Preliminary Draft Proposed Changes for Chapter 173-26 WAC under the Shoreline Management Act Rulemaking

June 16, 2025

For public comment and review during the informal comment period

Summary of draft amendments to WAC 173-26, State Master Program Approval/Amendment Procedures and Master Program Guidelines

This list of amendments under consideration will change as Ecology gathers more information during the informal comment period. Some minor revisions are not included in this list; please review the preliminary draft to see all revisions. Items with an asterisk note the provisions included to implement HB 1181/RCW 90.58.630.

WAC section	Topic	Summary of change
173-26-010	Authority and purpose	• Includes edits for readability and/or clarification
173-26-020	Definitions	• Adds several definitions • Includes edits for readability and/or clarification
173-26-030	Master programs required—state master program contents	• Includes edits for readability and/or clarification
173-26-040	Master programs required—unlisted local governments	• No changes
173-26-050	State master program register maintained by Ecology	• Specifies that the master program register is available online • Removes option for public viewing at Ecology's headquarters
173-26-060	State master program records maintained by Ecology	• Specifies that the master program records are available online and that Ecology can also make them available for viewing or provide hard copies • Removes option for inspection at Ecology's headquarters • Includes edits for readability and/or clarification
173-26-070	Ecology's adoption of shoreline master programs by rule	• Includes edits for readability and/or clarification
173-26-080	Master programs required of local governments	• Adds reference to requirement to periodically review SMPs • Specifies the county assigned to cities and towns located in more than one county • Removes Mesa and Elmer City for the list; they have no shorelines of the state or shorelands under local control

WAC section	Topic	Summary of change
		and do not need SMPs • Includes edits for readability and/or clarification
173-26-090	Process for periodic review of SMPs	• Moves locally initiated amendments to a new section (173-26-095) • Adds a subsection on applicability • Internal reorganization • Updates the periodic review schedule in Table WAC 173-26-090.1 • Moves definition and information on legislative action from 173-26-090(2)(c) to 173-26-090(3)(e) • Removes 173-26-090(2)(e)(ii) • Removes the statement that there is no minimum requirement to comprehensively revise shoreline inventory and characterization reports or restoration plans • Adds content from 173-26-201(2)(b) to 173-26-090(2)(e) and adds a statement about sea level rise changing shoreline conditions to this subsection* • Adds requirements for planning for sea level rise* • Adds a process overview to the periodic review and amendment steps • Adds requirements and makes revisions to the public participation plan • Adds information on consistency among plans and regulations and increasing efficiency and effectiveness • Requires considering the information, analyses, and assumptions regarding shoreline issues of concern that informed the comprehensive update of the SMP pursuant to WAC 173-26-201(3)(d) • Recommends updating restoration plans and public access plans • Adds information about incorporating amendments to SMPs and coordinating with Ecology • Adds periodic review amendment approval criteria • Includes edits for readability and/or clarification
173-26-095	SMP locally initiated amendments	• This is a new section • Topics include: ○ Applicability ○ Locally initiated master program reviews and amendments ○ Procedures for conducting locally initiated amendments ○ Locally initiated amendment approval criteria
173-26-100	Standard local process	• Requires identification of and encouraging participation

WAC section	Topic	Summary of change
	for approving/amending SMPs	from local vulnerable populations and overburdened communities that may be impacted by the SMP amendment • Requires noticing Tribal governments and organizations to invite engagement and provide opportunity for comment • Adds specificity on publishing notice of public hearing(s) • Adds details on SEPA compliance • Includes edits for readability and/or clarification
173-26-104	Joint review process for amending shoreline master programs	• Requires identification and encouraging participation from local vulnerable populations and overburdened communities that may be impacted by the SMP amendment • Requires noticing Tribal governments and organizations to invite engagement and provide opportunity for comment • Adds details on SEPA compliance • Includes edits for readability and/or clarification
173-26-105	Integration of SEPA process with adoption of SMP amendments	• This is a new section • Addresses SEPA process for adopting new or amended SMPs
173-26-110	Submittal to Ecology of proposed SMPs/ amendments	• Adds details and clarifications to the submittal requirements • Specifies materials required for planning for sea level rise*
173-26-120	State process for approving/amending SMPs	• Adds that any SMP update/amendment becomes effective per RCW 90.58.090 • Includes Ecology timeline for issuing a decision on proposed SMP updates • Includes details and requirements about the state public comment period and Ecology's review, decision, final action, and notice processes • Reorganization within the section for clarity • Includes edits for readability and/or clarification
173-26-130	Appeal procedures for master programs	• Specifies that appeals must be filed within 60 days of the date Ecology publish notice if its final action for local governments fully planning under the GMA • Includes edits for readability and/or clarification
173-26-140	SMP administrative interpretation	• Clarifies details about how to address administrative interpretations in SMPs
173-26-150	Local government annexation—shoreline	• Includes edits for readability and/or clarification

WAC section	Topic	Summary of change
	environment pre-designation in planning jurisdictions	
173-26-160	Local government annexation	• No changes
173-26-171	Authority, purpose, and effects of guidelines	• Adds RCW 90.58.630 to Ecology's authority* • Adds requirement for local governments to document information about authorizations in shorelines • Includes edits for readability and/or clarification
173-26-176	General policy goals of the SMA and guidelines for shorelines of the state	• Includes RCW 90.58.630 as a policy goal of the SMA* • Specifies that shoreline jurisdiction is a riparian area • Includes edits for readability and/or clarification
173-26-181	Special policy goals of the act and guidelines for shorelines of statewide significance	• No changes
173-26-186	Governing principles of the guidelines	• Adds hazard mitigation planning and climate adaptation planning to the list of additional means of achieving the planning policies* • Notes that local governments may need to consider planning outside of shoreline jurisdiction under some circumstances* • Adds detail about the integration of SMP with other local policies and regulation for local governments not fully planning under the GMA • Adds requirement to evaluate cumulative impacts as part of SMP periodic reviews. • Requires local governments to protect shoreline ecological functions as they adapt to rising sea levels* • Includes edits for readability and/or clarification
173-26-191	Master program contents	• Internal reorganization • References WAC 173-26-246(11) for additional considerations about consistency between GMA and SMA requirements with regard to climate planning* • Requires that SMP regulations include provisions to ensure no net loss • Requires SMPs to include administrative, enforcement, and permit review procedures • Requires SMPs to include definitions from RCWs and WACs • Adds detail to the requirement for local governments to

WAC section	Topic	Summary of change
		document all authorizations • Requires that the documentation of authorizations be used to determine whether they result in unanticipated development and/or changes to shoreline areas and evaluate their effects and use this information to inform periodic reviews • Requires Ecology to provide guidance to support data collection and evaluation • Requires that critical areas protection standards be directly in the SMP rather than added through an incorporation by reference • Requires a clear identification of the components that make up an SMP • Adds detail encouraging local governments to combine and/or coordinate SMP planning efforts • Includes edits for readability and/or clarification
173-26-201	Process to complete a comprehensive SMP update	• Removes all reference to SMP amendments, which are now addressed in WAC 173-26-090 and new section WAC 173-26-095 • This section now applies only to SMP comprehensive updates • Includes edits for readability and/or clarification
173-26-211	Environment designation system	• Adds a requirement that local governments required to plan for sea level rise (SLR) must consider their environment designations in the context of SLR planning, and includes specifics about how to do this* • Requires bulk, setback, density, and other standards within shoreline environment designation provisions without reliance on zoning or other codes located outside the SMP. • Moves some provisions to the alternative systems WAC 173-26-211(4)(c) • Describes circumstances under which provisions can be included in an SMP allowing for a mix of water-dependent and nonwater-dependent uses to be established. • Adds multiunit residential to uses that should be prohibited in the Natural or Conservancy SEDs • Clarifies residential standards • Recommends that uses that were originally established outside of an aquatic environment designation that fall within the aquatic environment due to shoreline change be managed under the aquatic designation policies • Requires a cumulative impacts analysis related to the

WAC section	Topic	Summary of change
		development of nonconforming lots legally created prior to the adoption of an SMP • Includes edits for readability and/or clarification
173-26-221	General master program provisions	• Clarification that these provisions apply throughout shoreline jurisdiction • Archaeological and cultural resources section: ○ This section is still under development ○ Added language to the from Cultural Resources Model Language for Shoreline Master Programs from the SMP Handbook Appendix B and WAC 365-196-450 • Moved critical areas language to new section WAC 173-26-226 • New nonconforming uses, developments, and lots section: ○ This section is still under development ○ Requires SMPs to address non-conforming policies and regulations with tailored provisions that address specific nonconformities at issue in shoreline jurisdiction ○ Replaces default provisions for nonconforming development found in WAC 173-27-080 • Public access section adds: ○ Principles for providing equitable access and maintaining or increasing overall level of public access over time ○ Recommendation to maintain/update public access plans ○ Requirement to for jurisdictions with marine shorelines to consider vulnerability of shorelines to sea level rise (SLR) and maintain or improve levels of service* ○ Standards for new and existing public access sites in areas vulnerable to SLR* • Includes edits for readability and/or clarification
173-26-226	Protection of critical areas and shoreline ecological functions	• This is a new section that includes language moved WAC 173-26-221 • Modifies the critical areas applicability and principles subsections from WAC 173-26-221(2) and adds general standards applicable to all critical areas • Specifies that critical areas provisions must be embedded in the SMP and not incorporated by reference • Adds detail to option of including critical area buffers to shoreline jurisdiction • Requires that SMPs protect critical areas to ensure no net loss

WAC section	Topic	Summary of change
		• Clarifies that updating critical areas codes under the GMA does not update the SMP and that shorelines are not critical areas unless areas meet the definition a critical area • Requires SMPs to preclude activities that are incompatible with critical areas • Includes limitations on buffer reductions and common-line setbacks • Specifies that SMPs cannot include critical areas impact allowances and reasonable use provisions • Addresses critical areas restoration and enhancement • Includes specifics on wetlands protection • Expands on geologically hazardous areas provisions relocated from WAC 17-26-221(2) • Includes critical saltwater habitat, critical freshwater habitat, and non-shoreline waterbodies within shoreline jurisdiction in a new fish and wildlife habitat conservation areas (FWHCA) section • Adds a frequently flooded areas section, which includes relocated flood hazard reduction provisions from WAC 173-26-221(3) • Adds a channel migration zone (CMZ) section: ○ CMZ protection clarifies several standards that were previously included under flood hazard protection in WAC 173-26-221(3) ○ CMZ standards include limiting development in CMZs, listing uses that may be appropriate in CMZs, and allowing the option of adding the CMZ section to the FWHCA, FFA, or geologically hazardous area regulations • Adds a critical aquifer recharge areas section • Includes a section on protection of shoreline ecological functions, which addresses applicability, principles, general standards, shoreline buffers, shoreline vegetation conservation, and water quality • Includes a section on shoreline buffers, which addresses standards, degraded buffers, and buffer impacts • Expands on the relocated shoreline vegetation conservation section by addressing functions and values, protection, and standards • Expands on the relocated water quality, stormwater, and nonpoint pollution section by addressing water quality and sediment management standards, protection, and standards

WAC section	Topic	Summary of change
173-26-231	Shoreline modifications	• Internal reorganization • Clarifies applicability • Adds specificity to the general principles applicable to all shoreline modifications • Adds definitions, details, specifications, and requirements to shoreline modification types currently in the rule • Adds specific shoreline modification types and associated requirements: ○ Access structures ○ Boat launches ○ Fencing ○ Grading and excavation ○ In-stream structures ○ Mooring buoys ○ On-site sewage systems ○ Outfalls and drainage dispersion systems ○ Scientific data-collection or monitoring devices ○ Tide gates ○ Vertical evacuation structures ○ Upland retaining walls ○ Utilities ○ Vegetation modifications • Moves shoreline stabilization separate section, 173-26-231(3) and with its own applicability section, principles, and standards ○ Condenses information on the adverse effects of stabilization ○ Requires that SMPs' stabilization provisions be consistent with WAC 173-26-226(1) and (2) ○ Adds a requirement that SMPs ensure that new stabilization is suitable for the environment and that plans are made to maintain and eventually decommission stabilization structures. ○ Requires SMPs to prioritize nature-based solutions ○ Revises language on stabilization for single-family residences to provide clarity and specific provisions ○ Revises general shoreline stabilization standards ○ Requires that new development be located and designed to avoid the need for future stabilization ○ Sets forth conditions under which new, enlarged, or expanded stabilization can be allowed ○ Sets forth conditions under which shoreline stabilization can be replaced ○ Requires a geotechnical report for demonstration of

WAC section	Topic	Summary of change
		need for all shoreline stabilization proposals and provides specific requirements for geotechnical reports, including an alternatives analysis ○ Requires an ecological impact analysis for all proposals for new, enlarged, or expanded stabilization ○ Provides additional standards for marine waters, including circumstances under which stabilization is not allowed and standards for managing existing stabilization • Adds a flood hazard reduction modification section with the following topics: ○ Applicability ○ Principles ○ Standards for freshwater ○ Standards for marine waters • Includes edits for readability and/or clarification
173-26-241	Shoreline uses	• Adds requirement to ensure that existing and planned shoreline uses are compatible with sea level rise projections and expected future conditions* • Moves in-stream structures to 173-26-231 • Adds criteria to residential development provisions, including addressing middle housing, multiunit residential development, and ADUs • Adds information on parking areas • Includes edits for readability and/or clarification
173-26-246	Sea level rise planning*	• This is a new section required by RCW 90.58.630 • Requires certain local governments to plan for sea level rise • Includes both requirements and optional recommendations • Topics include: ○ Purpose ○ Applicability ○ Exceptions and adjustments to requirements ○ Timing and phasing ○ Equitable planning ○ Process to amend SMPs to address SLR ○ SLR content requirements for SMPs ○ Development in SLR Hazard Areas ○ Additional measures for addressing SLR in SMPs ○ Principles for using SLR information in shoreline planning ○ Aligning climate adaptation across plans ○ Ecology guidance and assistance

WAC section	Topic	Summary of change
173-26-251	Shorelines of statewide significance	• Provides clarifications and improved text organization • Adds a section on sea level rise adaptation*
173-26-360	Ocean management	• No changes
173-26-365	Marine Spatial Planning	• This is a new section • Topics include: ○ Purpose and intent ○ Applicability ○ Definitions ○ Important, Sensitive, and Unique Areas protection ○ Fisheries use protection ○ Additional requirements for new ocean use proposals

* These provisions are included to implement HB 1181/RCW 90.58.630.

Chapter 173-26 WAC

STATE MASTER PROGRAM APPROVAL/AMENDMENT PROCEDURES AND MASTER PROGRAM GUIDELINES

Last Update: 8/7/17

173-26-010 Authority and purpose.
173-26-020 Definitions.

PART I- STATE MASTER PROGRAM

173-26-030 Master programs required—State master program contents.
173-26-040 Master programs required—Unlisted local governments.
173-26-050 State master program register—Maintained by department.
173-26-060 State master program—Records maintained by department.
173-26-070 Adoption of shoreline master programs by rule—Department action.
173-26-080 Master programs required of local governments.

PART II - SHORELINE MASTER PROGRAM APPROVAL/AMENDMENT DRAFT REVIEW:

173-26-090 ~~Locally initiated review —~~Process for ~~P~~periodic review of master programs~~—Public involvement and approval procedures.~~
173-26-095 Process for master program locally initiated amendments.
173-26-100 Standard local process for approving/amending shoreline master programs.
173-26-105 Integration of State Environmental Policy Act process with adoption of shoreline master program amendments.
173-26-104 Optional joint review process for amending shoreline master programs.
173-26-110 Submittal to department of proposed master programs/amendments.
173-26-120 State process for approving/amending shoreline master programs.
173-26-130 Appeal procedures for master programs.
173-26-140 Shoreline master program administrative interpretation.
173-26-150 Local government annexation—Shoreline environment pre-designation in planning jurisdictions.
173-26-160 Local government annexation.

