwater habitat has been done, shoreline master programs shall condition all over-water and near-shore developments in marine and estuarine waters with the requirement for an inventory of the site and adjacent beach sections to assess the presence of critical saltwater habitats and functions. The methods and extent of the inventory shall be consistent with accepted research methodology. At a minimum, local governments should consult with department technical assistance materials for guidance.

(iv) **Critical freshwater habitats.**

(A) **Applicability.** The following applies to master program provisions affecting critical freshwater habitats within shorelines of the state designated under chapter 36.70A RCW, including those portions of streams, rivers, wetlands, and lakes, their associated channel migration zones, and flood plains designated as such in the master program.

(B) **Principles.** Many ecological functions of lake, river and stream corridors depend both on continuity and connectivity along the length of the shoreline and on the conditions of the surrounding lands on either side of river channel and lake basin. Environmental degradation caused by development such as improper storm water sewer or industrial outfalls, unmanaged clearing and grading, or runoff from buildings and parking lots within the watershed, can degrade ecological functions in lakes and downstream. Likewise, gradual destruction or loss of riparian and associated upland native plant communities, alteration of runoff quality and quantity along the lake basin and stream corridor resulting from incremental flood plain and lake basin development can raise water temperatures and alter hydrographic conditions, degrading ecological functions. This makes the corridor inhospitable for invertebrate and vertebrate aquatic, amphibian and terrestrial wildlife species and susceptible to catastrophic flooding, droughts, landslides and channel changes. These conditions also threaten human health, safety, and property. Long stretches of lake, river and stream shorelines have been significantly altered or degraded in this manner. Therefore, effective management of lake basins and river and stream corridors depends on:

(I) Planning for protection, and restoration where appropriate, throughout the lake basin and along the entire length of the corridor from river headwaters to the mouth; and

(II) Regulating uses and development within lake basins and stream channels, associated channel migration zones, wetlands, and the flood plains, to the extent such areas are in the shoreline jurisdictional area, as necessary to assure no net loss of ecological functions, including where applicable the associated hyporheic zone, results from new development.

As part of a comprehensive approach to management of critical freshwater habitat and other lake, river and stream values, local gov-

ernments should integrate master program provisions, including those for shoreline stabilization, fill, vegetation conservation, water quality, flood hazard reduction, and specific uses, to protect human health and safety and to protect and restore lake and river corridor ecological functions and ecosystem-wide processes.

Applicable master programs shall contain provisions to protect hydrologic connections between water bodies, water courses, and associated wetlands. Restoration planning should include incentives and other means to restore water connections that have been impeded by previous development.

Master program provisions for lake basins and river and stream corridors should, where appropriate, be based on the information from comprehensive watershed management planning where available.

(C) **Standards.** Master programs shall implement the following standards within shoreline jurisdiction:

(I) Provide for the protection of ecological functions associated with critical freshwater habitat as necessary to assure no net loss of ecological functions.

(II) Integrate protection of critical freshwater, riparian and associated upland habitat, protection with flood hazard reduction and other lake, wetland, river and stream management provisions.

(III) Include provisions that facilitate authorization of appropriate restoration projects.

(IV) Provide for the implementation of the principles identified in (c)(iv)(B) of this subsection.

(3) **Flood hazard reduction.**

(a) **Applicability.** The following provisions apply to actions taken to reduce flood damage or hazard and to uses, development, and shoreline modifications that may increase flood hazards. Flood hazard reduction measures may consist of nonstructural measures, such as setbacks, land use controls, wetland restoration, dike removal, use relocation, biotechnical measures, and storm water management programs, and of structural measures, such as dikes, levees, revetments, floodwalls, channel realignment, and elevation of structures consistent with the National Flood Insurance Program. Additional relevant critical area provisions are in WAC 173-26-221(2).

(b) **Principles.** Flooding of rivers, streams, and other shorelines is a natural process that is affected by factors and land uses occurring throughout the watershed. Past land use practices have disrupted hydrological processes and increased the rate and volume of runoff, thereby exacerbating flood hazards and reducing ecological functions. Flood hazard reduction measures are most effective when integrated into comprehensive strategies that recognize the natural hydrogeological and biological processes of water bodies. Over the long term, the most effective means of flood hazard reduction is to prevent or remove development in flood-prone areas, to manage storm water within the flood plain, and to maintain or restore river and stream system's natural hydrological and geomorphological processes.

Structural flood hazard reduction measures, such as diking, even if effective in reducing inundation in a portion of the watershed, can intensify flooding elsewhere. Moreover, structural flood hazard reduction measures can damage ecological functions crucial to fish and wildlife species, bank stability, and water quality. Therefore, structural flood hazard reduction measures shall be avoided whenever possible. When necessary, they shall be accomplished in a manner that assures no net loss of ecological functions and ecosystem-wide processes.

The dynamic physical processes of rivers, including the movement of water, sediment and wood, cause the river channel in some areas to move laterally, or "migrate," over time. This is a natural process in response to gravity and topography and allows the river to release energy and distribute its sediment load. The area within which a river channel is likely to move over a period of time is referred to as the channel migration zone (CMZ) or the meander belt. Scientific examination as well as experience has demonstrated that interference with this natural process often has unintended consequences for human users of the river and its valley such as increased or changed flood, sedimentation and erosion patterns. It also has adverse effects on fish and wildlife through loss of critical habitat for river and riparian dependent species. Failing to recognize the process often leads to damage to, or loss of, structures and threats to life safety.

Applicable shoreline master programs should include provisions to limit development and shoreline modifications that would result in interference with the process of channel migration that may cause significant adverse impacts to property or public improvements and/or result in a net loss of ecological functions associated with the rivers and streams. (See also (c) of this subsection.)

The channel migration zone should be established to identify those areas with a high probability of being subject to channel movement based on the historic record, geologic character and evidence of past migration. It should also be recognized that past action is not a perfect predictor of the future and that human and natural changes may alter migration patterns. Consideration should be given to such changes that may have occurred and their effect on future migration patterns.

For management purposes, the extent of likely migration along a stream reach can be identified using evidence of active stream channel movement over the past one hundred years. Evidence of active movement can be provided from historic and current aerial photos and maps and may require field analysis of specific channel and valley bottom characteristics in some cases. A time frame of one hundred years was chosen because aerial photos, maps and field evidence can be used to evaluate movement in this time frame.

In some cases, river channels are prevented from normal or historic migration by human-made structures or other shoreline modifications. The definition of channel migration zone indicates that in defining the extent of a CMZ, local governments should take into account the river's characteristics and its surroundings. Unless otherwise demonstrated through scientific and technical information, the following characteristics should be considered when establishing the extent of the CMZ for management purposes:

- Within incorporated municipalities and urban growth areas, areas separated from the active river channel by legally existing artificial channel constraints that limit channel movement should not be considered within the channel migration zone.

- All areas separated from the active channel by a legally existing artificial structure(s) that is likely to restrain channel migration, including transportation facilities, built above or constructed to remain intact through the one hundred-year flood, should not be considered to be in the channel migration zone.

- In areas outside incorporated municipalities and urban growth areas, channel constraints and flood control structures built below the one hundred-year flood elevation do not necessarily restrict channel migration and should not be considered to limit the channel migra-

tion zone unless demonstrated otherwise using scientific and technical information.

Master programs shall implement the following principles:

(i) Where feasible, give preference to nonstructural flood hazard reduction measures over structural measures.

(ii) Base shoreline master program flood hazard reduction provisions on applicable watershed management plans, comprehensive flood hazard management plans, and other comprehensive planning efforts, provided those measures are consistent with the Shoreline Management Act and this chapter.

(iii) Consider integrating master program flood hazard reduction provisions with other regulations and programs, including (if applicable):

- Storm water management plans;
- Flood plain regulations, as provided for in chapter 86.16 RCW;
- Critical area ordinances and comprehensive plans, as provided in chapter 36.70A RCW; and
- The National Flood Insurance Program.

(iv) Assure that flood hazard protection measures do not result in a net loss of ecological functions associated with the rivers and streams.

(v) Plan for and facilitate returning river and stream corridors to more natural hydrological conditions. Recognize that seasonal flooding is an essential natural process.

(vi) When evaluating alternate flood control measures, consider the removal or relocation of structures in flood-prone areas.

(vii) Local governments are encouraged to plan for and facilitate removal of artificial restrictions to natural channel migration, restoration of off channel hydrological connections and return river processes to a more natural state where feasible and appropriate.

(c) **Standards.** Master programs shall implement the following standards within shoreline jurisdiction:

(i) Development in flood plains should not significantly or cumulatively increase flood hazard or be inconsistent with a comprehensive flood hazard management plan adopted pursuant to chapter 86.12 RCW, provided the plan has been adopted after 1994 and approved by the department. New development or new uses in shoreline jurisdiction, including the subdivision of land, should not be established when it would be reasonably foreseeable that the development or use would require structural flood hazard reduction measures within the channel migration zone or floodway. The following uses and activities may be appropriate and/or necessary within the channel migration zone or floodway:

- Actions that protect or restore the ecosystem-wide processes or ecological functions.
- Forest practices in compliance with the Washington State Forest Practices Act and its implementing rules.
- Existing and ongoing agricultural practices, provided that no new restrictions to channel movement occur.
- Mining when conducted in a manner consistent with the environment designation and with the provisions of WAC 173-26-241 (3)(h).
- Bridges, utility lines, and other public utility and transportation structures where no other feasible alternative exists or the alternative would result in unreasonable and disproportionate cost. Where such structures are allowed, mitigation shall address impacted functions and processes in the affected section of watershed or drift cell.

- Repair and maintenance of an existing legal use, provided that such actions do not cause significant ecological impacts or increase flood hazards to other uses.

- Development with a primary purpose of protecting or restoring ecological functions and ecosystem-wide processes.

- Modifications or additions to an existing nonagricultural legal use, provided that channel migration is not further limited and that the new development includes appropriate protection of ecological functions.

- Development in incorporated municipalities and designated urban growth areas, as defined in chapter 36.70A RCW, where existing structures prevent active channel movement and flooding.

- Measures to reduce shoreline erosion, provided that it is demonstrated that the erosion rate exceeds that which would normally occur in a natural condition, that the measure does not interfere with fluvial hydrological and geomorphological processes normally acting in natural conditions, and that the measure includes appropriate mitigation of impacts to ecological functions associated with the river or stream.

(ii) Allow new structural flood hazard reduction measures in shoreline jurisdiction only when it can be demonstrated by a scientific and engineering analysis that they are necessary to protect existing development, that nonstructural measures are not feasible, that impacts on ecological functions and priority species and habitats can be successfully mitigated so as to assure no net loss, and that appropriate vegetation conservation actions are undertaken consistent with WAC 173-26-221(5).

Structural flood hazard reduction measures shall be consistent with an adopted comprehensive flood hazard management plan approved by the department that evaluates cumulative impacts to the watershed system.

(iii) Place new structural flood hazard reduction measures landward of the associated wetlands, and designated vegetation conservation areas, except for actions that increase ecological functions, such as wetland restoration, or as noted below. Provided that such flood hazard reduction projects be authorized if it is determined that no other alternative to reduce flood hazard to existing development is feasible. The need for, and analysis of feasible alternatives to, structural improvements shall be documented through a geotechnical analysis.

(iv) Require that new structural public flood hazard reduction measures, such as dikes and levees, dedicate and improve public access pathways unless public access improvements would cause unavoidable health or safety hazards to the public, inherent and unavoidable security problems, unacceptable and unmitigable significant ecological impacts, unavoidable conflict with the proposed use, or a cost that is disproportionate and unreasonable to the total long-term cost of the development.

(v) Require that the removal of gravel for flood management purposes be consistent with an adopted flood hazard reduction plan and with this chapter and allowed only after a biological and geomorphological study shows that extraction has a long-term benefit to flood hazard reduction, does not result in a net loss of ecological functions, and is part of a comprehensive flood management solution.

(4) **Public access.**

(a) **Applicability.** Public access includes the ability of the general public to reach, touch, and enjoy the water's edge, to travel on

the waters of the state, and to view the water and the shoreline from adjacent locations. Public access provisions below apply to all shorelines of the state unless stated otherwise.

(b) **Principles.** Local master programs shall:

(i) Promote and enhance the public interest with regard to rights to access waters held in public trust by the state while protecting private property rights and public safety.

(ii) Protect the rights of navigation and space necessary for water-dependent uses.

(iii) To the greatest extent feasible consistent with the overall best interest of the state and the people generally, protect the public's opportunity to enjoy the physical and aesthetic qualities of shorelines of the state, including views of the water.

(iv) Regulate the design, construction, and operation of permitted uses in the shorelines of the state to minimize, insofar as practical, interference with the public's use of the water.

(c) **Planning process to address public access.** Local governments should plan for an integrated shoreline area public access system that identifies specific public needs and opportunities to provide public access. Such a system can often be more effective and economical than applying uniform public access requirements to all development. This planning should be integrated with other relevant comprehensive plan elements, especially transportation and recreation. The planning process shall also comply with all relevant constitutional and other legal limitations that protect private property rights.

Where a port district or other public entity has incorporated public access planning into its master plan through an open public process, that plan may serve as a portion of the local government's public access planning, provided it meets the provisions of this chapter. The planning may also justify more flexible off-site or special area public access provisions in the master program. Public participation requirements in WAC 173-26-201 (3)(b)(i) apply to public access planning.

At a minimum, the public access planning should result in public access requirements for shoreline permits, recommended projects, port master plans, and/or actions to be taken to develop public shoreline access to shorelines on public property. The planning should identify a variety of shoreline access opportunities and circulation for pedestrians (including disabled persons), bicycles, and vehicles between shoreline access points, consistent with other comprehensive plan elements.

(d) **Standards.** Shoreline master programs should implement the following standards:

(i) Based on the public access planning described in (c) of this subsection, establish policies and regulations that protect and enhance both physical and visual public access. The master program shall address public access on public lands. The master program should seek to increase the amount and diversity of public access to the state's shorelines consistent with the natural shoreline character, property rights, public rights under the Public Trust Doctrine, and public safety.

(ii) Require that shoreline development by public entities, including local governments, port districts, state agencies, and public utility districts, include public access measures as part of each development project, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline environment. Where public access planning as described in WAC 173-26-221

(4)(c) demonstrates that a more effective public access system can be achieved through alternate means, such as focusing public access at the most desirable locations, local governments may institute master program provisions for public access based on that approach in lieu of uniform site-by-site public access requirements.

(iii) Provide standards for the dedication and improvement of public access in developments for water-enjoyment, water-related, and nonwater-dependent uses and for the subdivision of land into more than four parcels. In these cases, public access should be required except:

(A) Where the local government provides more effective public access through a public access planning process described in WAC 173-26-221 (4)(c).

(B) Where it is demonstrated to be infeasible due to reasons of incompatible uses, safety, security, or impact to the shoreline environment or due to constitutional or other legal limitations that may be applicable.

In determining the infeasibility, undesirability, or incompatibility of public access in a given situation, local governments shall consider alternate methods of providing public access, such as off-site improvements, viewing platforms, separation of uses through site planning and design, and restricting hours of public access.

(C) For individual single-family residences not part of a development planned for more than four parcels.

(iv) Adopt provisions, such as maximum height limits, setbacks, and view corridors, to minimize the impacts to existing views from public property or substantial numbers of residences. Where there is an irreconcilable conflict between water-dependent shoreline uses or physical public access and maintenance of views from adjacent properties, the water-dependent uses and physical public access shall have priority, unless there is a compelling reason to the contrary.

(v) Assure that public access improvements do not result in a net loss of shoreline ecological functions.

(5) **Shoreline vegetation conservation.**

(a) **Applicability.** Vegetation conservation includes activities to protect and restore vegetation along or near marine and freshwater shorelines that contribute to the ecological functions of shoreline areas. Vegetation conservation provisions include the prevention or restriction of plant clearing and earth grading, vegetation restoration, and the control of invasive weeds and nonnative species.

Unless otherwise stated, vegetation conservation does not include those activities covered under the Washington State Forest Practices Act, except for conversion to other uses and those other forest practice activities over which local governments have authority. As with all master program provisions, vegetation conservation provisions apply even to those shoreline uses and developments that are exempt from the requirement to obtain a permit. Like other master program provisions, vegetation conservation standards do not apply retroactively to existing uses and structures, such as existing agricultural practices.