PART III - GUIDELINES

173-26-171 Authority, purpose and effects of guidelines.
173-26-176 General policy goals of the act and guidelines for shorelines of the state.
173-26-181 Special policy goals of the act and guidelines for shorelines of statewide significance.
173-26-186 Governing principles of the guidelines.
173-26-191 Master program contents.
173-26-201 Process to ~~prepare or amend~~ complete comprehensive ~~shoreline~~ master program~~s~~ updates.
173-26-211 Environment designation system.
173-26-221 General master program provisions.
173-26-226 Protection of critical areas and shoreline ecological functions.
173-26-231 Shoreline modifications.
173-26-241 Shoreline uses.
173-26-246 Sea level rise planning.

173-26-251 Shorelines of statewide significance.

PART IV - OCEAN MANAGEMENT

173-26-360 Ocean management.
173-26-365 Marine Spatial Planning

WAC 173-26-010 Authority and purpose.

The provisions of this chapter implement the requirements of chapter 90.58 RCW, the Shoreline Management Act of 1971. RCW 90.58.200 authorizes the adoption of rules by the department as necessary and appropriate to carry out the provisions of the act. RCW 90.58.080 directs local governments to develop and administer local shoreline master programs for regulation of uses on shorelines of the state. Such local programs should be integrated with other local government systems for administration and enforcement of land use regulations. RCW 36.70A.480 provides that the goals and policies contained in a local shoreline master program shall be considered an element of the local comprehensive plan required by the Growth Management Act. All other portions of the local shoreline master program, including the use regulations, are considered a part of the local development regulations required by the Growth Management Act.

This chapter is drafted to also reflect RCW 90.58.050, which provides that the Shoreline Management Act is intended to be a cooperative program between local government and the state. It is the intent of this chapter to provide minimum procedural requirements as necessary to comply with the statutory requirements while providing latitude for local government to establish procedural systems based on local needs and circumstances.

Pursuant to the Shoreline Management Act, the department must approve master programs prepared by local governments or adopt them by rule consistent with the act. In order to facilitate this process, Part I of this chapter establishes a recordkeeping system for the department and defines the contents of the state master program. Part II sets forth procedures for approving and adopting master programs and amendments thereto. Part III comprises the guidelines pursuant to RCW 90.58.060 and provides guidance for developing the content of shoreline master programs. Part IV –addresses the requirements of the state Ocean Resources Management Act.

[Statutory Authority: RCW 90.58.060 and 90.58.200. WSR 04-01-117 (Order 03-02), § 173-26-010, filed 12/17/03, effective 1/17/04; WSR 00-24-031 (Order 95-17a), § 173-26-010, filed 11/29/00, effective 12/30/00. Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-26-010, filed 9/30/96, effective 10/31/96.]

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.

(XX) "Adaptive capacity" means the ability of systems, institutions, humans, and other organisms to adjust to potential or actual damage, to take advantage of opportunities, or to respond to consequences.

(XX) "Adaptive management" means a process of iteratively planning, implementing, and modifying strategies for managing resources in the face of uncertainty and change. Adaptive management involves

adjusting management approaches in response to observations of their effect on, and changes in, the system brought on by resulting feedback effects and other variables.

(XX) "Adaptation pathways" means an approach to the challenge of making adaptation decisions today that supports flexibility for future adaptation options. It provides a structure for considering different options (or pathways) to respond to increasing climate hazards over time and helps communities understand what actions taken in the short term can enable options for the long term. Pathways rely on developing triggers and decision points based upon monitoring the effectiveness of strategies, lifespan of adaptation actions, and evaluating the changing physical and social conditions that signal when changes to the pathway need to occur.

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(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) Agricultural terms:

(a) "Agricultural activities" means agricultural uses and practices including, but not limited to,~~:~~ p~~P~~roducing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow ~~in which~~wherein 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" include~~s~~, but ~~is~~ are 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.

(4) "Amendment" means a revision, update, addition to, deletion from, and/or re-enactment ~~to~~ of 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.

(XX) "Arborist report" means a scientific study or evaluation conducted by a qualified arborist that includes a description of tree species, condition, size (diameter at breast height (dbh) and height) and location (including a unique identifier for all trees 8 inches or greater in dbh and/or forests greater than ¼ acre onsite); identifies affected trees, groves, and forests that will be impacted by construction; conclusions and recommendations regarding the effect of the proposed development on tree and forest conditions; impacts of the proposed development; alternative approaches to the proposed development; and measures to mitigate potential site-specific and cumulative tree and forest impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Arborist reports shall conform to accepted technical standards of writing provided by the American Society of Consulting Arborists and must be prepared by qualified arborists who have professional expertise about the regional and local shoreline ecology and processes.

(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~~catchment area.

(XX) "Channel migration zone" (CMZ) means a management area delineated for the purposes of predicting channel movement overtime, to inform appropriate uses and risk reduction strategies as part of shoreline management. CMZ delineations shall conform to accepted technical standards and must be prepared by qualified professional geologists, engineering geologists, or hydrogeologists who have at least five years of professional expertise in regional and local fluvial geomorphology and processes.

(XX) "Climate adaptation" means the process of adjustment to actual or expected climate conditions in order to reduce risk, moderate harm, or access beneficial opportunities.

(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.

(XX) "Critical freshwater habitat" means

Commented [A1]: Ecology will add a definition of critical freshwater habitat in the next draft.

(XX) "Critical saltwater habitat" means all kelp beds; eelgrass beds; spawning and holding areas for forage fish, such as herring, smelt, and sand lance; subsistence, commercial, and recreational shellfish beds; mudflats; intertidal habitats with vascular plants; and areas with which a priority species has a primary association.

(9) "Department" or "Ecology" 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~~ that 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 habitats and the associated ecological functions.

(XX) "Environmental justice" means the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to development, implementation, and enforcement of environmental laws, regulations, and policies. Environmental justice includes addressing disproportionate environmental and health impacts in all laws, rules, and policies with environmental impacts by prioritizing vulnerable populations and overburdened communities and the equitable distribution of resources and benefits, and eliminating harm.

(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~~ that meets the objectives of the act.

(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.

(XX) "Functional lifespan" means the amount of time that a project will be in use at a location, including regular repair and maintenance. The functional lifespan refers to the reasonable life expectancy of a project, rather than its design life.

(XX) "Future tidal inundation" area means the area expected to be flooded by daily high tides by about the year 2100 or 70 years from the deadline for completion of the next periodic review, whichever is later. This involves mapping the approximate projected extent of mean higher high water with sea level rise. The amount of sea level rise used to identify this area should, for scenario-based projections, align with at least the intermediate scenario or a higher amount of sea level rise. For probabilistic projections, the amount of sea level rise should align with the 50% likelihood or a lower likelihood and high emissions scenario. Sea level rise amounts evaluated should be relative, incorporating local vertical land movement.

(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

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Commented [A2]: These definitions are specific to the subsection they are used for, so moved the definitions from the chapter definitions in WAC 173-26-020 to WAC 173-26-221(2).

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Commented [A3]: Need to clarify that the local government can adopt the FEMA floodway, identify the "water course floodway locally and adopt that, or create a hybrid using both approaches. But the SMP needs to clearly define the later options, map this floodway and determine how it is delineated on the ground.

Commented [A4R3]: Add language to WAC 173-26-226(1) frequently flooded areas provisions.

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.

(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 or legally established contour of the land.

(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.

(XX) "Hazard tree" means a tree that a qualified arborist has determined to have a structural defect, combination of defects, or disease that qualify the tree as a high or extreme risk to persons or property and where that risk cannot reasonably be mitigated or reduced, and that under the normal range of environmental conditions at the site is likely to result in the imminent loss of a major structural component of that tree in a manner that will (a) damage a residential structure or accessory structure or place of employment or public assembly; or approved parking for a residential structure or accessory structure, or place of employment or public assembly, (b) damage an approved road or utility facility, or (c) prevent emergency access in the case of medical hardship.

(XX) "Kelp" means any of the 22 species of the order Laminariales in Washington waters, including but not limited to species in the genera Macrocystis and Nereocystis, and any newly discovered species.

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

(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.

(26) Master program terms:

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(a) "Master program" or "shoreline master program" ~~shall~~ means 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) "Master program amendment" means an amendment that 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).

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

(XX) "Middle housing" means buildings that are compatible in scale, form, and character with single-family houses and contain two or more attached, stacked, or clustered homes, including duplexes, triplexes, fourplexes, fiveplexes, sixplexes, townhouses, stacked flats, courtyard apartments, and cottage housing.

(XX) "Mixed-use development" means a project that includes both nonwater-oriented uses and water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives by providing public access and ecological restoration.

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

(XX) "Nature-based solutions" means measures that leverage naturally occurring processes and materials to mitigate shoreline hazards. They can be composed of soft or hard elements, depending on shoreline conditions. Specific approaches vary based on the shoreline environment and are appropriately scaled and designed to mimic or align with local shoreline processes while minimizing ecological impacts. Nature-based solutions can offer multiple benefits, including coastal resilience, improved nearshore habitat, and social benefits such as recreation and beach access.

(XX) Nonconforming terms:

(a) "Nonconforming use" means an existing shoreline use that was lawfully established prior to the effective date of the act or the applicable master program, but which does not conform to present use regulations due to subsequent changes to the master program

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(b) "Nonconforming development" or "nonconforming structure" means an existing structure that was lawfully constructed at the time it was built but is no longer fully consistent with present regulations such as setbacks or buffers, area, bulk, height, or density standards due to subsequent changes to the master program or the location of the ordinary high water mark.

(c) "Nonconforming lot" means a lot that met dimensional requirements of the applicable master program at the time of its establishment but now contains less than the required width, depth, or area due to subsequent changes to the master program.

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

(XX) "Overburdened community" means a geographic area where vulnerable populations face combined, multiple environmental harms and health impacts, and includes, but is not limited to, highly impacted communities as defined in RCW 19.405.020.

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(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.

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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, kelp, or eelgrass meadows). A priority habitat may also be described by a successional stage (such as~~,~~ old growth ~~and~~ or mature forests). Alternatively, a priority habitat may consist of a specific habitat element (such as a consolidated marine/estuarine shoreline, talus slopes, caves, or snags) of key value to fish and wildlife. A priority habitat may contain priority and/or nonpriority fish and wildlife.

(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.

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(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 T~~t~~ribal importance. Native and nonnative fish, shellfish, and wildlife species of recreational or commercial importance and recognized species used for T~~t~~ribal 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.

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

(xx) "Qualified professional" means a person with training and experience in the pertinent scientific discipline. With regard to critical areas, it means a person who is a qualified scientific expert in

accordance with WAC 365-195-905. A qualified professional must be licensed and/or certified where such licensing or certification are required. When certification is not required the professional must have: (1) obtained a B.S., B.A., or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology, or related field, and (2) have at least five years of related work experience.

(a) Wetlands. A qualified wetlands professional is a person who has an understanding of hydrology and advanced skills in plant identification and soils classification, has been trained in the procedures of the 1987 (federal) Wetland Delineation Manual and its updated Regional Supplement, has used those procedures to delineate a wetland, and has obtained wetland permits or worked for a qualified professional who has obtained wetland permits from the Washington State Department of Ecology or the U.S. Army Corps of Engineers within the last seven years, and has the qualifications to conduct wetland studies and make recommendations for wetland mitigation. These qualifications include specialization in wetland soils, botany, or hydrology, with appropriate education and experience.

(b) Fish and Wildlife Habitat Conservation Areas. A qualified professional for habitat must have a degree in biology or a related degree and professional experience related to the subject species.

(c) Geologically Hazardous Areas. A qualified professional for a geological hazard is: (a) a geotechnical engineer, qualified civil engineer, or certified engineering geologist; (b) with experience analyzing geologic, hydrologic, and groundwater flow systems and slope stability, seismicity, faulting and liquefaction; and (c) is licensed to practice in the state of Washington. When the proposed development or vegetation removal is located in an area subject to coastal geomorphological processes, the professional shall have demonstrated experience in evaluating and providing technical recommendations related to sediment and sediment transport, and effects on property and shoreline stability.

(d) Channel migration. Channel migration zone studies and delineations shall conform to accepted technical standards and must be prepared by a qualified professional geologist, engineering geologist, or hydrologist who have at least 5 years of professional experience on regional and local fluvial geomorphology and processes.

(e) Critical Aquifer Recharge Areas. A qualified professional for critical aquifer recharge areas means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeological assessments.

(f) Vegetation Management. "Qualified professional arborist" means an individual who is a certified professional with academic and field experience that makes them a recognized expert in urban forestry and tree protection during development. A qualified professional arborist shall be a Registered Consulting Arborist certified with the American Society of Consulting Arborists or a Certified Arborist or Board Certified Master Arborist, as certified by the International Society of Arboriculture, and when necessary for emergency tree removal, be ISA Tree Risk Assessment Qualified and have specific training and experience in Washington.

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

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(XX) "Sea level rise" means an increase to the height of sea level, both globally and locally, due to a change in ocean volume as a result of a change in the mass of water in the ocean from melting glaciers and ice sheets, changes in ocean volume as a result of expansion of sea water under warmer conditions, changes in the shape of the ocean basins, and changes in Earth's gravitational and rotational fields, as well as local subsidence or uplift of the land.

(XX) "Sea Level Rise Hazard Area" means a mapped regulatory overlay zone that a local government designates to manage development in areas likely to be impacted by sea level rise. The area is determined based on a planning exercise that includes reviewing information from a sea level rise vulnerability assessment. The Sea Level Rise Hazard Area must encompass the land that modeling indicates is reasonably likely to be exposed to hazards such as flooding, erosion, and groundwater rise over a long-term planning horizon and include the area of future tidal inundation.

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

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

(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.

(XX) "Shoreline stabilization" means actions taken to address erosion impacts caused by current, tides, stream flow, wind, or wave action. These actions include structural and nonstructural methods.

(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.

(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.

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

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

(XX) "Vulnerable populations" means population groups that are more likely to be at higher risk for poor health outcomes in response to environmental harms, due to: (i) Adverse socioeconomic factors, such as unemployment, high housing and transportation costs relative to income, limited access to nutritious food and adequate health care, linguistic isolation, and other factors that negatively affect health outcomes and increase vulnerability to the effects of environmental harms; and (ii) sensitivity factors, such as low birth weight and higher rates of hospitalization. "Vulnerable populations" includes, but is not limited to: racial or ethnic minorities; low-income populations; populations disproportionately impacted by environmental harms; and populations of workers experiencing environmental harms.

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

(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~~ that 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.

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

(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 stormwater 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.

(45) "Water-related use" means a use or portion of a use ~~which~~ that 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.

[Statutory Authority: Chapter 90.58 RCW. WSR 17-17-016 (Order 15-06), § 173-26-020, filed 8/7/17, effective 9/7/17. Statutory Authority: RCW 90.58.120, 90.58.200, 90.58.060 and 43.21A.681. WSR 11-05-064 (Order 10-07), § 173-26-020, filed 2/11/11, effective 3/14/11. Statutory Authority: RCW 90.58.060 and 90.58.200. WSR 04-01-117 (Order 03-02), § 173-26-020, filed 12/17/03, effective 1/17/04; WSR 00-24-031 (Order 95-17a), § 173-26-020, filed 11/29/00, effective 12/30/00. Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-26-020, filed 9/30/96, effective 10/31/96.]

PART I

STATE MASTER PROGRAM

WAC 173-26-030 Master programs required—State master program contents.

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~~ that are required to develop and administer shoreline master programs are listed in WAC 173-26-080.

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[Statutory Authority: Chapter 90.58 RCW. WSR 17-17-016 (Order 15-06), § 173-26-030, filed 8/7/17, effective 9/7/17. Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-26-030, filed 9/30/96, effective 10/31/96.]