(b) **Principles.** The intent of vegetation conservation is to protect and restore the ecological functions and ecosystem-wide processes performed by vegetation along shorelines. Vegetation conservation should also be undertaken to protect human safety and property, to increase the stability of river banks and coastal bluffs, to reduce the need for structural shoreline stabilization measures, to improve the visual and aesthetic qualities of the shoreline, to protect plant and animal species and their habitats, and to enhance shoreline uses.

Master programs shall include: Planning provisions that address vegetation conservation and restoration, and regulatory provisions that address conservation of vegetation; as necessary to assure no net loss of shoreline ecological functions and ecosystem-wide processes, to avoid adverse impacts to soil hydrology, and to reduce the hazard of slope failures or accelerated erosion.

Local governments should address ecological functions and ecosystem-wide processes provided by vegetation as described in WAC 173-26-201 (3)(d)(i).

Local governments may implement these objectives through a variety of measures, where consistent with Shoreline Management Act policy, including clearing and grading regulations, setback and buffer standards, critical area regulations, conditional use requirements for specific uses or areas, mitigation requirements, incentives and nonregulatory programs.

In establishing vegetation conservation regulations, local governments must use available scientific and technical information, as described in WAC 173-26-201 (2)(a). At a minimum, local governments should consult shoreline management assistance materials provided by the department and *Management Recommendations for Washington's Priority Habitats*, prepared by the Washington state department of fish and wildlife where applicable.

Current scientific evidence indicates that the length, width, and species composition of a shoreline vegetation community contribute substantively to the aquatic ecological functions. Likewise, the biota within the aquatic environment is essential to ecological functions of the adjacent upland vegetation. The ability of vegetated areas to provide critical ecological functions diminishes as the length and width of the vegetated area along shorelines is reduced. When shoreline vegetation is removed, the narrower the area of remaining vegetation, the greater the risk that the functions will not be performed.

In the Pacific Northwest, aquatic environments, as well as their associated upland vegetation and wetlands, provide significant habitat for a myriad of fish and wildlife species. Healthy environments for aquatic species are inseparably linked with the ecological integrity of the surrounding terrestrial ecosystem. For example, a nearly continuous corridor of mature forest characterizes the natural riparian conditions of the Pacific Northwest. Riparian corridors along marine shorelines provide many of the same functions as their freshwater counterparts. The most commonly recognized functions of the shoreline vegetation include, but are not limited to:

- Providing shade necessary to maintain the cool temperatures required by salmonids, spawning forage fish, and other aquatic biota.
- Providing organic inputs critical for aquatic life.
- Providing food in the form of various insects and other benthic macroinvertebrates.
- Stabilizing banks, minimizing erosion, and reducing the occurrence of landslides. The roots of trees and other riparian vegetation provide the bulk of this function.
- Reducing fine sediment input into the aquatic environment through storm water retention and vegetative filtering.
- Filtering and vegetative uptake of nutrients and pollutants from ground water and surface runoff.
- Providing a source of large woody debris into the aquatic system. Large woody debris is the primary structural element that functions as a hydraulic roughness element to moderate flows. Large woody debris also serves a pool-forming function, providing critical salmo-

nid rearing and refuge habitat. Abundant large woody debris increases aquatic diversity and stabilization.

- Regulation of microclimate in the stream-riparian and intertidal corridors.

- Providing critical wildlife habitat, including migration corridors and feeding, watering, rearing, and refugia areas.

Sustaining different individual functions requires different widths, compositions and densities of vegetation. The importance of the different functions, in turn, varies with the type of shoreline setting. For example, in forested shoreline settings, periodic recruitment of fallen trees, especially conifers, into the stream channel is an important attribute, critical to natural stream channel maintenance. Therefore, vegetated areas along streams which once supported or could in the future support mature trees should be wide enough to accomplish this periodic recruitment process.

Woody vegetation normally classed as trees may not be a natural component of plant communities in some environments, such as in arid climates and on coastal dunes. In these instances, the width of a vegetated area necessary to achieve the full suite of vegetation-related shoreline functions may not be related to vegetation height.

Local governments should identify which ecological processes and functions are important to the local aquatic and terrestrial ecology and conserve sufficient vegetation to maintain them. Such vegetation conservation areas are not necessarily intended to be closed to use and development but should provide for management of vegetation in a manner adequate to assure no net loss of shoreline ecological functions.

(c) **Standards.** Master programs shall implement the following requirements in shoreline jurisdiction.

Establish vegetation conservation standards that implement the principles in WAC 173-26-221 (5)(b). Methods to do this may include setback or buffer requirements, clearing and grading standards, regulatory incentives, environment designation standards, or other master program provisions. Selective pruning of trees for safety and view protection may be allowed and the removal of noxious weeds should be authorized.

Additional vegetation conservation standards for specific uses are included in WAC 173-26-241(3).

(6) **Water quality, storm water, and nonpoint pollution.**

(a) **Applicability.** The following section applies to all development and uses in shorelines of the state, as defined in WAC 173-26-020, that affect water quality.

(b) **Principles.** Shoreline master programs shall, as stated in RCW 90.58.020, protect against adverse impacts to the public health, to the land and its vegetation and wildlife, and to the waters of the state and their aquatic life, through implementation of the following principles:

(i) Prevent impacts to water quality and storm water quantity that would result in a net loss of shoreline ecological functions, or a significant impact to aesthetic qualities, or recreational opportunities.

(ii) Ensure mutual consistency between shoreline management provisions and other regulations that address water quality and storm water quantity, including public health, storm water, and water discharge standards. The regulations that are most protective of ecological functions shall apply.

(c) **Standards.** Shoreline master programs shall include provisions to implement the principles of this section.

AMENDATORY SECTION (Amending WSR 11-05-064, filed 2/11/11, effective 3/14/11)

WAC 173-26-241 Shoreline uses. (1) **Applicability.** The provisions in this section apply to specific common uses and types of development to the extent they occur within shoreline jurisdiction. Master programs should include these, where applicable, and should include specific use provisions for other common uses and types of development in the jurisdiction. All uses and development must be consistent with the provisions of the environment designation in which they are located and the general regulations of the master program.

(2) **General use provisions.**

(a) **Principles.** Shoreline master programs shall implement the following principles:

(i) Establish a system of use regulations and environment designation provisions consistent with WAC 173-26-201 (2)(d) and 173-26-211 that gives preference to those uses that are consistent with the control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon uses of the state's shoreline areas.

(ii) Ensure that all shoreline master program provisions concerning proposed development of property are established, as necessary, to protect the public's health, safety, and welfare, as well as the land and its vegetation and wildlife, and to protect property rights while implementing the policies of the Shoreline Management Act.

(iii) Reduce use conflicts by including provisions to prohibit or apply special conditions to those uses which are not consistent with the control of pollution and prevention of damage to the natural environment or are not unique to or dependent upon use of the state's shoreline. In implementing this provision, preference shall be given first to water-dependent uses, then to water-related uses and water-enjoyment uses.

(iv) Establish use regulations designed to assure no net loss of ecological functions associated with the shoreline.

(b) **Conditional uses.**

(i) Master programs shall define the types of uses and development that require shoreline conditional use permits pursuant to RCW 90.58.100(5). Requirements for a conditional use permit may be used for a variety of purposes, including:

- To effectively address unanticipated uses that are not classified in the master program as described in WAC 173-27-030.
- To address cumulative impacts.
- To provide the opportunity to require specially tailored environmental analysis or design criteria for types of use or development that may otherwise be inconsistent with a specific environment designation within a master program or with the Shoreline Management Act policies.

In these cases, allowing a given use as a conditional use could provide greater flexibility within the master program than if the use were prohibited outright.

(ii) If master programs permit the following types of uses and development, they should require a conditional use permit:

(A) Uses and development that may significantly impair or alter the public's use of the water areas of the state.

(B) Uses and development which, by their intrinsic nature, may have a significant ecological impact on shoreline ecological functions or shoreline resources depending on location, design, and site conditions.

(C) Development and uses in critical saltwater habitats.

(D) New commercial geoduck aquaculture as described in (3)(b) of this section.

(iii) The provisions of this section are minimum requirements and are not intended to limit local government's ability to identify other uses and developments within the master program as conditional uses where necessary or appropriate.

(3) **Standards.** Master programs shall establish a comprehensive program of use regulations for shorelines and shall incorporate provisions for specific uses consistent with the following as necessary to assure consistency with the policy of the act and where relevant within the jurisdiction.

(a) **Agriculture.**

(i) For the purposes of this section, the terms agricultural activities, agricultural products, agricultural equipment and facilities and agricultural land shall have the specific meanings as provided in WAC 173-26-020.

(ii) Master programs shall not require modification of or limit agricultural activities occurring on agricultural lands. In jurisdictions where agricultural activities occur, master programs shall include provisions addressing new agricultural activities on land not meeting the definition of agricultural land, conversion of agricultural lands to other uses, and other development on agricultural land that does not meet the definition of agricultural activities.

(iii) Nothing in this section limits or changes the terms of the current exception to the definition of substantial development. A substantial development permit is required for any agricultural development not specifically exempted by the provisions of RCW 90.58.030 (3)(e)(iv).

(iv) Master programs shall use definitions consistent with the definitions found in WAC 173-26-020(3).

(v) New agricultural activities are activities that meet the definition of agricultural activities but are proposed on land not currently in agricultural use. Master programs shall include provisions for new agricultural activities to assure that:

(A) Specific uses and developments in support of agricultural use are consistent with the environment designation in which the land is located.

(B) Agricultural uses and development in support of agricultural uses, are located and designed to assure no net loss of ecological functions and to not have a significant adverse impact on other shoreline resources and values.

Measures appropriate to meet these requirements include provisions addressing water quality protection, and vegetation conservation, as described in WAC 173-26-220 (5) and (6). Requirements for buffers for agricultural development shall be based on scientific and technical information and management practices adopted by the applicable state agencies necessary to preserve the ecological functions and qualities of the shoreline environment.

(vi) Master programs shall include provisions to assure that development on agricultural land that does not meet the definition of agricultural activities, and the conversion of agricultural land to nonagricultural uses, shall be consistent with the environment designation, and the general and specific use regulations applicable to the proposed use and do not result in a net loss of ecological functions associated with the shoreline.

(b) **Aquaculture.**

(i) General provisions.

(A) Aquaculture is the culture or farming of fish, shellfish, or other aquatic plants and animals. Aquaculture does not include the harvest of wild geoduck associated with the state managed wildstock geoduck fishery.

This activity is of statewide interest. Properly managed, it can result in long-term over short-term benefit and can protect the resources and ecology of the shoreline. Aquaculture is dependent on the use of the water area and, when consistent with control of pollution and prevention of damage to the environment, is a preferred use of the water area. Local government should consider local ecological conditions and provide limits and conditions to assure appropriate compatible types of aquaculture for the local conditions as necessary to assure no net loss of ecological functions.

(B) Potential locations for aquaculture are relatively restricted due to specific requirements for water quality, temperature, flows, oxygen content, adjacent land uses, wind protection, commercial navigation, and, in marine waters, salinity. The technology associated with some forms of present-day aquaculture is still in its formative stages and experimental. Local shoreline master programs should therefore recognize the necessity for some latitude in the development of this use as well as its potential impact on existing uses and natural systems.

(C) Aquaculture should not be permitted in areas where it would result in a net loss of ecological functions, adversely impact eelgrass and macroalgae, or significantly conflict with navigation and other water-dependent uses. Aquacultural facilities should be designed and located so as not to spread disease to native aquatic life, establish new nonnative species which cause significant ecological impacts, or significantly impact the aesthetic qualities of the shoreline. Impacts to ecological functions shall be mitigated according to the mitigation sequence described in WAC 173-26-201 (2)(e).

(D) Local government should ensure proper management of upland uses to avoid degradation of water quality of existing shellfish areas.

(ii) Siting considerations for commercial geoduck aquaculture.

In addition to the siting provisions of (b)(i) of this subsection, commercial geoduck aquaculture should only be allowed where sediments, topography, land and water access support geoduck aquaculture operations without significant clearing or grading.

(iii) Shoreline substantial development permits for geoduck aquaculture.

As determined by Attorney General Opinion 2007 No. 1, the planting, growing, and harvesting of farm-raised geoduck clams requires a substantial development permit if a specific project or practice causes substantial interference with normal public use of the surface waters, but not otherwise.

(iv) Conditional use permits for commercial geoduck aquaculture.

(A) Conditional use permits are required for new commercial geoduck aquaculture only. Where the applicant proposes to convert existing nongeoduck aquaculture to geoduck aquaculture, the requirement for a conditional use permit is at the discretion of local government.

(B) All subsequent cycles of planting and harvest shall not require a new conditional use permit.

(C) Conditional use permits must take into account that commercial geoduck operators have a right to harvest geoduck once planted.

(D) A single conditional use permit may be submitted for multiple sites within an inlet, bay or other defined feature, provided the sites are all under control of the same applicant and within the same shoreline permitting jurisdiction.

(E) Local governments should minimize redundancy between federal, state and local commercial geoduck aquaculture permit application requirements. Measures to consider include accepting documentation that has been submitted to other permitting agencies, and using permit applications that mirror federal or state permit applications.

(F) In addition to complying with chapter 173-27 WAC, the application must contain:

(I) A narrative description and timeline for all anticipated geoduck planting and harvesting activities if not already contained in the federal or state permit application or comparable information mentioned above.

(II) A baseline ecological survey of the proposed site to allow consideration of the ecological effects if not already contained in the federal or state permit application or comparable information mentioned above.

(III) Measures to achieve no net loss of ecological functions consistent with the mitigation sequence described in WAC-173-26-201 (2)(e).

(IV) Management practices that address impacts from mooring, parking, noise, lights, litter, and other activities associated with geoduck planting and harvesting operations.

(G) Local governments should provide public notice to all property owners within three hundred feet of the proposed project boundary, and notice to tribes with usual and accustomed fishing rights to the area.

(H) Commercial geoduck aquaculture workers oftentimes need to accomplish on-site work during low tides, which may occur at night or on weekends. Local governments must allow work during low tides but may require limits and conditions to reduce impacts, such as noise and lighting, to adjacent existing uses.

(I) Local governments should establish monitoring and reporting requirements necessary to verify that geoduck aquaculture operations are in compliance with shoreline limits and conditions set forth in conditional use permits and to support cumulative impacts analysis.

(J) Conditional use permits should be reviewed using the best scientific and technical information available.

(K) Local governments should apply best management practices to accomplish the intent of the limits and conditions.

(L) In order to avoid or limit impacts from geoduck aquaculture siting and operations and achieve no net loss of ecological functions, local governments should consider the following:

(I) The practice of placing nursery tanks or holding pools or other impervious materials directly on the intertidal sediments.

(II) Use of motorized vehicles, such as trucks, tractors and forklifts below the ordinary high water mark.

(III) Specific periods when limits on activities are necessary to protect priority habitats and associated species. The need for such measures should be identified in the baseline ecological survey conducted for the site.

(IV) Alterations to the natural condition of the site, including significant removal of vegetation or rocks and regrading of the natural slope and sediments.

(V) Installation of property corner markers that are visible at low tide during planting and harvesting.

(VI) Mitigation measures such as buffers between commercial geoduck aquaculture and other fish and wildlife habitat conservation areas as necessary to ensure no net loss of ecological functions.

(VII) Use of predator exclusion devices with minimal adverse ecological effects and requiring that they be removed as soon as they are no longer needed for predator exclusion.

(VIII) Use of the best available methods to minimize turbid runoff from the water jets used to harvest geoducks.

(IX) Number of barges or vessels that can be moored or beached at the site as well as duration limits.

(X) Public rights to navigation over the surface of the water.

(XI) Good housekeeping practices at geoduck aquaculture sites, including worker training and regular removal of equipment, tools, extra materials, and all wastes.

(XII) Where the site contains existing public access to publicly owned lands, consider recommendations from the department of natural resources or other landowning agencies regarding protection of the existing public access.

(c) **Boating facilities.** For the purposes of this chapter, "boating facilities" excludes docks serving four or fewer single-family residences. Shoreline master programs shall contain provisions to assure no net loss of ecological functions as a result of development of boating facilities while providing the boating public recreational opportunities on waters of the state.

Where applicable, shoreline master programs should, at a minimum, contain:

(i) Provisions to ensure that boating facilities are located only at sites with suitable environmental conditions, shoreline configuration, access, and neighboring uses.

(ii) Provisions that assure that facilities meet health, safety, and welfare requirements. Master programs may reference other regulations to accomplish this requirement.

(iii) Regulations to avoid, or if that is not possible, to mitigate aesthetic impacts.

(iv) Provisions for public access in new marinas, particularly where water-enjoyment uses are associated with the marina, in accordance with WAC 173-26-221(4).