WAC 173-26-040 Master programs required—Unlisted local governments.

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The department shall periodically update the list of local governments contained in WAC 173-26-080. When as a result of annexation, municipal incorporation, or change in shoreline jurisdiction, a city or town with shorelines of the state within its boundaries is not listed, such local government is required to develop and administer a shoreline master program pursuant to chapter 90.58 RCW and this chapter.

[Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-26-040, filed 9/30/96, effective 10/31/96.]

WAC 173-26-050 State master program register—Maintained by department.

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The department shall prepare and maintain an official state master program register identifying original department adoption dates and the effective dates of subsequent amendments approved or adopted by the department for each local government shoreline master program. The master program register shall be available online for public viewing ~~and inspection during normal business hours at the headquarters of the department~~. Copies of the register shall be available from the department at the expense of the requesting party. The department shall keep the register current, incorporating master program adoption and amendment dates as they occur.

[Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-26-050, filed 9/30/96, effective 10/31/96.]

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WAC 173-26-060 State master program—Records maintained by department.

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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 online for public viewing. The department can make these available for review in person or in hard copy upon request. ~~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;

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

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

(d) Supplemental materials including:

(i) Interested party mailing list;

(ii) Comment letters and exhibits from federal, state, local, and ~~t~~Tribal agencies;

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

(iv) 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.

[Statutory Authority: Chapter 90.58 RCW. WSR 17-17-016 (Order 15-06), § 173-26-060, filed 8/7/17, effective 9/7/17. Statutory Authority: RCW 90.58.120, 90.58.200, 90.58.060 and 43.21A.681. WSR 11-05-064 (Order 10-07), § 173-26-060, filed 2/11/11, effective 3/14/11. Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-26-060, filed 9/30/96, effective 10/31/96.]

WAC 173-26-070 Adoption of shoreline master programs by rule—Department action.

(1) The department may adopt a shoreline master program by rule in the following circumstances:

(a) Pursuant to RCW 90.58.070(2), when a local government fails to approve a master program relating to shorelines of the state within its jurisdiction in accordance with the time schedule provided for in RCW 90.58.080, the department shall carry out the requirements of RCW 90.58.080 and adopt by rule a master program for shorelines of the state within the jurisdiction of the local government. The department has adopted by rule a master program for shorelines of the state within the jurisdiction of those local governments listed in subsection (2) of this section;

(b) Pursuant to RCW 90.58.090(4), when the department determines that those parts of a master program relating to shorelines of statewide significance do not provide for optimum implementation of the policy of chapter 90.58 RCW to satisfy the statewide interest, the department may develop and adopt by rule an alternative to the local government's master program proposal. The department has adopted by rule an alternative master program for shorelines of statewide significance within the jurisdiction of those local governments listed in subsection (2) of this section.

(2) As set forth in subsection (1)(a) and (b) of this section, the department has adopted by rule a master program, alternative master program or portion thereof for the local governments listed below. This listing shall be updated periodically so as to remove reference to local governments ~~who~~ that have complied with the requirements of chapter 90.58 RCW and this chapter, having prepared and submitted a shoreline master program that has been approved by the department.

[Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-26-070, filed 9/30/96, effective 10/31/96.]

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

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

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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, city of.
- Ridgefield, 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.

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.

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.

(2) Cities and towns that are located in multiple counties have been assigned to a single county for tracking, grant, and deadline purposes:

(a) Auburn, located in King and Pierce Counties, is assigned to King County.

(b) Bothell, located in King and Snohomish Counties, is assigned to Snohomish County.

(c) Coulee Dam, located in Douglas, Grant, and Okanogan Counties, is assigned to Okanogan County.

(d) Enumclaw, located in King and Pierce Counties, is assigned King County.

(e) Milton, located in King and Pierce Counties, is assigned Pierce County.

(f) Pacific, located in King and Pierce Counties, is assigned King County.

(g) Woodland, located in Clark and Cowlitz Counties, is assigned Cowlitz County.

[Statutory Authority: Chapter 90.58 RCW. WSR 17-17-016 (Order 15-06), § 173-26-080, filed 8/7/17, effective 9/7/17. Statutory Authority: RCW 90.58.120, 90.58.200, 90.58.060 and 43.21A.681. WSR 11-05-064 (Order 10-07), § 173-26-080, filed 2/11/11, effective 3/14/11. Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-26-080, filed 9/30/96, effective 10/31/96.]

PART II
SHORELINE MASTER PROGRAM APPROVAL/AMENDMENT

DRAFT REVIEW:

WAC 173-26-090 Process for periodic review of master programs. ~~Locally initiated review—Periodic review—Public involvement and approval procedures.~~

~~(1) Locally initiated master program review.~~

~~Each local government should review its shoreline master program and make amendments deemed necessary to reflect changing local circumstances, new information or improved data. Local governments are encouraged to consult department guidance for applicable new information on emerging topics such as sea level rise.~~

(1~~2~~) **Applicability.** This section outlines the process to complete a master program periodic review and establishes approval criteria for master program periodic review amendments.

(2) **Periodic review ~~requirements~~.**

~~(a)~~ Following completion of the comprehensive updates required by RCW 90.58.080(2), each local government shall conduct a review of ~~their~~ its master program at least once every ~~eight~~ ten years on a schedule established in the act, RCW 90.58.080(4). 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.

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(a) The purpose of the review is to ensures that shoreline master programs do not fall out of compliance over time through inaction:

(i) To assure that the master program complies with applicable law (Chapter 90.58 RCW) and implementing rules in effect at the time of the review;

(ii) 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; and

(iii) To incorporate amendments to reflect changed circumstances, new information, or improved data and reflect changing shorelines as described in WAC 173-22-052.

(b) Deadlines for periodic review. Local governments must take action to review, ~~,~~ and revise 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

Reviews must be completed on or before June 30th of:	Affected counties and the cities and towns within:
2019/~~2027~~2029*	King, Kitsap, Pierce, Snohomish.
2020/~~2028~~2030*	Clallam, Clark, Island, Jefferson, ~~Kitsap,~~ Lewis, Mason, San Juan, Skagit, Thurston, Whatcom.
2021/~~2029~~2031*	Benton, Chelan, Cowlitz, Douglas, Franklin, Kittitas, ~~Lewis,~~ Skamania, Spokane, Walla Walla, Yakima.
2022/~~2030~~2032*	Adams, Asotin, Columbia, Ferry, ~~Franklin,~~ Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, ~~Walla Walla,~~ Whitman.

*And every ten~~eight~~ years thereafter.

(c) ~~Taking legislative action.~~

~~(i)~~ The periodic review must be accomplished through legislative action consistent with WAC 173-26-090(3)(e) and be followed by department review and approval as required by RCW 90.58.090. ~~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.~~

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~~(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.~~

(e) Effective shoreline management requires the evaluation of changing conditions and the modification of policies and regulations to address identified trends and new information. Consistent with WAC 173-26-191(2)(a)(iii), local governments shall document all authorizations, regardless of whether a shoreline permit or exemption is required, within shoreline jurisdiction and shoreline conditions to facilitate appropriate updates of master program provisions to improve shoreline management over time. In particular, accelerating rates of sea level rise will continue to change shoreline conditions and necessitate adaptive management of shoreline policies and regulations.

(i) This information shall be shared with ecology to facilitate a state-led effort to study SMP implementation. The state-led effort will support the continual improvement of permitting systems and the periodic review and update of these guidelines. Local governments shall comply with ecology requests to transmit collected information to the department and shall be given reasonable time, and no less than forty-five (45) days, to do so. At the time that ecology implements an online permit submittal system, local governments shall use the department's system as a means for documenting information on shoreline exemptions and permits within shoreline jurisdiction.

(ii) 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.

(iii) As provided in WAC 173-26-171-(3)(d), the department will periodically review these guidelines, based in part on information provided by local governments, and through that

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process, Ecology will provide local governments with additional guidance on significant shoreline management issues that may require amendments to master programs.

(f) Local governments required to plan for sea level rise must meet the requirements of WAC 173-26-246 during each periodic review, in addition to the periodic review requirements established in this section.

~~(3) Procedures for conducting periodic reviews.~~(3) **Steps in master program periodic review and amendment process.**

Commented [A5]: Built off of WAC 173-26-201(3)

(a) **Process overview.**

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This section provides a generalized process for conducting a master program periodic review and preparing an amendment. Local governments may modify the timing of 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 periodic review checklist to help local governments identify issues to address. The checklist will not create new or additional requirements beyond the provisions of the act and its implementing rules. The checklist is intended to aid the review of the master program and identify necessary amendments.

(b) **Public participation ~~program~~plan.**

(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;~~,~~ T~~t~~ribes;~~,~~ 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 shall establish and broadly disseminate to the public a public participation ~~program~~ plan identifying procedures whereby review of the shoreline master program will be considered by the local governing body ~~consistent with RCW 36.70A.140~~. Such procedures shall provide for early and ~~continuous~~ continual 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.

(A) Include at least one opportunity to comment on the scope of the periodic review.

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(B) ~~The public participation program should i~~Include a schedule ~~for the periodic review~~ and identify when legislative action on the review and ~~update~~ amendment 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.~~

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(C) Identify whether the periodic review will use the standard adoption process of WAC 173-26-100 or the joint review process or WAC 173-26-104 and demonstrate compliance with the process and procedures outlined in the chosen process.

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

(iv) Communication with 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; and solicit Tribal knowledge. Contact the individual Tribes, the Governor's Office of Indian Affairs, or coordinating bodies such as the Northwest Indian Fisheries Commission, for a list of affected Indian Tribes to be notified.

(v) Identify potentially impacted overburdened communities and vulnerable populations. Include outreach and engagement strategies to reach identified communities and populations.

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

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

Local governments must review amendments to chapter 90.58 RCW and ~~department guidelines~~implementing rules (chapters 173-18, 173-20, 173-22, 173-26, and 173-27 WAC) that have occurred since the last master program periodic review ~~was last amended,~~ and determine ~~if~~ whether 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~~implementing rules.

(ii) Review relevant comprehensive plan~~s~~ and development regulations.

Local governments must review changes to their comprehensive plan and development regulations to ~~determine if the shoreline master program policies and regulations remain consistent with them~~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 with the act and chapter 173-27 WAC.

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 en~~as~~sure consistency between the master program and other elements of the comprehensive plan and development regulations. Local governments should document the consistency analysis as part of the periodic review and as necessary to support proposed changes.

(iii) ~~Additional review and analysis. Local governments should c~~Consider changed local circumstances, new information, and improved data that is readily available or provided during the periodic review process. During the ten-year interim between periodic reviews, shorelines may change, new information will become available, and local and state priorities may shift.

(A) Local governments must identify and compile the most current, accurate, and complete science and technical information available about local circumstances, new information, and

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improved data within their shoreline jurisdiction. This should at a minimum include review of local watershed plans, salmon recovery plans, Ecology-identified TMDL listings, WDFW-identified priority habitat and priority species data, change detection data, current relevant agency guidance, and model language for critical area protection.

(B) For local governments planning for sea level rise, see WAC 173-26-246 for additional requirements.

(C) Local governments must rely on the data outputs as established in WAC 173-26-191 to review and evaluate the effectiveness of the master program. This will be a form of new information and improved data for consideration. Applicable findings from the master program review and evaluation along with recommendations provided by the department should be incorporated into the draft amendment.

(D) ~~during their periodic review~~Determine whether ~~to incorporate any~~ amendments are needed to reflect changed circumstances, new information or improved data ~~as described under subsection (1) of this section~~identified and considered above in subsection (A). Local governments should consider whether the significance of the changed circumstances, new information or improved data warrants amendments and document this analysis and justification as part of the periodic review.

(iv) Local governments should consider the information, analyses, and assumptions regarding shoreline issues of concern that informed the comprehensive update of their master program pursuant to WAC 173-26-201(3)(d). Where the proposed periodic review amendment would substantially change any of these, the local government shall conduct an analysis and/or provide documentation as necessary to demonstrate that the master program, as proposed for amendment, remains consistent with RCW 90.58.020 and applicable guidelines. For example, an amendment may allow a type of shoreline development not currently allowed under the master program. This new allowance could challenge the assumptions made regarding the cumulative impacts of reasonably foreseeable development under WAC 173-26-201(3)(d)(iii). In such case, the local government shall provide an addendum to the cumulative impacts analysis that demonstrates how the amended master program will achieve no net loss of shoreline ecological functions.

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(v) Local governments are encouraged to update restoration plans and public access plans as part of this periodic review process. Review restoration plans to identify potential restoration projects that provide climate resilience co-benefits, such as restoring marshes and estuaries to mitigate the impacts of sea level rise; incorporate new information from watershed plans and salmon recovery plans; adjust priorities; and update project lists. Master programs should prioritize areas for restoration that will enable habitat to migrate landward with sea level rise. Review public access plans to incorporate information about shoreline change, identify at-risk access points and plan future for public access that is both equitable and resilient.

(d~~e~~) **Draft revisions.**

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(i) Where the review conducted in (c) identifies amendments necessary to bring the program into compliance with the requirements of the act or implementing rules, the local government must incorporate those amendments. The draft amendment must be made available as outlined in the public participation plan in subsection (b).

(ii) Consistent with the local-state partnership established by RCW 90.58.050, local governments shall coordinate and collaborate with department personnel during the master program review and preparation of these draft revisions. Local governments shall provide draft master program provisions to the department for informal guidance and technical assistance prior to local legislative action or formal submittal.

(e) **Take legislative action.**

Legislative action means the adoption of a resolution or ordinance following notice and a public hearing including, at a minimum, findings that a review and evaluation have occurred and identifying the revisions made or that a revision was not needed and the rationale for that decision. Legislative findings that no revisions are needed are referred to in this section as "findings of adequacy."

~~(i)~~ (i) Legislative action includes two components:

(A) Documentation of the review of the shoreline master program as required by RCW 90.58.080(4) and this section.

(B) The adoption of either findings of adequacy or any amendments necessary to bring the program into compliance with the requirements of the act and its implementing rules.

(ii) At the end of the periodic review process, ~~counties and cities~~local governments must take legislative action declaring the review process complete:

(A) 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).

(B) 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).

(C) If a local government ~~that~~ determines, as a result of the periodic ~~fter~~ review, that amendments are not needed, it shall adopt a resolution or ~~,~~ motion~~, or ordinance~~ declaring finding~~s~~ 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) and this section.

(iii) Legislative actions concluding the periodic review must be followed by department approval in order for the amended master program to take effect.

(f~~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 motion ~~or ordinance~~ declaring findings of adequacy.

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

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(C) Copies of all public, agency, and Ttribal 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 that review elements have been considered, and are either inapplicable or have already been addressed through previous locally initiated amendments prior to the scheduled periodic reviewin the master program.

(g) **Periodic review amendment approval criteria.**

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

(ii) Master program periodic review amendments may be approved by the department provided all of the following criteria are met:

(A) The master program as amended will not foster uncoordinated and piecemeal development of the state's shorelines,

(B) The amendment is consistent with all applicable policies and standards of the act,

(C) All procedural rule requirements for public notice and consultation have been satisfied,

(D) Master program guidelines analytical requirements and substantive standards, where they reasonably apply to the periodic review and proposed amendment, have been satisfied,

(E) Process and procedural requirements and substantive standards for master program periodic reviews established by this section have been satisfied,

(F) All master program amendments must demonstrate that implementation of the amended master program will not result in a net loss of shoreline ecological functions, and

(G) The department shall evaluate whether the change promotes achievement of the policies of the master program and the act.

(he) **State process for approving periodic reviews.**

(i) The department must issue a formal approval of any amendment or findings of adequacy to complete the periodic review process and for the amended master program to take effect. Department approval is necessary to affirmatively 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, the 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.