(v) Regulations to limit the impacts to shoreline resources from boaters living in their vessels (live-aboard).

(vi) Regulations that assure that the development of boating facilities, and associated and accessory uses, will not result in a net loss of shoreline ecological functions or other significant adverse impacts.

(vii) Regulations to protect the rights of navigation.

(viii) Regulations restricting vessels from extended mooring on waters of the state except as allowed by applicable state regulations and unless a lease or permission is obtained from the state and impacts to navigation and public access are mitigated.

(d) **Commercial development.** Master programs shall first give preference to water-dependent commercial uses over nonwater-dependent commercial uses; and second, give preference to water-related and water-enjoyment commercial uses over nonwater-oriented commercial uses.

The design, layout and operation of certain commercial uses directly affects their classification with regard to whether or not they qualify as water-related or water-enjoyment uses. Master programs shall assure that commercial uses that may be authorized as water-related or water-enjoyment uses are required to incorporate appropriate design and operational elements so that they meet the definition of water-related or water-enjoyment uses.

Master programs should require that public access and ecological restoration be considered as potential mitigation of impacts to shoreline resources and values for all water-related or water-dependent commercial development unless such improvements are demonstrated to be infeasible or inappropriate. Where commercial use is proposed for location on land in public ownership, public access should be required. Refer to WAC 173-26-221(4) for public access provisions.

Master programs should prohibit nonwater-oriented commercial uses on the shoreline unless they meet the following criteria:

(i) The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration; or

(ii) Navigability is severely limited at the proposed site; and the commercial use provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration.

In areas designated for commercial use, nonwater-oriented commercial development may be allowed if the site is physically separated from the shoreline by another property or public right of way.

Nonwater-dependent commercial uses should not be allowed over water except in existing structures or in the limited instances where they are auxiliary to and necessary in support of water-dependent uses.

Master programs shall assure that commercial development will not result in a net loss of shoreline ecological functions or have significant adverse impact to other shoreline uses, resources and values provided for in RCW 90.58.020 such as navigation, recreation and public access.

(e) **Forest practices.** Local master programs should rely on the Forest Practices Act and rules implementing the act and the *Forest and Fish Report* as adequate management of commercial forest uses within shoreline jurisdiction. ~~((However))~~ A forest practice that only involves timber cutting is not a development under the act and does not require a shoreline substantial development permit or a shoreline exemption. A forest practice that includes activities other than timber cutting may be a development under the act and may require a substantial development permit. In addition, local governments shall, where applicable, apply this chapter to Class IV-General forest practices where shorelines are being converted or are expected to be converted to nonforest uses.

Forest practice conversions and other Class IV-General forest practices where there is a likelihood of conversion to nonforest uses, shall assure no net loss of shoreline ecological functions and shall maintain the ecological quality of the watershed's hydrologic system. Master programs shall establish provisions to ensure that all such

practices are conducted in a manner consistent with the master program environment designation provisions and the provisions of this chapter. Applicable shoreline master programs should contain provisions to ensure that when forest lands are converted to another use, there will be no net loss of shoreline ecological functions or significant adverse impacts to other shoreline uses, resources and values provided for in RCW 90.58.020 such as navigation, recreation and public access.

Master programs shall implement the provisions of RCW 90.58.150 regarding selective removal of timber harvest on shorelines of statewide significance. Exceptions to this standard shall be by conditional use permit only.

Lands designated as "forest lands" pursuant to RCW 36.70A.170 shall be designated consistent with either the "natural," "rural conservancy," environment designation.

Where forest practices fall within the applicability of the Forest Practices Act, local governments should consult with the department of natural resources, other applicable agencies, and local timber owners and operators.

(f) **Industry.** Master programs shall first give preference to water-dependent industrial uses over nonwater-dependent industrial uses; and second, give preference to water-related industrial uses over nonwater-oriented industrial uses.

Regional and statewide needs for water-dependent and water-related industrial facilities should be carefully considered in establishing master program environment designations, use provisions, and space allocations for industrial uses and supporting facilities. Lands designated for industrial development should not include shoreline areas with severe environmental limitations, such as critical areas.

Where industrial development is allowed, master programs shall include provisions that assure that industrial development will be located, designed, or constructed in a manner that assures no net loss of shoreline ecological functions and such that it does not have significant adverse impacts to other shoreline resources and values.

Master programs should require that industrial development consider incorporating public access as mitigation for impacts to shoreline resources and values unless public access cannot be provided in a manner that does not result in significant interference with operations or hazards to life or property, as provided in WAC 173-26-221(4).

Where industrial use is proposed for location on land in public ownership, public access should be required. Industrial development and redevelopment should be encouraged to locate where environmental cleanup and restoration of the shoreline area can be incorporated. New nonwater-oriented industrial development should be prohibited on shorelines except when:

(i) The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration; or

(ii) Navigability is severely limited at the proposed site; and the industrial use provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration.

In areas designated for industrial use, nonwater-oriented industrial uses may be allowed if the site is physically separated from the shoreline by another property or public right of way.

(g) **In-stream structural uses.** "In-stream structure" means a structure placed by humans within a stream or river waterward of the ordinary high-water mark that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. In-stream structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, or other purpose.

In-stream structures shall provide for the protection and preservation, of ecosystem-wide processes, ecological functions, and cultural resources((7)) including, but not limited to, fish and fish passage, wildlife and water resources, shoreline critical areas, hydrogeological processes, and natural scenic vistas. The location and planning of in-stream structures shall give due consideration to the full range of public interests, watershed functions and processes, and environmental concerns, with special emphasis on protecting and restoring priority habitats and species.

(h) **Mining.** Mining is the removal of sand, gravel, soil, minerals, and other earth materials for commercial and other uses. Historically, the most common form of mining in shoreline areas is for sand and gravel because of the geomorphic association of rivers and sand and gravel deposits. Mining in the shoreline generally alters the natural character, resources, and ecology of shorelines of the state and may impact critical shoreline resources and ecological functions of the shoreline. However, in some circumstances, mining may be designed to have benefits for shoreline resources, such as creation of off channel habitat for fish or habitat for wildlife. Activities associated with shoreline mining, such as processing and transportation, also generally have the potential to impact shoreline resources unless the impacts of those associated activities are evaluated and properly managed in accordance with applicable provisions of the master program.

A shoreline master program should accomplish two purposes in addressing mining. First, identify where mining may be an appropriate use of the shoreline, which is addressed in this section and in the environment designation sections above. Second, ensure that when mining or associated activities in the shoreline are authorized, those activities will be properly sited, designed, conducted, and completed so that it will cause no net loss of ecological functions of the shoreline.

(i) Identification of shoreline areas where mining may be designated as appropriate shall:

(A) Be consistent with the environment designation provisions of WAC 173-26-211 and where applicable WAC 173-26-251(2) regarding shorelines of statewide significance; and

(B) Be consistent with local government designation of mineral resource lands with long-term significance as provided for in RCW 36.70A.170 (1)(c), 36.70A.130, and 36.70A.131; and

(C) Be based on a showing that mining is dependent on a shoreline location in the city or county, or portion thereof, which requires evaluation of geologic factors such as the distribution and availability of mineral resources for that jurisdiction, as well as evaluation of need for such mineral resources, economic, transportation, and land use factors. This showing may rely on analysis or studies prepared for purposes of GMA designations, be integrated with any relevant environmental review conducted under SEPA (chapter 43.21C RCW), or otherwise

be shown in a manner consistent with RCW 90.58.100(1) and WAC 173-26-201 (2)(a).

(ii) Master programs shall include policies and regulations for mining, when authorized, that accomplish the following:

(A) New mining and associated activities shall be designed and conducted to comply with the regulations of the environment designation and the provisions applicable to critical areas where relevant. Accordingly, meeting the no net loss of ecological function standard shall include avoidance and mitigation of adverse impacts during the course of mining and reclamation. It is appropriate, however, to determine whether there will be no net loss of ecological function based on evaluation of final reclamation required for the site. Preference shall be given to mining proposals that result in the creation, restoration, or enhancement of habitat for priority species.

(B) Master program provisions and permit requirements for mining should be coordinated with the requirements of chapters 78.44 and 77.55 RCW.

(C) Master programs shall assure that proposed subsequent use of mined property is consistent with the provisions of the environment designation in which the property is located and that reclamation of disturbed shoreline areas provides appropriate ecological functions consistent with the setting.

(D) Mining within the active channel or channels (a location waterward of the ordinary high-water mark) of a river shall not be permitted unless:

(I) Removal of specified quantities of sand and gravel or other materials at specific locations will not adversely affect the natural processes of gravel transportation for the river system as a whole; and

(II) The mining and any associated permitted activities will not have significant adverse impacts to habitat for priority species nor cause a net loss of ecological functions of the shoreline.

(III) The determinations required by (h)(ii)(D)(I) and (II) of this subsection shall be made consistent with RCW 90.58.100(1) and WAC 173-26-201 (2)(a). Such evaluation of impacts should be appropriately integrated with relevant environmental review requirements of SEPA (chapter 43.21C RCW) and the SEPA rules (chapter 197-11 WAC).

(IV) In considering renewal, extension or reauthorization of gravel bar and other in-channel mining operations in locations where they have previously been conducted, local government shall require compliance with this subsection (D) to the extent that no such review has previously been conducted. Where there has been prior review, local government shall review previous determinations comparable to the requirements of this section to assure compliance with this subsection (D) under current site conditions.

(V) The provisions of this section do not apply to dredging of authorized navigation channels when conducted in accordance with WAC 173-26-231 (3)(f).

(E) Mining within any channel migration zone that is within Shoreline Management Act jurisdiction shall require a shoreline conditional use permit.

(i) **Recreational development.** Recreational development includes commercial and public facilities designed and used to provide recreational opportunities to the public. Master programs should assure that shoreline recreational development is given priority and is primarily related to access to, enjoyment and use of the water and shorelines of the state. Commercial recreational development should be consistent

with the provisions for commercial development in (d) of this subsection. Provisions related to public recreational development shall assure that the facilities are located, designed and operated in a manner consistent with the purpose of the environment designation in which they are located and such that no net loss of shoreline ecological functions or ecosystem-wide processes results.

In accordance with RCW 90.58.100(4), master program provisions shall reflect that state-owned shorelines are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational uses for the public and give appropriate special consideration to the same.

For all jurisdictions planning under the Growth Management Act, master program recreation policies shall be consistent with growth projections and level-of-service standards established by the applicable comprehensive plan.

(j) Residential development.

(i) Single-family residences are the most common form of shoreline development and are identified as a priority use when developed in a manner consistent with control of pollution and prevention of damage to the natural environment. Without proper management, single-family residential use can cause significant damage to the shoreline area through cumulative impacts from shoreline armoring, storm water runoff, septic systems, introduction of pollutants, and vegetation modification and removal. Residential development also includes multi-family development and the creation of new residential lots through land division.

(ii) Master programs shall include policies and regulations that assure no net loss of shoreline ecological functions will result from residential development. Such provisions should include specific regulations for setbacks and buffer areas, density, shoreline armoring, vegetation conservation requirements, and, where applicable, on-site sewage system standards for all residential development and uses and applicable to divisions of land in shoreline jurisdiction.

(iii) Residential development, including appurtenant structures and uses, should be sufficiently set back from steep slopes and shorelines vulnerable to erosion so that structural improvements, including bluff walls and other stabilization structures, are not required to protect such structures and uses. (See RCW 90.58.100(6).)

(iv) Over-water residences.

(A) New over-water residences, including floating homes, are not a preferred use and should be prohibited. It is recognized that certain existing communities of floating and/or over-water homes exist and should be reasonably accommodated to allow improvements associated with life safety matters and property rights to be addressed provided that any expansion of existing communities is the minimum necessary to assure consistency with constitutional and other legal limitations that protect private property.

(B) A floating home permitted or legally established prior to January 1, 2011, must be classified as a conforming preferred use. For the purposes of this subsection, "conforming preferred use" means that applicable development and shoreline master program regulations may only impose reasonable conditions and mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating homes and floating home moorages by rendering these actions impracticable.

(C) A floating on-water residence legally established prior to July 1, 2014, must be considered a conforming use and accommodated

through reasonable shoreline master program regulations, permit conditions, or mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating on-water residences and their moorages by rendering these actions impracticable.

(v) Multiunit residential development.

(A) New multiunit residential development, including the subdivision of land for more than four parcels, should provide community and/or public access in conformance to the local government's public access planning and this chapter.

(B) Master programs shall include standards for the creation of new residential lots through land division that accomplish the following:

((i)) (I) Plats and subdivisions must be designed, configured and developed in a manner that assures that no net loss of ecological functions results from the plat or subdivision at full build-out of all lots.

((ii)) (II) Prevent the need for new shoreline stabilization or flood hazard reduction measures that would cause significant impacts to other properties or public improvements or a net loss of shoreline ecological functions.

((iii)) (III) Implement the provisions of WAC 173-26-211 and 173-26-221.

(vi) Option for addressing legal status of existing shoreline structures.

(A) New or amended master programs may include provisions authorizing:

(I) Residential structures and appurtenant structures that were legally established and are used for a conforming use, but that do not meet standards for the following to be considered a conforming structure: Setbacks, buffers, or yards; area; bulk; height; or density; and

(II) Redevelopment, expansion, change with the class of occupancy, or replacement of the residential structure if it is consistent with the master program, including requirements for no net loss of shoreline ecological functions.

(B) For purposes of this subsection, "appurtenant structures" means garages, sheds, and other legally established structures. "Appurtenant structures" does not include bulkheads and other shoreline modifications or over-water structures.

(C) Nothing in this subsection:

(I) Restricts the ability of a master program to limit redevelopment, expansion, or replacement of over-water structures located in hazardous areas, such as flood plains and geologically hazardous areas; or

(II) Affects the application of other federal, state, or local government requirements to residential structures.

(k) Transportation and parking. Master programs shall include policies and regulations to provide safe, reasonable, and adequate circulation systems to, and through or over shorelines where necessary and otherwise consistent with these guidelines.

Transportation and parking plans and projects shall be consistent with the master program public access policies, public access plan, and environmental protection provisions.

Circulation system planning shall include systems for pedestrian, bicycle, and public transportation where appropriate. Circulation planning and projects should support existing and proposed shoreline uses that are consistent with the master program.

Plan, locate, and design proposed transportation and parking facilities where routes will have the least possible adverse effect on unique or fragile shoreline features, will not result in a net loss of shoreline ecological functions or adversely impact existing or planned water-dependent uses. Where other options are available and feasible, new roads or road expansions should not be built within shoreline jurisdiction.

Parking facilities in shorelines are not a preferred use and shall be allowed only as necessary to support an authorized use. Shoreline master programs shall include policies and regulations to minimize the environmental and visual impacts of parking facilities.

(1) **Utilities.** These provisions apply to services and facilities that produce, convey, store, or process power, gas, sewage, communications, oil, waste, and the like. On-site utility features serving a primary use, such as a water, sewer or gas line to a residence, are "accessory utilities" and shall be considered a part of the primary use.

Master programs shall include provisions to assure that:

All utility facilities are designed and located to assure no net loss of shoreline ecological functions, preserve the natural landscape, and minimize conflicts with present and planned land and shoreline uses while meeting the needs of future populations in areas planned to accommodate growth.

Utility production and processing facilities, such as power plants and sewage treatment plants, or parts of those facilities, that are nonwater-oriented shall not be allowed in shoreline areas unless it can be demonstrated that no other feasible option is available.

Transmission facilities for the conveyance of services, such as power lines, cables, and pipelines, shall be located outside of the shoreline area where feasible and when necessarily located within the shoreline area shall assure no net loss of shoreline ecological functions.

Utilities should be located in existing rights of way and corridors whenever possible.

Development of pipelines and cables on tidelands, particularly those running roughly parallel to the shoreline, and development of facilities that may require periodic maintenance which disrupt shoreline ecological functions should be discouraged except where no other feasible alternative exists. When permitted, provisions shall assure that the facilities do not result in a net loss of shoreline ecological functions or significant impacts to other shoreline resources and values.

AMENDATORY SECTION (Amending WSR 11-05-064, filed 2/11/11, effective 3/14/11)

WAC 173-26-360 Ocean management. (1) Purpose and intent. This section implements the Ocean Resources Management Act, (RCW 43.143.005 through 43.143.030) enacted in 1989 by the Washington state legislature. The law requires the department of ecology to develop guidelines and policies for the management of ocean uses and to serve as the basis for evaluation and modification of local shoreline management master programs of coastal local governments in Jefferson, Clallam, Grays Harbor, and Pacific counties. The guidelines are intended to clarify

state shoreline management policy regarding use of coastal resources, address evolving interest in ocean development and prepare state and local agencies for new ocean developments and activities.