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[Statutory Authority: Chapter 90.58 RCW. WSR 17-17-016 (Order 15-06), § 173-26-090, filed 8/7/17, effective 9/7/17. Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-26-090, filed 9/30/96, effective 10/31/96. RCW 90.58.090]

WAC 173-26-095 Process for shoreline master program locally initiated amendments.

(1) **Applicability.** This section outlines the process to complete a locally initiated master program review and amendment and establishes approval criteria for these amendments.

(2) **Locally initiated master program reviews and amendments.** Local governments may initiate review and propose amendments to a master program separately from the comprehensive updates required by RCW 90.58.080(2) and the periodic reviews required by RCW 90.58.080-(4). Any master program amendment not intended to meet the statutory requirements of a comprehensive master program update or a periodic review, shall be considered and referred to in this section as a locally initiated amendment.

(a) **Schedule.** Locally initiated amendments may be conducted at the discretion of the local government and are not subject to any minimum or maximum frequency, except that:

(i) A local government out of compliance with the periodic review schedule defined in WAC 173-26-090(2)(b) shall not conduct a locally initiated amendment that does not incorporate the required minimum scope of the periodic review, as defined in WAC 173-26-090, and

(ii) Only one master program amendment may be processed per WAC 173-26-120 at a time.

(b) **Scope.** Local initiated master program amendments can address issues deemed necessary to reflect changes to the comprehensive plan or development regulations, changing local circumstances, new information or improved data that have been identified outside the periodic review ten year cycle. This is an intentionally broad category and circumstances will vary widely. Examples of changes that could trigger the need for amendment include zoning code revisions, critical area regulation amendments, annexation of new shoreline areas, physical changes to the shoreline through natural occurrence (e.g. channel migration, major flood or landslide events) or restoration projects (e.g. levee setback) that significantly shift the location of the ordinary high water mark, implementation challenges, clarification of issues addressed by Administrative Interpretations or Moratoria, and similar issues.

(i) With the exception of (a) above, the scope of a locally initiated amendment is at the discretion of the local government.

(ii) Local governments are encouraged to consolidate unrelated topics where it is practical to do so, in order to incorporate outstanding issues including, but not limited to, identified implementation problems, administrative interpretations, and/or changes to other local policies, plans, or regulations made since the effective date of the master program.

(iii) Local governments shall consult department guidance for applicable new information on emerging topics.

(3) **Procedures for conducting locally initiated amendments**

(a) **Process.** Local governments conducting a locally initiated amendment may follow the standard local process for amending shoreline master programs defined in WAC 173-26-100, or the optional

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joint review process for amending shoreline master programs defined in WAC 173-26-104. The local government shall include early and continual consultation with the department.

(b) **Documentation and analysis required**.

(i) Local governments shall clearly document the scope, intent, and necessity for the proposed changes to the master program amendment and provide such documentation to the department consistent with the submittal requirements of WAC 173-26-110(41).

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(ii) Local governments should consider the information, analyses, and assumptions regarding shoreline issues of concern that informed the comprehensive update of its master program pursuant to WAC 173-26-201(3)(d). Where the proposed locally initiated amendment would substantially change any of these, the local government shall conduct an analysis and/or provide documentation as necessary to demonstrate that the master program, as proposed for amendment, remains consistent with RCW 90.58.020 and applicable guidelines. For example, a locally initiated amendment may amend the master program to allow a type of shoreline development not currently allowed under the effective master program. This new allowance would challenge the assumptions made regarding the cumulative impacts of reasonably foreseeable development under WAC 173-26-201(3)(d)(iii). In such case, the local government shall provide an addendum to the cumulative impacts analysis that demonstrates how the amended master program will achieve no net loss of shoreline ecological functions.

(iii) Local governments are encouraged to consult with department staff for guidance on documentation and analysis required under this section.

(c) **Local adoption and state review process.**

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(i) After local legislative action adopting the amendment through resolution or ordinance, the locally initiated amendment must be submitted to the department pursuant to WAC 173-26-110.

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(ii) The department shall follow the applicable review and adoption procedures of this section and WAC 173-26-120.

(4) **Locally initiated amendment approval criteria.**

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

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(b) Master program amendments may be approved by the department provided all of the following criteria are met:

(i) The master program as amended will not foster uncoordinated and piecemeal development of the state's shorelines,

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

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(iii) All procedural rule requirements for public notice and consultation have been satisfied,

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(iv) Master program guidelines analytical requirements and substantive standards have been satisfied, where they reasonably apply to the proposed amendment,

(v) Process and procedural requirements and substantive standards for master program amendments established by this section have been satisfied,

(vi) All master program amendments must demonstrate that implementation of the amended master program will not result in a net loss of shoreline ecological functions, and

(vii) The department shall evaluate whether the change promotes achievement of the policies of the master program and the act.

[Statutory Authority: RCW 90.58.090 and RCW 90.58.200]

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WAC 173-26-100 Standard local process for approving/amending shoreline master programs.

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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 periodic review or locally initiated master program amendments may follow these standard 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 continu~~ous~~al consultation with the department is ~~encouraged~~ required 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 ensure early and continu~~ous~~al public participation consistent with WAC 365-196-600.

At a minimum, local government shall:

(1) Notify the department of the intent to modify the master program, prior to commencing the master program development or amendment process;

(2) Send notice, invite engagement, and provide opportunity for comment during the amendment scoping and drafting to the following:

(a) Tribal governments and Tribal organizations.

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(b) State agencies having interest, technical expertise, or responsibilities relating to the shorelines of the state.

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(c) Persons and entities having interest in the master program.

(d) Identify and encourage participation from local vulnerable populations and overburdened communities that may be impacted by the proposed master program amendment.

(3) Once the draft proposal is prepared:

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

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(i~~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. This shall at a minimum include publication in the local government's official paper of record, and an affidavit of publication shall be retained for the adoption record. The notice shall include:

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

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

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

(D~~d~~) Reference to the availability of the draft proposal for public review;

(b~~3~~) Consult with and solicit the comments of any persons~~;~~, groups~~;~~, federal, state, regional, or local agencies~~;~~~~y~~, and T~~t~~ribes~~,~~ 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;

(4) Where amendments are proposed to a county or regional master program ~~which~~ that 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 through legislative action. For local governments planning under the Growth Management Act, the local government shall notify both the department and the department of commerce of its intent to adopt shoreline policies or regulations, pursuant to RCW 36.70A.106;

(6) Comply with chapter 43.21C RCW, the State Environmental Policy Act (SEPA) and WAC 173-26-105. Adoption of shoreline master program policies and regulations are "actions" as defined under SEPA. Local governments must comply with SEPA when adopting new or amended shoreline master program provisions.

(7) Take legislative action to approve~~Approve~~ the proposal and submit for final ~~agency~~ department review and decision ~~approval~~ as outlined in WAC 173-26-110 and WAC 173-26-120.

[Statutory Authority: Chapter 90.58 RCW. WSR 17-17-016 (Order 15-06), § 173-26-100, filed 8/7/17, effective 9/7/17. Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-26-100, filed 9/30/96, effective 10/31/96.]

WAC 173-26-104 ~~Optional j~~Joint review process for amending shoreline master programs.

This section establishes ~~an optional~~a joint review process a local government may elect to use for ~~master program amendments other than comprehensive updates~~either periodic review amendments or locally initiated amendments. The process combines the local public involvement requirements of RCW 90.58.130 and the state public comment period~~s~~ required by ~~-~~RCW 90.58.090. Recognizing that ~~the optional~~ this review process requires close coordination in conducting a joint public review, early and continu~~ous~~al 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) Prior to initiating the joint review process, the l~~L~~ocal government shall solicit~~s~~ early public, Tribal, and agency feedback.

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(a) ~~Prior to commencing the amendment process,~~The local government~~s~~ shall notify the department of its intent to develop an amendment under the ~~optional~~ joint review process.

(i) The department will provide the local government with a shoreline master program amendment checklist~~s~~, if necessary, to help ~~local governments~~ identify issues to address. The checklist~~s~~ will not create new or additional requirements beyond the provisions of this chapter. The checklist~~s~~ ~~are~~ is intended to aid in the preparation and review of master program amendments.

(b) ~~Prior to submittal of a master program amendment to the department,~~The 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 agencies;~~,~~ and T~~t~~ribes~~,~~ 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, the local citizen involvement strategies ~~should be implemented to~~must also ensure early and ~~continuous~~ continual public participation consistent with WAC 365-196-600.

(iv) Identify and encourage participation from local vulnerable populations and overburdened communities that may be impacted by the proposed master program amendment.

(c) The local government shall send notice to Tribal governments and Tribal organizations to invite engagement and provide opportunity for comment during the amendment scoping and drafting.

(d) Where amendments are proposed to a county or regional master program ~~which~~ that 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 governments shall comply with chapter 43.21C RCW, the State Environmental Policy Act (SEPA) and WAC 173-26-105. Adoption of shoreline master program policies and regulations are "actions" as defined under SEPA.

(3) ~~(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.

(~~4~~2) Local government and ecology conduct a joint ~~public~~ comment period and public hearing.

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.~~

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

(a~~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 of 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 T~~t~~ribes 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, when applicable to the proposed amendment:

(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 comments 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;

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(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.

[Statutory Authority: Chapter 90.58 RCW. WSR 17-17-016 (Order 15-06), § 173-26-104, filed 8/7/17, effective 9/7/17.]

WAC 173-26-105 Integration of State Environmental Policy Act process with adoption of shoreline master program amendments.

(1) Adoption of shoreline master program policies and regulations are "actions" as defined under the State Environmental Policy Act (SEPA). Local governments must comply with SEPA when adopting new or amended shoreline master program provisions. Local governments must analyze what effects are likely to occur from the allowed uses and anticipated development.

(a) The SEPA rules authorize joint documents that incorporate requirements of the act and SEPA (WAC 197-11-210 through 197-11-235). In general, using joint documents can provide time and cost savings related to review and adoption of shoreline master program amendments.

(b) The SEPA process is supplementary to other governmental decision-making processes, including the processes involved in creating, amending, and adopting shoreline master programs.

(i) When evaluating shoreline master program amendments, the proposed changes should be considered together as one action under SEPA so that the cumulative effect of various changes can be evaluated together.

(c) In conducting SEPA review and making a threshold determination, the local government should review existing environmental documents. These documents may already address some or all of the potential adverse environmental impacts posed by the proposed changes to the master program. As an example, if an environmental impact statement (EIS) or determination of non-significance was done on the comprehensive shoreline master program update, a previous periodic review, or critical areas ordinance adoption was done, the local government may need to only update or supplement the information in this existing SEPA document. The local government may be able to accomplish

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this by incorporating a document by reference, adopting a document, or preparing a supplemental EIS or an addendum, as authorized by the SEPA rules (chapter 197-11 WAC).

(i) When conducting the SEPA analysis of a shoreline master program amendment, the local government should analyze the impacts of fundamental land use planning choices. Because these choices cannot be revisited during project review, the impacts of these decisions must be evaluated when adopting shoreline master program amendments. These choices include, but are not limited to, the types of uses allowed or permitted by the environment designation; the intensity or density of development permitted; infrastructure needed to serve the allowed uses and development; and the characteristics of the development, such as development standards.

(ii) SEPA compliance for development regulations should concentrate on the difference among alternative means of successfully implementing the policy of the shoreline management act within the shoreline master program. This can be referred to as an analysis of the local discretion options.

[Statutory Authority: Chapter 90.58 RCW, chapter RCW 36.70B, and RCW 43.21C.110.]

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 the following, where applicable:

(14) 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~~that document the necessity for the proposed changes to the master program;

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

(3) 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;~~

(4) Master program maps, diagrams, tables, and illustrations. 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. Maps must be provided in a static format such as a portable document format or image, as well as the geodatabase or other geospatial file type;

~~(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;~~

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(5) Evidence of compliance with chapter 43.21C RCW, the State Environmental Policy Act (SEPA), and WAC 173-26-105 specific to the proposal, including a record of names and addresses of parties notified of the SEPA action;

(6) Evidence of compliance with the public notice and consultation requirements of either WAC 173-26-100 or 173-26-104, including the affidavit of publication for the required notice of public hearing;

(7) Documentation of the outreach actions, opportunities for engagement, comments received, and local government responses to comments.

(a) Copies of all public, agency, and ~~t~~Tribal comments received.

(b) Responses to comments, including evidence of consideration of comments.

(i) If no comments have been received, a statement to that effect should be made.

(ii) A summary of additional changes made in response to comments received.

(c)~~, including a~~ A record of names and mailing or email addresses of interested parties that expressed interest in or provided comment ~~involved in~~during 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.~~

(8~~9~~) A copy of the applicable master program submittal checklist, if applicable, and supporting materials:

(a) For comprehensive master program updates prepared under RCW 90.58.080(2), a checklist completed in accordance with WAC 173-26-201-(3)(a) and (h) and c~~-~~opies of the inventory and characterization, use analysis, restoration plan, and cumulative impacts analysis.

(b) For periodic reviews prepared under RCW 90.58.080(4), a checklist and supplemental reports and materials 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, including any supplemental reports prepared pursuant to WAC 173-26-095.

(9) For local governments required to plan for sea level rise, the following materials are required for each periodic review, in addition to all other requirements of this section. Local governments undertaking locally initiated amendments related to sea level rise should consult with the department regarding necessary documentation.

(a) A vulnerability assessment report that meets the requirements of WAC 173-26-246(6).

(b) Maps associated with the vulnerability assessment and maps displaying the Sea Level Rise Hazard Area. Maps must be provided in a static format such as a portable document format or image, as well as the geodatabase or other geospatial file type.

(c) If adaptation plans, strategy summaries, memos, project lists, or other materials related to sea level rise adaptation have informed policies and regulations, local governments should also provide these.

(d) A checklist demonstrating how the following have been met:

(i) Process requirements in WAC 173-26-246(6),

(ii) Content requirements in 173-26-246(7), and

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(iii) Development regulation requirements in WAC 173-26-246(8).

(e) A record of any exceptions or adjustments to the requirements per 173-26-246(3).

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

[Statutory Authority: Chapter 90.58 RCW. WSR 17-17-016 (Order 15-06), § 173-26-110, filed 8/7/17, effective 9/7/17. Statutory Authority: RCW 90.58.120, 90.58.200, 90.58.060 and 43.21A.681. WSR 11-05-064 (Order 10-07), § 173-26-110, filed 2/11/11, effective 3/14/11. Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-26-110, filed 9/30/96, effective 10/31/96.]

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WAC 173-26-120 State process for approving/amending shoreline master programs.

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Comprehensive master program updates, periodic review amendments, and locally initiated master program amendments shall become effective when approved by the department as established by RCW 90.58.090. The department shall strive to issue a decision on a submitted master program within one hundred eighty days of its determination that the submittal is complete.

Department rReview and approval of master programs and amendments ~~by the department~~ shall follow the procedures set forth below. ~~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.

(a) ~~The~~ If the submittal is determined to be complete, the department shall notify the local government in writing ~~when it determines~~ that a complete submittal has been received.

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~~(b)~~ (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 begin until the department determines the submittal is complete.

(2) **State ~~public~~ comment period.**

A state public comment period is required for all master program updates and amendments processed under the procedures of WAC 173-26-100. The state public comment period does not apply to master programs adopted under the joint review process of WAC 173-26-104, provided all the process and procedural requirements are documented in the submittal provided for in WAC 173-26-110.

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

(a) The department shall initiate Tribal consultation once the master program or amendment submittal is determined to be complete. This will occur prior to agency decision making or commitment to actions.

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(b) The department shall provide reasonable notice of and opportunity for written comments to all parties of record who expressed interest regarding the local government proposal. Parties of record who expressed interest shall include:

(i) Parties that provided written comment during the local government adoption process,

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(ii) Parties that verbalized their comments- during a local government public hearing regarding the master program amendment, and

(iii) ~~to a~~All persons, groups, and agencies~~, and tribes~~ that have requested in writing notice of proposed master programs or amendments generally or for a specific subject matter.

(c) 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.

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

(e~~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.

(i~~d~~) If the department conducts a hearing pursuant to subsection (~~c~~e) 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.

(ii) 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.

(f~~e~~) Within fifteen days after the close of the department's public comment period, the department shall provide the ~~request of the~~ local government with the comments received and a summary of the issues identified during ~~submitting the proposal a review of the issues if any, identified~~ Tribal consultation and~~by the~~ the public comment period. The department shall provide an opportunity for the local government to submit a~~, 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 or propose additional amendments to address the identified issues.

(i) The l~~L~~ocal government shall submit its response to the department within forty-five days of the date of the department's letter requesting a response.

(ii) The ~~Within the forty-five-day period, the~~ local government may request in writing additional time to prepare a response. The request should be submitted within the original 45-day period.

(iii) If no response is received by the department and no request for additional time is received within the forty-five-day period, the department may proceed with action on the proposal according to subsection (3) of this section. ~~Within the forty-five-day period, the local government may request in writing additional time to prepare a response.~~

(3) **Department review~~Approval~~. ~~:~~**

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~~(a)~~ Within thirty days after receipt of the local government's written response pursuant to subsection (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:

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

(i)The written findings and conclusions shall be provided to the local government and made available to all interested persons, parties, Tribes, groups, and agencies of record on the proposal.

(ii) 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.

(iii) The department shall approve those parts of a master program relating to shorelines of statewide significance only after determining that 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.

(iv) The department shall approve the provisions of a master program relating to critical areas provided the following criteria are met:

(A) The provisions are consistent with RCW 90.58.020, applicable shoreline guidelines, and implementing rules, and

(B) The level of protection of critical areas within shoreline jurisdiction is at least equal to that provided by the local government's critical areas ordinance adopted and thereafter amended pursuant to RCW 36.70A.060(2).

(b~~ii~~) For amendments adopted under WAC 173-26-100, demonstrate consideration of comments received and provide a response to the issues identified in subsection (2)(e) of this section, if applicable.~~; 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 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.~~

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(4) **Department decision.** The department must decide to approve the proposal as submitted, conditionally approve the proposal to require changes and recommend specific changes necessary to make the proposal consistent with chapter 90.58 RCW policy and its applicable guidelines and implementing rules, 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 its applicable guidelines and implementing rules.

(a) If the department approves the comprehensive master program update, periodic review amendment, or locally initiated amendment as locally adopted and submitted, without any required changes or recommended modifications, that is the departments final action.

(b) If the department requires changes and recommends modifications~~changes~~ to the proposal as part of a conditional approval~~, within thirty days after the department provides the written findings and conclusions to the local government~~ pursuant to the review and analysis required by ~~this~~ subsection (3), that is not the department's final action. The department's approval (final action) will occur after the local government accepts the department's changes or agreed-upon alternative language. ~~t~~The local government must review the following options and provide the department with an initial response within 30 days of the department's notification to the local government of required changes and/or recommended modifications~~may~~.~~:~~

~~(i)~~ The local government may:

(i) Agree to the ~~proposed~~ department's changes. ~~by written notice to the department.~~ The local government shall approve those changes through local legislative action (i.e., resolution or ordinance) and submit documentation of such approval to the department~~The department shall provide written notice of the local government acceptance to all parties of record~~; or

(ii~~i~~) Submit an alternative proposal. The local government may propose alternative modifications to address the consistency issue identified by the department.

(A) Local governments shall coordinate with department personnel during development of the alternative proposal for informal review and guidance. The local government shall approve the alternative proposal via resolution or ordinance and submit documentation of such approval to the department.

(B) 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 (3) and with the policy of RCW 90.58.020, ~~and the~~ applicable guidelines and implementing rules, it shall approve the alternative changes, ~~and provide written notice to all parties of record~~and that will be the department's final action.

(C) 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 in WAC 173-26-120.

(c) The department shall 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 and implementing rules and that will be the departments final action.

(5~~c~~) **Department ~~notice of~~ final action and notice.~~**

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The department must take final action on the local government's proposed master program, periodic review, and amendments thereto.

(a) The department's final action will be a notice in the form of a letter sent to the local government.

(i) 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.

(ii) The written findings and conclusions will be provided to the local government as part of the final action.

(iii) The final action letter, conditional approval (if applicable), and written findings and conclusion will be made available to all interested persons, parties, groups, and agencies of record on the proposal via the department's website;

(b) The department is required to publish a newspaper notice announcing the department's final action to approve or deny a master program or amendment. This notice is in the form of a legal advertisement, and it begins the appeal period associated with the department's decision. This notice must be ~~filed~~ completed for all shoreline master programs or amendments.

(i) Promptly after approval or ~~disapproval~~ denial 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~~denied. ~~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.

(6~~d~~) **Effective date.**~~-~~

(a~~i~~) A master program or amendment thereto takes effect in such form as it is approved or adopted by rule by the department. 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.

(b~~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.~~

[Statutory Authority: Chapter 90.58 RCW. WSR 17-17-016 (Order 15-06), § 173-26-120, filed 8/7/17, effective 9/7/17. Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-26-120, filed 9/30/96, effective 10/31/96.]

WAC 173-26-130 ~~-~~Appeal procedures for master programs.

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(1) For local governments planning under chapter 36.70A RCW, appeals shall be to the growth management hearings board within sixty days of the date the department publishes notice of its final action under RCW 90.58.090(8) as provided in RCW 36.70A.290 and 90.58.190.

(2) For local governments not fully planning under chapter 36.70A RCW, all petitions for review shall be filed with the state shorelines hearings board within thirty days of the date the department publishes notice of its final ~~decision~~ action under RCW 90.58.090(8) as provided in RCW 90.58.190.

[Statutory Authority: Chapter 90.58 RCW. WSR 17-17-016 (Order 15-06), § 173-26-130, filed 8/7/17, effective 9/7/17. Statutory Authority: RCW 90.58.120, 90.58.200, 90.58.060 and 43.21A.681. WSR 11-05-064 (Order 10-07), § 173-26-130, filed 2/11/11, effective 3/14/11. Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-26-130, filed 9/30/96, effective 10/31/96.]

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WAC 173-26-140 Shoreline master program administrative interpretation.

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As required by RCW 36.70B.110(11), each local government planning under chapter 36.70A RCW shall adopt procedures for administrative interpretation of its development regulations, ~~which~~ which include shoreline master programs. Any local government not fully planning under chapter 36.70A RCW may adopt procedures for administrative interpretation of its shoreline master program.

When developing and adopting procedures for administrative interpretation of its shoreline master program, local governments shall include provisions requiring consultation with the department and a process consistent with WAC 173-27-075 to ~~insure~~ensure that any formal written interpretations are consistent with the purpose and intent of chapter 90.58 RCW and the applicable guidelines.

All master program administrative interpretations completed by any local government must follow the consultation and process requirements outlined in WAC 173-27-075.

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[Statutory Authority: RCW 90.58.140(3) and [90.58].200 and RCW 90.58.050. WSR 96-20-075 (Order 95-17), § 173-26-140, filed 9/30/96, effective 10/31/96.]

WAC 173-26-150 Local government annexation—Shoreline environment pre-designation in planning jurisdictions.

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Cities and towns planning under the Growth Management Act, chapter 36.70A RCW, may within adopted urban growth areas predesignate environments on shorelines located outside of existing city boundaries. Shoreline environment pre-designations shall be consistent with the policy of chapters 36.70A and 90.58 RCW and their applicable guidelines and rules.

Such pre-designation shall be conducted under a city's or town's authority to plan for growth within adopted urban growth areas.

Cities and towns not planning under the Growth Management Act, chapter 36.70A RCW, may predesignate environments on shorelines located outside their existing incorporated boundaries. Shoreline environment pre-designations shall be consistent with the policy of chapter 90.58 RCW and its applicable guidelines and rules.

Environment pre-designations shall be approved by the department according to the procedures set forth in this chapter for amendment of a shoreline master program. No additional procedures are

required by the department at the time of annexation. The shoreline environment designation for a pre-designated shoreline area shall take effect concurrently with annexation.

[Statutory Authority: RCW 90.58.120, 90.58.200, 90.58.060 and 43.21A.681. WSR 11-05-064 (Order 10-07), § 173-26-150, filed 2/11/11, effective 3/14/11. Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-26-150, 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.

[Statutory Authority: Chapter 90.58 RCW. WSR 17-17-016 (Order 15-06), § 173-26-160, filed 8/7/17, effective 9/7/17. Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-26-160, filed 9/30/96, effective 10/31/96.]

PART III

GUIDELINES

WAC 173-26-171 Authority, purpose and effects of guidelines.

(1) **Authority.** RCW 90.58.090 authorizes and directs the department to adopt "guidelines consistent with RCW 90.58.020, containing the elements specified in RCW 90.58.100" for development of local master programs for regulation of the uses of "shorelines" and "shorelines of statewide significance." RCW 90.58.200 authorizes the department and local governments "to adopt such rules as are necessary and appropriate to carry out the provisions of" the Shoreline Management Act. RCW 90.58.630 authorizes and directs the department to "update its shoreline master program guidelines to require shoreline master programs to address the impact of sea level rise and increased storm severity on people, property, and shoreline natural resources and the environment."

(2) **Purpose.** The general purpose of the guidelines is to implement the "cooperative program of shoreline management between local government and the state." Local government shall have the primary responsibility for initiating the planning required by the Shoreline Management Act and "administering the regulatory program consistent with the policy and provisions" of the act. "The department shall act primarily in a supportive and review capacity with an emphasis on providing assistance to local government and ei~~~~nsuring compliance with the policy and provisions" of the act. RCW 90.58.050.

In keeping with the relationship between state and local governments prescribed by the act, the guidelines have three specific purposes:

(a) To assist local governments in developing master programs,~~;~~

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(b) T~~t~~o serve as standards for the regulation of shoreline development in the absence of a master program along with the policy and provisions of the act, and~~;~~

(c) ~~to be~~To be used along with the policy of RCW 90.58.020, as criteria for state review of local master programs under RCW 90.58.090.

(3) **Effect.**

(a) The guidelines are guiding parameters, standards, and review criteria for local master programs. The guidelines allow local governments substantial discretion to adopt master programs reflecting local circumstances and other local regulatory and non-regulatory programs related to the policy goals of shoreline management as provided in the policy statements of RCW 90.58.020, WAC 173-26-176, and WAC 173-26-181. The policy of RCW 90.58.020 and these guidelines constitute standards and criteria to be used by the department in reviewing the adoption and amendment of local master programs under RCW 90.58.090 and by the growth management hearings board and shorelines hearings board adjudicating appeals of department decisions to approve, ~~reject~~deny, or modify proposed master programs and amendments under RCW 90.58.190.

(b) Under RCW 90.58.340, the guidelines, along with the policy of the act and the master programs, also shall be standards of review and criteria to be used by state agencies, counties, and public and municipal corporations in determining whether the use of lands under their respective jurisdictions adjacent to the shorelines of the state are subject to planning policies consistent with the policies and regulations applicable to shorelines of the state.

(c) The guidelines do not regulate development on shorelines of the state in counties and cities where approved master programs are in effect. In local jurisdictions without approved master programs, development on the shorelines of the state must be consistent with the policy of RCW 90.58.020 and the applicable guidelines under RCW 90.58.140.

(d) As provided in RCW 90.58.060, the department is charged with periodic review and update of these guidelines to address technical and procedural issues that arise as from the review of shoreline master programs ~~(SMPs)~~, as well as compliance of the guidelines with statutory provisions. As a part of this process, ecology will compile information concerning the effectiveness and efficiency of these guidelines and the master programs adopted pursuant thereto with regard to accomplishment of the policies of the Shoreline Management Act and the corresponding principles and specific requirements set forth in these guidelines. To support this effort, local governments shall document information about all authorizations in shoreline jurisdiction consistent with WAC 173-26-191(2)(a)(iii) and shall comply with ecology requests to transmit collected information to the department.

[Statutory Authority: RCW 90.58.060 and 90.58.200. WSR 04-01-117 (Order 03-02), § 173-26-171, filed 12/17/03, effective 1/17/04.]

WAC 173-26-176 General policy goals of the act and guidelines for shorelines of the state.

(1) The guidelines are designed to assist local governments in developing, adopting, and amending master programs that are consistent with the policy and provisions of the act. Thus, the policy goals of the act are the policy goals of the guidelines. The policy goals of the act are derived from the policy statement of RCW 90.58.020, ~~and~~ the description of the elements to be included in master programs under RCW 90.58.100, and the direction given in RCW 90.58.630.

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(2) The policy goals for the management of shorelines harbor potential for conflict. The act recognizes that the shorelines and the waters they encompass are "among the most valuable and fragile" of the state's natural resources. They are valuable for economically productive industrial and commercial uses, recreation, navigation, residential amenity, scientific research, and education. They are fragile because they depend upon balanced physical, biological, and chemical systems that may be adversely altered by natural forces (earthquakes, volcanic eruptions, landslides, storms, droughts, floods) and human conduct (industrial, commercial, residential, recreation, navigational). Unbridled use of shorelines ultimately could destroy their utility and value. The prohibition of all use of shorelines also could eliminate their human utility and value. Thus, the policy goals of the act relate both to utilization and protection of the extremely valuable and vulnerable shoreline resources of the state. The act calls for the accommodation of "all reasonable and appropriate uses" consistent with "protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life" and consistent with "public rights of navigation." The act's policy of achieving both ~~shoreline~~ the utilization and protection of shorelines is reflected in the provision that "permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, in so far as practical, any resultant damage to the ecology and environment of the shoreline area and the public's use of the water." RCW 90.58.020. Shoreline jurisdiction is a riparian area that is managed consistent with the state interest in both use and protection. Achieving both shoreline utilization and protection is the policy guiding management of this riparian area.

(3) The act's policy of protecting ecological functions, fostering reasonable utilization, and maintaining the public right of navigation and corollary uses encompasses the following general policy goals for shorelines of the state. The statement of each policy goal is followed by the statutory language from which the policy goal is derived.

(a) **The utilization of shorelines for economically productive uses that are particularly dependent on shoreline location or use.**

RCW 90.58.020:

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"*The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration and preservation.*"

"*It is the policy of the state to provide for the management of the shorelines by planning for and fostering all reasonable and appropriate uses.*"

"*Uses shall be preferred which are. . .unique to or dependent upon use of the state's shoreline.*"

"*Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single-family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state.*"

RCW 90.58.100:

"*(2) The master programs shall include, when appropriate, the following:*

(a) An economic development element for the location and design of industries, transportation facilities, port facilities, tourist facilities, commerce and other developments that are particularly dependent on their location on or use of the shorelines of the state;. . .

(d) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other public utilities and facilities, all correlated with the shorelines use element.

(e) A use element which considers the proposed general distribution and general location and extent of the use on shorelines and adjacent land areas for housing, business, industry, transportation, agriculture, natural resources, recreation, education, public buildings and grounds, and other categories of public and private uses of the land;. . ."

(b) **The utilization of shorelines and the waters they encompass for public access and recreation.**

RCW 90.58.020:

"*The public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally*."

"*Alterations of the natural conditions of the shorelines of the state, in those limited instances when authorized, shall be given priority for. . .development that will provide an opportunity for substantial numbers of people to enjoy the shorelines of the state*."

RCW 90.58.100:

"*(2) The master programs shall include, when appropriate, the following:*

(b) A public access element making provisions for public access to publicly owned areas;

(c) A recreational element for the preservation and enlargement of recreational opportunities, including but not limited to parks, tidelands, beaches, and recreational areas;. . ."

***

"*(4) Master programs will reflect that state-owned shorelines of the state are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational activities for the public and will give appropriate special consideration to same*."

(c) **Protection and restoration of the ecological functions of shoreline natural resources.**

RCW 90.58.020:

"*The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization protection, restoration, and preservation*."