(2) Geographical application. The guidelines apply to Washington's coastal waters from Cape Disappointment ~~((at))~~ directly south to the state border, including the mouth of the Columbia River, and from Cape Disappointment north one hundred sixty miles to Cape Flattery at the entrance to the Strait of Juan De Fuca including the offshore ocean area, the near shore area under state ownership, shorelines of the state, and their adjacent uplands. Their broadest application would include an area seaward two hundred miles (RCW 43.143.020) and landward to include those uplands immediately adjacent to land under permit jurisdiction for which consistent planning is required under RCW 90.58.340. The guidelines address uses occurring in Washington's coastal waters, but not impacts generated from activities offshore of Oregon, Alaska, California, or British Columbia or impacts from Washington's offshore on the Strait of Juan de Fuca, the Columbia River east of Cape Disappointment, or other inland marine waters.

(3) Ocean uses defined. Ocean uses are activities or developments involving renewable and/or nonrenewable resources that occur on Washington's coastal waters and includes their associated off shore, near shore, inland marine, shoreland, and upland facilities and the supply, service, and distribution activities, such as crew ships, circulating to and between the activities and developments. Ocean uses involving nonrenewable resources include such activities as extraction of oil, gas and minerals, energy production, disposal of waste products, and salvage. Ocean uses which generally involve sustainable use of renewable resources include commercial, recreational, and tribal fishing, aquaculture, recreation, shellfish harvesting, and pleasure craft activity.

(4) Relationship to existing management programs. These guidelines augment existing requirements of the Shoreline Management Act, chapter 90.58 RCW, and those chapters in Title 173 of the Washington Administrative Code that implement the act. They are not intended to modify current resource allocation procedures or regulations administered by other agencies, such as the Washington department of fisheries management of commercial, recreational, and tribal fisheries. They are not intended to regulate recreational uses or currently existing commercial uses involving fishing or other renewable marine or ocean resources. Every effort will be made to take into account tribal interests and programs in the guidelines and master program amendment processes. After inclusion in the state coastal zone management program, these guidelines and resultant master programs will be used for federal consistency purposes in evaluating federal permits and activities in Washington's coastal waters. Participation in the development of these guidelines and subsequent amendments to master programs will not preclude state and local government from opposing the introduction of new uses, such as oil and gas development.

These and other statutes, documents, and regulations referred to or cited in these rules may be reviewed at the department of ecology, headquarters in Lacey, Washington, for which the mailing address is P.O. Box 47600, Olympia, WA 98504. The physical address is 300 Desmond Drive S.E., Lacey, WA 98503.

(5) Regional approach. The guidelines are intended to foster a regional perspective and consistent approach for the management of ocean uses. While local governments may have need to vary their programs to accommodate local circumstances, local government should at-

tempt and the department will review local programs for compliance with these guidelines and chapter 173-26 WAC: Shoreline Management Act guidelines for development of master programs. It is recognized that further amendments to the master programs may be required to address new information on critical and sensitive habitats and environmental impacts of ocean uses or to address future activities, such as oil development. In addition to the criteria in RCW 43.143.030, these guidelines apply to ocean uses until local master program amendments are adopted. The amended master program shall be the basis for review of an action that is either located exclusively in, or its environmental impacts confined to, one county. Where a proposal clearly involves more than one local jurisdiction, the guidelines shall be applied and remain in effect in addition to the provisions of the local master programs.

(6) Permit criteria: Local government and the department may permit ocean or coastal uses and activities as a substantial development, variance or conditional use only if the criteria of RCW 43.143.030(2) listed below are met or exceeded:

(a) There is a demonstrated significant local, state, or national need for the proposed use or activity;

(b) There is no reasonable alternative to meet the public need for the proposed use or activity;

(c) There will be no likely long-term significant adverse impacts to coastal or marine resources or uses;

(d) All reasonable steps are taken to avoid and minimize adverse environmental impacts, with special protection provided for the marine life and resources of the Columbia River, Willapa Bay and Grays Harbor estuaries, and Olympic National Park;

(e) All reasonable steps are taken to avoid and minimize adverse social and economic impacts, including impacts on aquaculture, recreation, tourism, navigation, air quality, and recreational, commercial, and tribal fishing;

(f) Compensation is provided to mitigate adverse impacts to coastal resources or uses;

(g) Plans and sufficient performance bonding are provided to ensure that the site will be rehabilitated after the use or activity is completed; and

(h) The use or activity complies with all applicable local, state, and federal laws and regulations.

(7) General ocean uses guidelines. The following guidelines apply to all ocean uses, their service, distribution, and supply activities and their associated facilities that require shoreline permits.

(a) Ocean uses and activities that will not adversely impact renewable resources shall be given priority over those that will. Correspondingly, ocean uses that will have less adverse impacts on renewable resources shall be given priority over uses that will have greater adverse impacts.

(b) Ocean uses that will have less adverse social and economic impacts on coastal uses and communities should be given priority over uses and activities that will have more such impacts.

(c) When the adverse impacts are generally equal, the ocean use that has less probable occurrence of a disaster should be given priority.

(d) The alternatives considered to meet a public need for a proposed use should be commensurate with the need for the proposed use. For example, if there is a demonstrated national need for a proposed use, then national alternatives should be considered.

(e) Chapter 197-11 WAC (SEPA rules) provides guidance in the application of the permit criteria and guidelines of this section. The range of impacts to be considered should be consistent with WAC 197-11-060 (4)(e) and 197-11-792 (2)(c). The determination of significant adverse impacts should be consistent with WAC 197-11-330(3) and 197-11-794. The sequence of actions described in WAC 197-11-768 should be used as an order of preference in evaluating steps to avoid and minimize adverse impacts.

(f) Impacts on commercial resources, such as the crab fishery, on noncommercial resources, such as environmentally critical and sensitive habitats, and on coastal uses, such as loss of equipment or loss of a fishing season, should be considered in determining compensation to mitigate adverse environmental, social and economic impacts to coastal resources and uses.

(g) Allocation of compensation to mitigate adverse impacts to coastal resources or uses should be based on the magnitude and/or degree of impact on the resource, jurisdiction and use.

(h) Rehabilitation plans and bonds prepared for ocean uses should address the effects of planned and unanticipated closures, completion of the activity, reasonably anticipated disasters, inflation, new technology, and new information about the environmental impacts to ensure that state of the art technology and methods are used.

(i) Local governments should evaluate their master programs and select the environment(s) for coastal waters that best meets the intent of chapter 173-26 WAC, these guidelines and chapter 90.58 RCW.

(j) Ocean uses and their associated coastal or upland facilities should be located, designed and operated to prevent, avoid, and minimize adverse impacts on migration routes and habitat areas of species listed as endangered or threatened, environmentally critical and sensitive habitats such as breeding, spawning, nursery, foraging areas and wetlands, and areas of high productivity for marine biota such as upwelling and estuaries.

(k) Ocean uses should be located to avoid adverse impacts on proposed or existing environmental and scientific preserves and sanctuaries, parks, and designated recreation areas.

(l) Ocean uses and their associated facilities should be located and designed to avoid and minimize adverse impacts on historic or culturally significant sites in compliance with chapter 27.34 RCW. Permits in general should contain special provisions that require permittees to comply with chapter 27.53 RCW if any archaeological sites or archaeological objects such as artifacts and shipwrecks are discovered.

(m) Ocean uses and their distribution, service, and supply vessels and aircraft should be located, designed, and operated in a manner that minimizes adverse impacts on fishing grounds, aquatic lands, or other renewable resource ocean use areas during the established, traditional, and recognized times they are used or when the resource could be adversely impacted.

(n) Ocean use service, supply, and distribution vessels and aircraft should be routed to avoid environmentally critical and sensitive habitats such as sea stacks and wetlands, preserves, sanctuaries, bird colonies, and migration routes, during critical times those areas or species could be affected.

(o) In locating and designing associated onshore facilities, special attention should be given to the environment, the characteristics of the use, and the impact of a probable disaster, in order to assure

adjacent uses, habitats, and communities adequate protection from explosions, spills, and other disasters.