"*This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life. . .*"

"*To this end uses shall be preferred which are consistent with the control of pollution and prevention of damage to the natural environment*."

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"*Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area. . .*"

RCW 90.58.100:

"*(2) The master programs shall include, when appropriate, the following:*

(f) A conservation element for the preservation of natural resources, including but not limited to scenic vistas, aesthetics, and vital estuarine areas for fisheries and wildlife protection;

(g) An historic, cultural, scientific, and educational element for the protection and restoration of buildings, sites, and areas having historic, cultural, scientific, or educational values;. . ."

(d) **Protection of the public right of navigation and corollary uses of waters of the state.**

RCW 90.58.020:

"*This policy contemplates protecting. . .generally public rights of navigation and corollary rights incidental thereto.*"

"*Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical,. . .any interference with the public's use of the water.*"

(e) **The protection and restoration of buildings and sites having historic, cultural and educational value.**

RCW 90.58.100:

"*(2) The master programs shall include, when appropriate, the following:*

(g) An historic, cultural, scientific, and educational element for the protection and restoration of buildings, sites, and areas having historic, cultural, scientific, or educational values;. . ."

(f) **Planning for public facilities and utilities correlated with other shorelines uses.**

RCW 90.58.100:

"*(2) The master programs shall include, when appropriate, the following:*

(d) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other public utilities and facilities, all correlated with the shoreline use element."

(g) **Prevention and minimization of flood damages.**

RCW 90.58.100:

"*(2) The master programs shall include, when appropriate, the following:*

(h) An element that gives consideration to the statewide interest in the prevention and minimization of flood damages."

(h) **Recognizing and protecting private property rights.**

RCW 90.58.020:

"*The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership;. . .and, therefore coordinated planning is necessary. . .while, at the same time, recognizing and protecting private rights consistent with the public interest*."

(i) **Preferential accommodation of single-family uses.**

RCW 90.58.020:

"*Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single-family residences and their appurtenant structures. . .*"

RCW 90.58.100:

"*(6) Each master program shall contain standards governing the protection of single-family residences and appurtenant structures against damage or loss due to shoreline erosion. The standards shall govern the issuance of substantial development permits for shoreline protection, including structural methods such as construction of bulkheads, and nonstructural methods of protection. The standards shall provide for methods which achieve effective and timely protection against loss or damage to single-family residences and appurtenant structures due to shoreline erosion. The standards shall provide a preference for permit issuance for measures to protect single-family residences occupied prior to January 1, 1992, where the proposed measure is designed to minimize harm to the shoreline natural environment*."

(j) **Coordination of shoreline management with other relevant local, state, and federal programs.**

RCW 90.58.020:

"*In addition. . .*" the legislature "*. . .finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state*."

"*. . .and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state. . .*"

"*There is, therefore, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines*."

RCW 90.58.100:

"*In preparing the master programs, and any amendments thereto, the department and local governments shall to the extent feasible:*

(a) Utilize a systematic interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts;

(b) Consult with and obtain the comments of any federal, state, regional, or local agency having any special expertise with respect to any environmental impact;

(c) Consider all plans, studies, surveys, inventories, and systems of classification made or being made by federal, state, regional, or local agencies, by private individuals, or by organizations dealing with pertinent shorelines of the state;

(d) Conduct or support such further research, studies, surveys, and interviews as are deemed necessary;

(e) Utilize all available information regarding hydrology, geography, topography, ecology, economics, and other pertinent data;

(f) Employ, when feasible, all appropriate modern scientific data processing and computer techniques to store, index, analyze, and manage the information gathered."

(k) **Increasing the resilience of people, property, and the environment to the impact of sea level rise and increased storm severity.**

RCW 90.58.630:

…to require shoreline master programs to address the impact of sea level rise and increased storm severity on people, property, and shoreline natural resources and the environment.

[Statutory Authority: RCW 90.58.060 and 90.58.200. WSR 04-01-117 (Order 03-02), § 173-26-176, filed 12/17/03, effective 1/17/04.]

WAC 173-26-181 Special policy goals of the act and guidelines for shorelines of statewide significance. In accordance with RCW 90.58.020, the "department, in adopting guidelines for shorelines of statewide significance, and local government, in developing master programs for shorelines of statewide significance, shall give preference to uses in the following order of preference which:

(1) Recognize and protect the statewide interest over local interest;

(2) Preserve the natural character of the shoreline;

(3) Result in long term over short term benefit;

(4) Protect the resources and ecology of the shoreline;

(5) Increase public access to publicly owned areas of the shorelines;

(6) Increase recreational opportunities for the public in the shoreline;

(7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary."

[Statutory Authority: RCW 90.58.060 and 90.58.200. WSR 04-01-117 (Order 03-02), § 173-26-181, filed 12/17/03, effective 1/17/04.]

WAC 173-26-186 Governing principles of the guidelines.

The governing principles listed below are intended to articulate a set of foundational concepts that underpin the guidelines, guide the development of the planning policies and regulatory provisions of master programs, and provide direction to the department in reviewing and approving master programs. These governing principles, along with the policy statement of RCW 90.58.020, other relevant provisions of the act, the regulatory reform policies and provisions of RCW 34.05.328, and the policy goals set forth in WAC 173-26-176 and 173-26-181 should be used to assist in interpretation of any ambiguous provisions and reconciliation of any conflicting provisions of the guidelines.

(1) **Supremacy of the act.** The guidelines are subordinate to the act. Any inconsistency between the guidelines and the act must be resolved in accordance with the act.

(2) **Role of the guidelines.** The guidelines are intended to reflect the policy goals of the act, as described in WAC 173-26-176 and 173-26-181.

(3) **Addressing the policy goals.** All relevant policy goals must be addressed in the planning policies of master programs.

(4) **Means of achieving the planning policies.** The planning policies of master programs (as distinguished from the development regulations of master programs) may be achieved by a number of means, only one of which is the regulation of development. Other means, as authorized by RCW 90.58.240, include, but are not limited to: The acquisition of lands and easements within shorelines of the state by purchase, lease, or gift, either alone or in concert with other local governments; and accepting grants, contributions, and appropriations from any public or private agency or individual. Additional other means may include, but are not limited to, public facility and park planning, watershed planning, voluntary salmon recovery projects and incentive programs, hazard mitigation planning, and climate adaptation planning.

(5) **Regulation of development of private property.** The policy goals of the act, implemented by the planning policies of master programs, may not be achievable by development regulation alone. Planning policies should be pursued through the regulation of development of private property only to an extent that is consistent with all relevant constitutional and other legal limitations (where applicable, statutory limitations such as those contained in chapter 82.02 RCW and RCW 43.21C.060) on the regulation of private property. Local government should use a process designed to ~~assure~~ensure that proposed regulatory or administrative actions do not unconstitutionally infringe upon private property rights. A process established for this purpose, related to the constitutional takings limitation, is set forth in a publication entitled~~,~~ "~~*State of Washington, Attorney General's Advisory Memorandum and Recommended Process for Evaluating on of Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property*~~,~~" first published in February 1992. The attorney general is required to review and update this process on at least an annual basis to maintain consistency with changes in case law by RCW 36.70A.370.

(6) **Territorial boundaries of planning and regulatory functions.** The territorial jurisdictions of the master program's planning function and regulatory function are legally distinct. The planning function may, and in some circumstances must, look beyond the territorial limits of shorelines of the state, as stated in~~.~~ RCW 90.58.340. In some circumstances, consideration of the planning function of the master program in areas outside of shoreline jurisdiction may be important to meeting the objectives of the act. For example, planning for areas adjacent to current shoreline jurisdiction may be needed to effectively address the impact of sea level rise and increased storm severity established by RCW 90.58.630. The regulatory function is limited to the territorial limits of shorelines of the state, RCW 90.58.140(1), as defined in RCW 90.58.030(2).

(7) **Integration with comprehensive planning.** The planning policies and regulatory provisions of master programs and the comprehensive plans and development regulations, adopted under RCW 36.70A.040 shall be integrated and coordinated in accordance with RCW 90.58.340, 36.70A.480, 34.05.328~~.~~(1)(h), and section 1, chapter 347, Laws of 1995. For local governments not fully planning under chapter 36.70A RCW, other local policies and regulations should be coordinated for consistency with the master program.

(8) **Protection of the shoreline environment.** Through numerous references to and emphasis on the maintenance, protection, restoration, and preservation of "fragile" shoreline "natural resources," "public

health," "the land and its vegetation and wildlife," "the waters and their aquatic life," "ecology," and "environment," the act makes protection of the shoreline environment an essential statewide policy goal consistent with the other policy goals of the act. It is recognized that shoreline ecological functions may be impaired not only by shoreline development subject to the substantial development permit requirement of the act but also by past actions, unregulated activities, and development that is exempt from the act's permit requirements. The principle regarding protecting shoreline ecological systems is accomplished by these guidelines in several ways, and in the context of related principles. These include:

(a) Assess shoreline conditions. Local government is guided in its review and amendment of local master programs ~~so that it~~to use~~s~~ a process that identifies, inventories, and ensures meaningful understanding of current and potential ecological functions provided by affected shorelines.

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(b) Achieve not net loss. Local master programs shall include policies and regulations designed to achieve no net loss of those ecological functions.

(i) M~~Local m~~aster programs shall include regulations and mitigation standards ensuring that each permitted development will not cause a net loss of ecological functions of the shoreline; local government shall design and implement such regulations and mitigation standards in a manner consistent with current scientific and technical information and all relevant constitutional and other legal limitations on the regulation of private property.

(ii) Local master programs shall include regulations and mitigation standards ensuring that exempt development in the aggregate will not cause a net loss of ecological functions of the shoreline.

(c) Restore lost ecological functions. For ~~counties and cities~~local governments containing any shorelines with impaired ecological functions, master programs shall include goals and policies that provide for restoration of such impaired ecological functions. These master program provisions shall identify existing policies and programs that contribute to planned restoration goals and identify any additional policies and programs that local government will implement to achieve its goals. These master program elements regarding restoration should make real and meaningful use of established or funded nonregulatory policies and programs that contribute to restoration of ecological functions ~~,~~and should appropriately consider the direct or indirect effects of other regulatory or nonregulatory programs under other local, state, and federal laws, as well as any restoration effects that may flow indirectly from shoreline development regulations and mitigation standards.

(d) Evaluate cumulative effects. Local ~~master programs~~governments shall evaluate and consider cumulative impacts of reasonably foreseeable future development on shoreline ecological functions and other shoreline functions fostered by the policy goals of the act. To ensure no net loss of ecological functions and protection of other shoreline functions and/or uses, master programs shall contain policies, programs, and regulations that address adverse cumulative impacts and fairly allocate the burden of addressing cumulative impacts among development opportunities. Evaluation of such cumulative impacts should be undertaken as part of the master program periodic review and should consider:

(i) Current trends and circumstances affecting the shorelines and relevant natural processes;

(ii) Reasonably foreseeable future development and use of the shoreline; and

(iii) Beneficial and detrimental effects of any established regulatory programs under other local, state, and federal laws.

It is recognized that methods of determining reasonably foreseeable future development may vary according to local circumstances, including demographic and economic characteristics and the nature and extent of local shorelines.

(e) Identify other opportunities for recovery. The guidelines are not intended to limit the use of regulatory incentives, voluntary modification of development proposals, ~~and~~or voluntary mitigation measures that are designed to restore as well as protect shoreline ecological functions.

(f) Local governments required to plan for sea level rise shall ensure that they protect shoreline ecological functions as they adapt to rising sea levels. Local governments should seek to implement projects that increase climate resilience and protect and restore habitat.

(9) **Local discretion.** To the extent consistent with the policy and use preference of RCW 90.58.020, this chapter (chapter 173-26 WAC), and these principles, local governments have reasonable discretion to balance the various policy goals of this chapter, in light of other relevant local, state, and federal regulatory and nonregulatory information, data, and programs, and to modify master programs to reflect changing circumstances.

(10) **Integration of information.** Local governments, in adopting and amending master programs and the department in its review capacity shall, to the extent feasible, as required by RCW 90.58.100(1):

"*(a) Utilize a systematic interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts;*

(b) Consult with and obtain the comments of any federal, state, regional, or local agency having any special expertise with respect to any environmental impact;

(c) Consider all plans, studies, surveys, inventories, and systems of classification made or being made by federal, state, regional, or local agencies, by private individuals, or by organizations dealing with pertinent shorelines of the state;

(d) Conduct or support such further research, studies, surveys, and interviews as are deemed necessary;

(e) Utilize all available information regarding hydrology, geography, topography, ecology, economics, and other pertinent data;

(f) Employ, when feasible, all appropriate, modern scientific data processing and computer techniques to store, index, analyze, and manage the information gathered."

(11) **State interest.** In reviewing and approving local government actions under RCW 90.58.090, the department shall e~~i~~nsure that the state's interest in shorelines is protected, including compliance with the policy and provisions of RCW 90.58.020.

[Statutory Authority: RCW 90.58.060 and 90.58.200. WSR 04-01-117 (Order 03-02), § 173-26-186, filed 12/17/03, effective 1/17/04.]

WAC 173-26-191 Master program contents.

(1) **Master program concepts.**
The following concepts are the basis for effective shoreline master programs.

(a) **Master program policies and regulations.**

(i) Shoreline master programs are both planning and regulatory tools. Master programs serve a planning function in ~~several~~ the following ways.

(A) ~~First, t~~They balance and integrate the objectives and interests of local citizens. Therefore, the preparation and amending of master programs shall involve active public participation, as called for in WAC 173-26-201(3), WAC 173-26-090, and WAC 173-26-095.

(B) ~~Second, t~~They address the full variety of conditions on the shoreline.

(C) ~~Third, t~~They consider and, where necessary to achieve the objectives of chapter 90.58 RCW, influence planning and regulatory measures for adjacent land. For jurisdictions planning under chapter 36.70A RCW, the Growth Management Act, the requirements for consistency between shoreline and adjacent land planning are more specific and are described in WAC 173-26-191-(1)(e).

(D) ~~Fourth, master programs~~They address conditions and opportunities of specific shoreline segments by classifying the shorelines into "environment designations" as described in WAC 173-26-211.

(E) The results of shoreline planning are summarized in shoreline master program policies that establish broad shoreline management directives. The policies are the basis for regulations that govern use and development along the shoreline.

(F) Some master program policies may not be fully attainable by regulatory means due to the constitutional and other legal limitations on the regulation of private property. The policies may be pursued by other means as provided in RCW 90.58.240.

(G) ~~Some~~ Most ~~development requires~~developments require a shoreline permit prior to construction. A local government evaluates a permit application with respect to the shoreline master program policies and regulations and approves a permit only after determining that the development conforms to them.

(H) Except where specifically provided in statute, the master program regulations apply to all uses and development within shoreline jurisdiction, whether or not a shoreline permit is required, and are implemented through an administrative process established by local government pursuant to RCW 90.58.050 and 90.58.140 and enforcement pursuant to RCW 90.58.210 through 90.58.230.

(ii) Master programs must contain shoreline management policies and regulations. The combined policies and regulations of a master program are the local expression of the shoreline management act. Use and development regulations within a master program are specific controls placed on uses and development activities. Use and development regulations must be consistent with and implement the master program policies adopted pursuant to chapter 90.58 RCW. "Implement" in this context has a more affirmative meaning, not only lack of conflict but also a sufficient scope and detail to fully carry out the goals, policies, standards and direction contained within the master program policies and the policy of the act. Master program policies along with the provisions of chapter 90.58 RCW and its implementing rules shall be used in the interpretation of master program regulations.

(b) **Master program elements.**

(i) Master programs are required to contain elements to accomplish the policy goals of the Shoreline Management Act. "Master program element" refers to the definition in the Shoreline

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Management Act. The Growth Management Act (chapter 36.70A RCW) also uses the word "element" for discrete components of a comprehensive plan. Unlike comprehensive planning, local jurisdictions are not required to address the master program elements listed in the Shoreline Management Act as discrete sections. The elements may be addressed throughout master program provisions rather than used as a means to organize the master program.

(ii) RCW 90.58.100(2) states that the master programs shall, when appropriate, include the following elements:

"*(a) An economic development element for the location and design of industries, projects of statewide significance, transportation facilities, port facilities, tourist facilities, commerce and other developments that are particularly dependent on their location on or use of shorelines of the state;*

(b) A public access element making provision for public access to publicly owned areas;

(c) A recreational element for the preservation and enlargement of recreational opportunities, including but not limited to parks, tidelands, beaches, and recreational areas;

(d) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other public utilities and facilities, all correlated with the shoreline use element;

(e) A use element which considers the proposed general distribution and general location and extent of the use on shorelines and adjacent land areas for housing, business, industry, transportation, agriculture, natural resources, recreation, education, public buildings and grounds, and other categories of public and private uses of the land;

(f) A conservation element for the preservation of natural resources, including but not limited to scenic vistas, aesthetics, and vital estuarine areas for fisheries and wildlife protection;

(g) An historic, cultural, scientific, and educational element for the protection and restoration of buildings, sites, and areas having historic, cultural, scientific, or educational values;

(h) An element that gives consideration to the statewide interest in the prevention and minimization of flood damages; and

(i) Any other element deemed appropriate or necessary to effectuate the policy of this chapter."

~~The Growth Management Act (chapter 36.70A RCW) also uses the word "element" for discrete components of a comprehensive plan. To avoid confusion, "master program element" refers to the definition in the Shoreline Management Act as cited above. Local jurisdictions are not required to address the master program elements listed in the Shoreline Management Act as discrete sections. The elements may be addressed throughout master program provisions rather than used as a means to organize the master program.~~

(c) **Shorelines of statewide significance.** The Shoreline Management Act identifies certain shorelines as "shorelines of statewide significance" and raises their status by setting use priorities and requiring "optimum implementation" of the act's policy. WAC 173-26-251 describes methods to provide for the priorities listed in RCW 90.58.020 and to achieve "optimum implementation" as called for in RCW 90.58.090(4).

(d) **Shoreline environment designations.** Shoreline management must address a wide range of physical conditions and development settings along shoreline areas. Effective shoreline management requires that the shoreline master program prescribe different sets of environmental protection

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measures, allowable use provisions, and development standards for each of these shoreline segments.

The method for local government to account for different shoreline conditions is to assign an environment designation to each distinct shoreline section in its jurisdiction. The environment designation assignments provide the framework for implementing shoreline policies and regulatory measures specific to the environment designation. WAC 173-26-211 presents guidelines for environment designations in greater detail.

(e) **Consistency with comprehensive planning and other development regulations.** Shoreline management is most effective and efficient when accomplished within the context of comprehensive planning. For cities and counties planning under the Growth Management Act, chapter 36.70A RCW requires mutual and internal consistency between the comprehensive plan elements and implementing development regulations (including master programs). The requirement for consistency is amplified in WAC 365-196-500.

(i) The Growth Management Act also calls for coordination and consistency of comprehensive plans among local jurisdictions.

RCW 36.70A.100 states:

"*The comprehensive plan of each county or city that is adopted pursuant to RCW 36.70A.040 shall be coordinated with, and consistent with, the comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties or cities with which the county or city has, in part, common borders or related regional issues*."

Since master program goals and policies are an element of the local comprehensive plan, the requirement for internal and intergovernmental plan consistency may be satisfied by watershed-wide or regional planning.

Legislative findings provided in section 1, chapter 347, Laws of 1995 (see RCW 36.70A.470 notes) state:

"*The legislature recognizes by this act that the growth management act is a fundamental building block of regulatory reform. The state and local governments have invested considerable resources in an act that should serve as the integrating framework for all other land-use related laws. The growth management act provides the means to effectively combine certainty for development decisions, reasonable environmental protection, long-range planning for cost-effective infrastructure, and orderly growth and development*."

And RCW 36.70A.480(1) (~~T~~the Growth Management Act) states:

"*For shorelines of the state, the goals and policies of the shoreline management act as set forth in RCW 90.58.020 are added as one of the goals of this chapter as set forth in RCW 36.70A.020 without creating an order of priority among the 15~~fourteen~~ goals. 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*."

Furthermore, RCW 36.70A.481 states:

"*Nothing in RCW 36.70A.480 shall be construed to authorize a county or city to adopt regulations applicable to shorelands as defined in RCW 90.58.030 that are inconsistent with the provisions of chapter 90.58 RCW.*"

(ii) The Shoreline Management Act addresses the issue of consistency in RCW 90.58.340, which states:

"*All state agencies, counties, and public and municipal corporations shall review administrative and management policies, regulations, plans, and ordinances relative to lands under their respective jurisdictions adjacent to the shorelines of the state so as the [to] achieve a use policy on said land consistent with the policy of this chapter, the guidelines, and the master programs for the shorelines of the state. The department may develop recommendations for land use control for such lands. Local governments shall, in developing use regulations for such areas, take into consideration any recommendations developed by the department as well as any other state agencies or units of local government. [1971 ex.s. c 286 § 34.]*"

(iii) Pursuant to the statutes cited above, the intent of these guidelines is to assist local governments in preparing and amending master programs that fit within the framework of applicable comprehensive plans, facilitate consistent, efficient review of projects and permits, and effectively implement the Shoreline Management Act. It should be noted theHowever, ecology'sthe department's authority under the Shoreline Management Act is limited to review of shoreline master programs based solely on consistency with the act, and these guidelines, and other implementing rules. 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.

Several The following sections in these guidelines include methods to achieve the consistency required by both the Shoreline Management Act and the Growth Management Act:.

First,(A) WAC 173-26-191-(2)(b) and (c) describe optional methods to integrate master programs and other development regulations and the local comprehensive plan.

Second,(B) WAC 173-26-221 through 173-26-251 translate the broad policy goals in the Shoreline Management Act into more specific policies. They also provide a more defined policy basis on which to frame local shoreline master program provisions and to evaluate the consistency of applicable sections of a local comprehensive plan with the Shoreline Management Act.

(C) WAC 173-26-246(11) provides considerations for aligning Growth Management Act climate planning efforts with sea level rise planning aspects of master programs.

Finally,(D) WAC 173-26-211(3) presents specific methods for testing consistency between shoreline environment designations and comprehensive plan land use designations.

(2) **Basic requirements.** This chapter describes the basic components and content required in a master program. A master program must be sufficient and complete to implement the Shoreline Management Act and the provisions of this chapter. A master program shall contain policies and regulations as necessary for reviewers to evaluate proposed shoreline uses and developments for conformance to the Shoreline Management Act.

As indicated in WAC 173-26-020, for this chapter and master programs approved by Ecology:

- The terms "shall," "must," and "are required" and the imperative voice, mean a mandate; the action is required;
- The ~~the~~ term "should" means that the particular action is required unless there is a demonstrated, compelling reason, based on a policy of the Shoreline Management Act and this chapter, for not taking the action; and
- The~~the~~ term "may" indicates that the action is within discretion and authority, provided it satisfies all other provisions in this chapter.

(a) **Master program contents.** Master programs shall include the following contents:

(i) **Master program policies.** Master programs shall provide clear, consistent policies that translate broad statewide policy goals set forth in WAC 173-26-176 and 173-26-181 into local directives. Policies are statements of intent directing or authorizing a course of action or specifying criteria for regulatory and nonregulatory actions by a local government. Master program policies provide a comprehensive foundation for the shoreline master program regulations, which are more specific, standards used to evaluate shoreline development. Master program policies also are to be pursued and provide guidance for public investment and other nonregulatory initiatives to assure consistency with the overall goals of the master program.

Shoreline policies shall be developed through an open ~~comprehensive~~ shoreline planning process. For governments planning under the Growth Management Act, the master program policies are considered a shoreline element of the local comprehensive plan and shall be consistent with the planning goals of RCW 36.70A.020, as well as the act's general and special policy goals set forth in WAC 173-26-176 and 173-26-181.

At a minimum, shoreline master program policies shall:

(A) Be consistent with state shoreline management policy goals and specific policies listed in this chapter and the policies of the Shoreline Management Act;

(B) Address the master program elements of RCW 90.58.100;

(C) Include policies for environment designations as described in WAC 173-26-211. The policies shall be accompanied by an official map ~~or~~ and physical description of the schematic environment designation boundaries in sufficient detail to compare with comprehensive plan land use designations; and

(D) Be designed and implemented in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property.

(ii) **Master program regulations.** RCW 90.58.100 states:

~~"~~*The master programs provided for in this chapter, when adopted or approved by the department shall constitute use regulations for the various shorelines of the state*.~~"~~

In order to implement the directives of the Shoreline Management Act, master program regulations shall:

(A) Be sufficient in scope and detail to ensure the implementation of the Shoreline Management Act, statewide shoreline management policies of this chapter, and local master program policies;

(B) Include environment designation regulations that apply to specific environments consistent with WAC 173-26-211~~0~~;

(C) Include general regulations, use regulations that address issues of concern in regard to specific uses, and shoreline modification regulations; ~~and~~

(D) ~~Design and i~~Implement ~~regulations~~ policies and mitigation standards in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property~~.~~, and

(E) Include provisions that ensure that authorized and permitted development on and use of the shorelines, shorelines of statewide significance and shorelands will not result in a net loss of shoreline ecological function.

(iii) **Administrative provisions.**

(A) **Statement of applicability.** The Shoreline Management Act's provisions are intended to provide for the management of all development and uses within its jurisdiction, whether or not a shoreline permit is required. Many activities that may not require a substantial development permit, such as clearing vegetation or construction of a residential bulkhead, can, individually or cumulatively, adversely impact adjacent properties, shoreline ecological functions, and natural resources, including those held in public trust.

Local governments have the authority and responsibility to enforce master program regulations on all uses and development in the shoreline area. There has been, historically, some public confusion regarding the Shoreline Management Act's applicability in this regard. Therefore, all master programs shall include the following statement:

"Except when specifically ~~exempted~~ excluded from review or permitting by statute, all proposed uses and development occurring within shoreline jurisdiction must conform to chapter 90.58 RCW, the Shoreline Management Act, and this master program."

In addition to the requirements of the act, permit review, implementation, and enforcement procedures affecting private property must be conducted in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property. Administrative procedures should include provisions e~~i~~nsuring that these requirements and limitations are considered and followed in all such decisions.

While the master program is a comprehensive use regulation applicable to all land and water areas within the jurisdiction described in the act, its effect is generally on future development and changes in land use. Local government may find it necessary to regulate existing uses to avoid severe harm to public health and safety or the environment and in doing so should be cognizant of constitutional and other legal limitations on the regulation of private property. In some circumstances existing uses and properties may become nonconforming with regard to the regulations and master programs should include provisions to address these situations in a manner consistent with achievement of the policy of the act ~~and~~ consistent with constitutional and other legal limitations, and consistent with nonconforming provision requirements of WAC 173-26-221(2).

(B) **Conditional use and variance provisions.**

RCW 90.58.100(5) states:

~~"~~*Each master program shall contain provisions to allow for the varying of the application of use regulations of the program, including provisions for permits for conditional uses and variances, to insure that strict implementation of a program will not create unnecessary hardships or thwart the policy enumerated in RCW 90.58.020. Any such varying shall be*

allowed only if extraordinary circumstances are shown and the public interest suffers no substantial detrimental effect. The concept of this subsection shall be incorporated in the rules adopted by the department relating to the establishment of a permit system as provided in RCW 90.58.140(3)."

All master programs shall include standards for reviewing conditional use permits and variances ~~which~~ that conform to chapter 173-27 WAC.

(C) **Administrative permit review and enforcement procedures.**

RCW 90.58.140(3) states:

"*The local government shall establish a program, consistent with rules adopted by the department, for the administration and enforcement of the permit system provided in this section. The administration of the system so established shall be performed exclusively by the local government*."

Local governments ~~may~~ shall include administrative, enforcement, and permit review procedures in the master program ~~or the procedures may be defined by a local government ordinance separate from the master program. In either case, these procedures shall~~ that conform to the Shoreline Management Act, specifically RCW 90.58.140, 90.58.143, 90.58.210, and 90.58.220 and shall be consistent with ~~to~~ chapter 173-27 WAC. Master programs shall include all applicable definition from RCW 90.58.030, RCW 90.58.065, WAC 173-26-020, WAC 173-27-030, and chapter 173-22 WAC.

~~Adopting review and enforcement procedures separate from the master program allows local governments to more expeditiously revise their shoreline permit review procedures and to integrate them with other permit processing activities.~~

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(D) **Documentation of ~~project review actions~~authorizations and changing conditions in shoreline areas.**

Master programs ~~or other local permit review ordinances addressing shoreline project review~~ shall ~~include~~ identify a mechanism for documenting all ~~project review actions~~authorizations in shoreline ~~areas~~jurisdiction regardless of whether a shoreline permit or exemption from the substantial development permit process is required. They shall also include a process for periodically evaluating whether authorizations resulted in unanticipated development or changes to shoreline areas that are inconsistent with the purpose and management policies of established shoreline environment designations. Results and findings shall be used to inform master program periodic reviews. Ecology shall provide written technical guidance to support local government data collection and evaluation efforts. Evaluations should be conducted at least once every ten (10) years, and whenever practicable, within the two (2) years preceding the start of the master program periodic review. At a minimum, the following information should be documented for all authorizations:

(I) Local permit, authorization, or tracking number.
(II) Shoreline environment designation.
(III) Location information.
(IV) The permit or authorization type that was issued.
(V) The underlying use.

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(VI) What development and/or activity was authorized.

(VII) Whether the authorization approves new development, repair and maintenance, replacement, the expansion of an existing use or development, redevelopment, environmental restoration, and/or vegetation removal.

(VIII) Whether development was authorized to occur waterward of the OHWM or within a wetland.

(IX) Whether development was authorized to occur within a standard shoreline buffer or setback or within a critical areas or critical area buffer.

(X) Whether any new length of shoreline stabilization was authorized.

(XI) Whether vegetation was authorized to be cleared, removed, or otherwise modified.

(XII) Documentation of mitigation sequence, whether compensatory mitigation was required, and if applicable, what compensatory mitigation action was provided.

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Local governments shall also identify a process and timeline for ~~periodically~~ reviewing and evaluating the cumulative effects of authorized activities, development, and uses on shoreline conditions. This process and effort should include coordination with Ecology and could involve a joint effort by local governments, state resource agencies, affected Indian T~~t~~ribes, and other parties.

(b) **Including other documents in a master program by reference.** Shoreline master program provisions sometimes address similar issues as other comprehensive plan elements and development regulations, such as the zoning code and critical areas ordinance. For the purposes of completeness and consistency of master programs, local governments must include all necessary master program provisions directly within the master program rather than through an incorporation by reference.

(i) Critical areas ordinance provisions often include reasonable use allowances and~~,~~ permit processes and procedures that conflict with the requirements of the act and are not appropriate for master programs. Critical areas within shoreline jurisdiction shall be protected consistent with WAC 173-26-226(1).

(ii) Incorporation by reference of floodplain development regulations is not necessary for compliance with the guideline requirements for frequently flooded areas and flood hazard reduction.

(iii) The requirements of other applicable local government codes and regulations such as floodplain development, building codes, and stormwater regulations still apply within shoreline jurisdiction but are implemented outside of the master program and its permit system.