(p) Ocean uses and their associated facilities should be located and designed to minimize impacts on existing water dependent businesses and existing land transportation routes to the maximum extent feasible.

(q) Onshore facilities associated with ocean uses should be located in communities where there is adequate sewer, water, power, and streets. Within those communities, if space is available at existing marine terminals, the onshore facilities should be located there.

(r) Attention should be given to the scheduling and method of constructing ocean use facilities and the location of temporary construction facilities to minimize impacts on tourism, recreation, commercial fishing, local communities, and the environment.

(s) Special attention should be given to the effect that ocean use facilities will have on recreational activities and experiences such as public access, aesthetics, and views.

(t) Detrimental effects on air and water quality, tourism, recreation, fishing, aquaculture, navigation, transportation, public infrastructure, public services, and community culture should be considered in avoiding and minimizing adverse social and economic impacts.

(u) Special attention should be given to designs and methods that prevent, avoid, and minimize adverse impacts such as noise, light, temperature changes, turbidity, water pollution and contaminated sediments on the marine, estuarine or upland environment. Such attention should be given particularly during critical migration periods and life stages of marine species and critical oceanographic processes.

(v) Preproject environmental baseline inventories and assessments and monitoring of ocean uses should be required when little is known about the effects on marine and estuarine ecosystems, renewable resource uses and coastal communities or the technology involved is likely to change.

(w) Oil and gas, mining, disposal, and energy producing ocean uses should be designed, constructed, and operated in a manner that minimizes environmental impacts on the coastal waters environment, particularly the seabed communities, and minimizes impacts on recreation and existing renewable resource uses such as fishing.

(x) To the extent feasible, the location of oil and gas, and mining facilities should be chosen to avoid and minimize impacts on shipping lanes or routes traditionally used by commercial and recreational fishermen to reach fishing areas.

(y) Discontinuance or shutdown of oil and gas, mining or energy producing ocean uses should be done in a manner that minimizes impacts to renewable resource ocean uses such as fishing, and restores the seabed to a condition similar to its original state to the maximum extent feasible.

(8) Oil and gas uses and activities. Oil and gas uses and activities involve the extraction of oil and gas resources from beneath the ocean.

~~((a) Whenever feasible oil and gas facilities should be located and designed to permit joint use in order to minimize adverse impacts to coastal resources and uses and the environment.~~

~~(b) Special attention should be given to the availability and adequacy of general disaster response capabilities in reviewing ocean locations for oil and gas facilities.~~

~~(c) Because environmental damage is a very probable impact of oil and gas uses, the adequacy of plans, equipment, staffing, procedures,~~

~~and demonstrated financial and performance capabilities for preventing, responding to, and mitigating the effects of accidents and disasters such as oil spills should be major considerations in the review of permits for their location and operation. If a permit is issued, it should ensure that adequate prevention, response, and mitigation can be provided before the use is initiated and throughout the life of the use.~~

~~(d) Special attention should be given to the response times for public safety services such as police, fire, emergency medical, and hazardous materials spill response services in providing and reviewing onshore locations for oil and gas facilities.~~

~~(e) Oil and gas facilities including pipelines should be located, designed, constructed, and maintained in conformance with applicable requirements but should at a minimum ensure adequate protection from geological hazards such as liquefaction, hazardous slopes, earthquakes, physical oceanographic processes, and natural disasters.~~

~~(f) Upland disposal of oil and gas construction and operation materials and waste products such as cuttings and drilling muds should be allowed only in sites that meet applicable requirements.)) As established by the legislature in RCW 43.143.010, there shall be no leasing of Washington's tidal or submerged lands extending from mean high tide seaward three miles along the Washington coast from Cape Flattery south to Cape Disappointment, nor in Grays Harbor, Willapa Bay, and the Columbia River downstream from the Longview bridge, for purposes of oil or gas exploration, development, or production.~~

(9) Ocean mining. Ocean mining includes such uses as the mining of metal, mineral, sand, and gravel resources from the sea floor.

(a) Seafloor mining should be located and operated to avoid detrimental effects on ground fishing or other renewable resource uses.

(b) Seafloor mining should be located and operated to avoid detrimental effects on beach erosion or accretion processes.

(c) Special attention should be given to habitat recovery rates in the review of permits for seafloor mining.

(10) Energy production. Energy production uses involve the production of energy in a usable form directly in or on the ocean rather than extracting a raw material that is transported elsewhere to produce energy in a readily usable form. Examples of these ocean uses are facilities that use wave action or differences in water temperature to generate electricity.

(a) Energy-producing uses should be located, constructed, and operated in a manner that has no detrimental effects on beach accretion or erosion and wave processes.

(b) An assessment should be made of the effect of energy producing uses on upwelling, and other oceanographic and ecosystem processes.

(c) Associated energy distribution facilities and lines should be located in existing utility rights of way and corridors whenever feasible, rather than creating new corridors that would be detrimental to the aesthetic qualities of the shoreline area.

(11) Ocean disposal. Ocean disposal uses involve the deliberate deposition or release of material at sea, such as solid wastes, industrial waste, radioactive waste, incineration, incinerator residue, dredged materials, vessels, aircraft, ordnance, platforms, or other man-made structures.

(a) Storage, loading, transporting, and disposal of materials shall be done in conformance with local, state, and federal requirements for protection of the environment.

(b) Ocean disposal shall be allowed only in sites that have been approved by the Washington department of ecology, the Washington department of natural resources, the United States Environmental Protection Agency, and the United States Army Corps of Engineers as appropriate.

(c) Ocean disposal sites should be located and designed to prevent, avoid, and minimize adverse impacts on environmentally critical and sensitive habitats, coastal resources and uses, or loss of opportunities for mineral resource development. Ocean disposal sites for which the primary purpose is habitat enhancement may be located in a wider variety of habitats, but the general intent of the guidelines should still be met.

(12) Transportation. Ocean transportation includes such uses as: Shipping, transferring between vessels, and offshore storage of oil and gas; transport of other goods and commodities; and offshore ports and airports. The following guidelines address transportation activities that originate or conclude in Washington's coastal waters or are transporting a nonrenewable resource extracted from the outer continental shelf off Washington.

(a) An assessment should be made of the impact transportation uses will have on renewable resource activities such as fishing and on environmentally critical and sensitive habitat areas, environmental and scientific preserves and sanctuaries.

(b) When feasible, hazardous materials such as oil, gas, explosives and chemicals, should not be transported through highly productive commercial, tribal, or recreational fishing areas. If no such feasible route exists, the routes used should pose the least environmental risk.

(c) Transportation uses should be located or routed to avoid habitat areas of endangered or threatened species, environmentally critical and sensitive habitats, migration routes of marine species and birds, marine sanctuaries and environmental or scientific preserves to the maximum extent feasible.

(13) Ocean research. Ocean research activities involve scientific investigation for the purpose of furthering knowledge and understanding. Investigation activities involving necessary and functionally related precursor activities to an ocean use or development may be considered exploration or part of the use or development. Since ocean research often involves activities and equipment, such as drilling and vessels, that also occur in exploration and ocean uses or developments, a case by case determination of the applicable regulations may be necessary.

(a) Ocean research should be encouraged to coordinate with other ocean uses occurring in the same area to minimize potential conflicts.

(b) Ocean research meeting the definition of "exploration activity" of WAC 173-15-020 shall comply with the requirements of chapter 173-15 WAC: Permits for oil or natural gas exploration activities conducted from state marine waters.

(c) Ocean research should be located and operated in a manner that minimizes intrusion into or disturbance of the coastal waters environment consistent with the purposes of the research and the intent of the general ocean use guidelines.

(d) Ocean research should be completed or discontinued in a manner that restores the environment to its original condition to the maximum extent feasible, consistent with the purposes of the research.

(e) Public dissemination of ocean research findings should be encouraged.

(14) Ocean salvage. Ocean salvage uses share characteristics of other ocean uses and involve relatively small sites occurring intermittently. Historic shipwreck salvage which combines aspects of recreation, exploration, research, and mining is an example of such a use.

(a) Nonemergency marine salvage and historic shipwreck salvage activities should be conducted in a manner that minimizes adverse impacts to the coastal waters environment and renewable resource uses such as fishing.

(b) Nonemergency marine salvage and historic shipwreck salvage activities should not be conducted in areas of cultural or historic significance unless part of a scientific effort sanctioned by appropriate governmental agencies.