~~may include other locally adopted policies and regulations within their master programs. For example, a local government may include its critical area ordinance in the master program to provide for compliance with the requirements of RCW 90.58.090(4), provided the critical area ordinance is also consistent with this chapter. This can ensure that local master programs are consistent with other regulations.~~

~~Shoreline master programs may include other policies and regulations by referencing a specific, dated edition. When including referenced regulations within a master program, local governments shall ensure that the public has an opportunity to participate in the formulation of the regulations or~~

~~in their incorporation into the master program, as called for in WAC 173-26-201 (3)(b)(i). In the approval process the department will review the referenced development regulation sections as part of the master program. A copy of the referenced regulations shall be submitted to the department with the proposed master program or amendment. If the development regulation is amended, the edition referenced within the master program will still be the operative regulation in the master program. Changing the referenced regulations in the master program to the new edition will require a master program amendment.~~

(c) **Incorporating master program provisions into other plans and regulations.** RCW 90.58.120 requires that all adopted regulations, designations, and master programs be available for public inspection at the department or the applicable county or city. Local governments shall identify all documents which contain master program provisions, and which provisions constitute part of the master program. Clear identification of master program provisions is also necessary so that interested persons and entities may be involved in master program preparation and amendment, as called for in RCW 90.58.130. Local governments may ~~integrate~~ include master program policies and regulations in~~to~~ their comprehensive plan policies and implementing development regulations ~~rather than preparing a discrete master program in a single document~~provided that the master program provisions are clearly identified to ensure proper implementation using the pathways provided under the Shoreline Management Act rather than the Growth Management Act. Master program provisions that are integrated into such plans and development regulations shall be clearly identified so that the department can review these provisions for approval and evaluate development proposals for compliance.

~~RCW 90.58.120 requires that all adopted regulations, designations, and master programs be available for public inspection at the department or the applicable county or city. Local governments shall identify all documents which contain master program provisions and which provisions constitute part of the master program. Clear identification of master program provisions is also necessary so that interested persons and entities may be involved in master program preparation and amendment, as called for in RCW 90.58.13~~Local governments integrating all or portions of their master program provisions into other plans and regulations shall submit to the department a listing and copies of all provisions that constitute the master program. The master program shall also be sufficiently complete and defined to provide:

(i) Clear directions to applicants applying for shoreline permits and exemptions; and

(ii) Clear evaluation criteria and standards to the local governments, the department, other agencies, and the public for reviewing permit applications with respect to state and local shoreline management provisions.

(d) ~~**Multijurisdictional**~~ **Coalition master program**s **and multi-jurisdictional coordination.** Two or more adjacent local governments are encouraged to jointly prepare master programs.

(i) Coalition or partnership master programs. These coalitions or partnerships form to combine efforts; maximize grant efficiency; and take advantage of their proximity and similar development patterns and pressures.

(A) Jointly proposed master programs may offer opportunities to effectively and efficiently manage natural resources, such as drift cells or watersheds, that cross jurisdictional boundaries.

(B) Local governments jointly preparing master programs shall provide the opportunity for public participation locally in each jurisdiction, simultaneously under a single outreach and engagement process.

(C) ~~as called for in WAC 173-26-201 (3)(b), and submit the~~ ~~multijurisdictional~~ A coalition or partnership master program shall be submitted as a single master program with evidence of the participation and local adoption of each of the members. ~~to t~~The department ~~for~~ will review and approve under a single Ecology final action decision.

(ii) Multijurisdictional coordination. Local governments are encouraged to combine and consolidate master program planning efforts even if they are not creating a coalition or partnership master program. This coordination should occur anytime when collaboration will lead to efficiencies and consistencies among adjacent local governments or along shared shorelines of the state.

(A) During sea level rise planning. Sea level rise vulnerability assessments and adaption planning are key points where cross-jurisdictional coordination should be used to leverage resources and make vulnerabilities and adaption strategies available countywide to inform local application and consideration.

(B) During periodic review processes. Local governments are encouraged to work together as they review changed local circumstances, new information, and improved data as it applies on the regional or county scale.

(C) During the Ecology grant application process. Local governments are encouraged to work collaboratively under combined grant agreements provided for special planning, such as sea level rise, as well as standard grant cycles for master program periodic reviews.

[Statutory Authority: RCW 90.58.120, 90.58.200, 90.58.060 and 43.21A.681. WSR 11-05-064 (Order 10-07), § 173-26-191, filed 2/11/11, effective 3/14/11. Statutory Authority: RCW 90.58.060 and 90.58.200. WSR 04-01-117 (Order 03-02), § 173-26-191, filed 12/17/03, effective 1/17/04.]

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WAC 173-26-201 Process to ~~prepare or amend shoreline master programs~~ complete a comprehensive master program update.

(1) **Applicability.** This section outlines the process to prepare a comprehensive shoreline master program adoption or update as necessary to meet the timetable provided in RCW 90.58.080(2) and establishes approval criteria. ~~This section also establishes approval criteria for shoreline master program amendments.~~

(a) All master program ~~amendment~~s 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.

(c) Master program ~~amendments~~ comprehensive updates may be approved by the department provided:

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

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

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

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

(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 T~~t~~ribes, 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 T~~t~~ribes, 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 ensure ~~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 ensure ~~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 ensure ~~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 inventory 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~~ that 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 accommodated 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 comprehensive master program update.**

(a) **Process overview.** This section provides a generalized process to prepare or comprehensively ~~amend~~ update 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~~ comprehensive update 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~~comprehensive updates. Local governments shall submit the completed checklist with the proposed master program updates. ~~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~~comprehensive updates.

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 T~~t~~ribes 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, ~~t~~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 T~~t~~ribe 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.

[Statutory Authority: Chapter 90.58 RCW. WSR 17-17-016 (Order 15-06), § 173-26-201, filed 8/7/17, effective 9/7/17. Statutory Authority: RCW 90.58.120, 90.58.200, 90.58.060 and 43.21A.681. WSR 11-05-064 (Order 10-07), § 173-26-201, filed 2/11/11, effective 3/14/11. Statutory Authority: RCW 90.58.060 and 90.58.200. WSR 04-01-117 (Order 03-02), § 173-26-201, filed 12/17/03, effective 1/17/04.]

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 365-196-400-(2)(d).

(d) Pursuant to RCW 90.58.040, the map ~~should~~ shall 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. The local government must address this shoreline designation at their next master program periodic review or before.

(f) Local governments required to plan for sea level rise must consider their environment designations in the context of sea level rise planning.

(i) -Local governments must consider shoreline environment designations when determining sea level rise adaptation strategies and ensure that selected strategies are consistent with the purpose and management policies of the underlying environment designation. Different environment designations may have different adaptation strategies that are appropriate and aligned with the purpose, management policies, and regulations for that designation.

(ii) Local governments are encouraged to review existing environment designations and determine whether designations are consistent with how the biological and physical character of the shoreline is projected to change over time, and if not, propose changes to ensure consistency.

(iii) Local governments must maintain accurate maps of shoreline environment designations pursuant to WAC 173-26-211(2)(b). This includes updating the approximate mapped boundaries between environment designations as shoreline jurisdiction shifts, the extent of shoreline jurisdiction itself, and any redesignations.

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

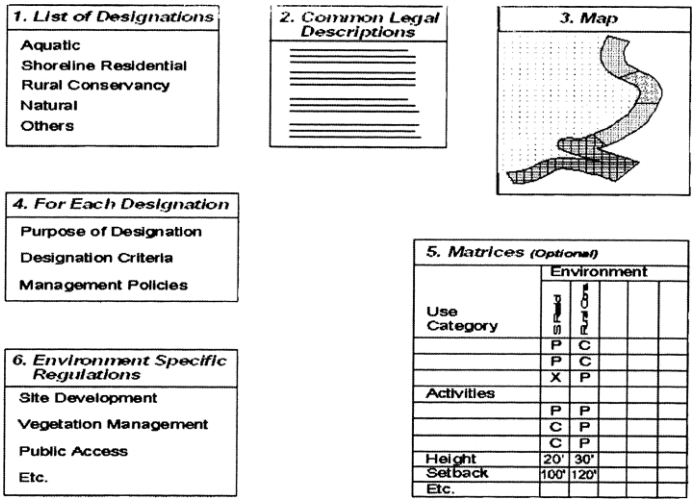

Diagram summarizing the components of the environment designation provisions.

(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 criteri~~a~~on, 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

(I) These provisions must be in the master program and this requirement cannot be met with reference to the zoning code or comprehensive plan provisions contained outside the master program.

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(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.

(iii) 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 alternative shoreline environment, provided the applicable master program provisions do not allow significant ecological impacts.

(iv) 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.

(v) Local governments may assign an "aquatic" environment designation to wetlands.

(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.
- Non-water-oriented recreation.
- Multiunit residential.
- 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.

(H) 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.

(D) 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."

(E) 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~~ that 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~~ phrase "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.

(F) 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~~ that 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.

(B) Except as noted, commercial and ~~and~~ industrial uses and multiunit residential development should not be allowed. Agriculture, commercial forestry, and aquaculture when consistent 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.

(C) 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.

(D) 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.

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

(FC) 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.

(GD) 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 willMaster program shall include require density, lot coverage, vegetation conservation and other provisionslimitation, including but not limited to, a .

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 each lot or parcel, will maintain the existing hydrologic character of the shoreline. Alternate However, an alternatives standard developed shall be 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 guidelinesprovided the local government completes a cumulative impacts analysis to confirm that the provisions will not result in a cumulative net loss of shoreline ecological function. 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.~~

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(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 shoreline uses. Such planning should consider the need for upland and in-water uses in shoreline jurisdiction and potential impacts on~~,~~ water quality, navigation, presence of aquatic vegetation, existing shellfish protection districts and critical habitats and corridors, aesthetics, public access, and views.

(H) Uses that were originally established outside of an aquatic environment designation that fall within the aquatic environment due to shoreline change should be managed in alignment with the above policies to avoid adverse impacts to water quality, critical habitats, navigation, and passage of fish and wildlife.

(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.~~

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(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.

(B) Non-water-oriented uses should not be allowed except:

(I) A~~a~~s part of mixed-use developments~~. Nonwater-oriented uses may also be allowed~~ or

(II) I~~i~~n limited situations where they do not conflict with or limit opportunities for water-oriented uses; or

(III) O~~o~~n 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 173-26-201-(3)(d)(ii) and (ix); or ~~.~~

(IV) If an analysis of water-dependent use needs as described in WAC 173-26-201 (3)(d)(ii) demonstrates that 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~~

consistent with a cumulative impacts analysis demonstrating no net loss of shoreline ecological functions~~, apply standards to assure no net loss of those functions~~.

(C~~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 non-water-oriented uses with water-oriented uses when analyzing full utilization of urban waterfronts and before considering expansion of such areas.

(D~~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.

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

(F~~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 non-water-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 173-26-241-(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~~ that 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 single-family residential development and appurtenant structures 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, development and use setbacks, lot coverage and impervious surface limitations, buffers, shoreline stabilization, vegetation conservation and restoration, critical area protection, and water quality and quantity 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~~Multiunit 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.

[Statutory Authority: Chapter 90.58 RCW. WSR 17-17-016 (Order 15-06), § 173-26-211, filed 8/7/17, effective 9/7/17. Statutory Authority: RCW 90.58.120, 90.58.200, 90.58.060 and 43.21A.681. WSR 11-05-064 (Order 10-07), § 173-26-211, filed 2/11/11, effective 3/14/11. Statutory Authority: RCW 90.58.060 and 90.58.200. WSR 04-01-117 (Order 03-02), § 173-26-211, filed 12/17/03, effective 1/17/04.]

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~~throughout shoreline jurisdiction 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~~ cultural resources.** Archaeological and cultural resources are ~~a~~ nonrenewable resources that contribute to our sense of history and place.

(a) **Applicability.** Shoreline features of historic, cultural, archaeological, or scientific value as determined by the Washington Department of Archaeology and Historic Preservation (DAHP) should be protected to prevent the destruction of, or damage to, any site having archaeological, historic, cultural, or scientific value through coordination and consultation with the affected Tribes and appropriate local, state, and federal authorities. The following ~~provisions~~ principles and standards apply to archaeological and historic resources that are either recorded at ~~the state department of archaeology and historic preservation~~DAHP and/or by local jurisdictions or have been inadvertently uncovered.

(i) 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.

(ii) In coordination with DAHP and potentially affected Tribes, the local government should identify areas designated as traditional cultural properties. A "traditional cultural property" is a property that has traditional cultural significance. It is associated with the cultural practices or beliefs of a living community that are rooted in that community's history and are important in maintaining the continuing cultural identity of the community. Because the location of these sites is uncertain and not on a public register, local governments should cooperate with the cultural resources officers of any potentially affected Tribal governments to establish a protocol to identify cultural resources and procedures to protect any cultural resources that are identified or discovered during development activity. Counties and cities may establish a cultural resource data-sharing agreement with the department of archaeology and historic preservation to help identify sites with potential cultural historic or archaeological significance.

Commented [A8]: This entire section is under development. We are actively looking for Tribal input on this section and will coordinate with DAHP on further revisions. Proposed language is from the Ecology and DAHP developed *Cultural Resources Model Language for Shoreline Master Programs* from the SMP Handbook Appendix B published in August 2009 and WAC 365-196-450. May also need to be updated to reflect updated guidance related to preservation planning. Preservation Planning | Washington State Department of Archaeology & Historic Preservation (DAHP)

https://apps.ecology.wa.gov/publications/parts/1106010part20.pdf

(iii) Sites should be protected in collaboration with appropriate Tribal, state, federal, and local governments. Cooperation among public and private parties is to be encouraged in the identification, protection, and management of cultural resources.

(iv) Where appropriate, access to such sites should be made available to parties of interest. Access to such sites must be designed and managed in a manner that gives maximum protection to the resource.

(v) Opportunities for education related to archaeological, historical, and cultural features should be provided where appropriate and incorporated into public and private programs and development.

(b) **Principles.** Shorelines can be the location of significant archaeological and cultural resources.

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(i) Due to the limited and irreplaceable nature of these 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 T~~t~~ribes, and ~~the department of archaeology and historic preservation~~DAHP.

(ii) Sites having historical, cultural, scientific, or educational value include shell middens; open sites or campsites; pictographs and petroglyphs; caves or rockshelters; wet sites; lithic sites; quarries; culturally modified trees; burials sites or cemeteries; fur trade sites; military and homestead sites; and logging, mining, and railroad features.

(iii) Archaeological and cultural sites may be adversely impacted by new development, uses, or shoreline modifications that include but are not limited to filling, grading, dredging, compaction, construction of building or impervious surfaces, and tree removal.

(iv) Cooperation among involved private and public parties should be encouraged to achieve the archaeological, historical, and cultural element goals and objectives of this section.

(c) **Designation.**

(i) Local governments should work with Tribes, DAHP, and the department to maintain an inventory of all known significant local historic, cultural, and archaeological sites in observance of applicable state and federal laws protecting such information from public disclosure.

(ii) Counties and cities may, through existing data, attempt to identify sites with a high likelihood of containing cultural resources. If cultural resources are discovered during construction, irreversible damage to the resource may occur, and significant and costly project delays are likely to occur. Establishing an early identification process can reduce the likelihood of these problems.

(d~~c~~) **Standards.** Pursuant to RCW 90.58.100(2)(g) master programs shall include provisions for the protection and restoration of buildings, sites, and areas having historic, cultural, scientific, or educational values. ~~Local shoreline master~~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~~. C~~ and should contact the department of archaeology and historic preservation and affected Indian T~~t~~ribes for additional information.

(i) Master programs shall include the following policies related to the protection and preservation of archaeological and cultural resources.

(A) Provisions for historic, cultural, and archaeological site preservation, restoration, and education should be incorporated with open space or recreation areas in site development plans whenever compatible and possible.

(B) Private and public owners of historic sites should be encouraged to provide public access and educational opportunities at levels consistent with long-term protection of both historic values and shoreline ecological functions. Site specific conditions may require public site access to be restricted at times, but educational means should be provided whenever possible.

(C) Historic, cultural, and archaeological site development should be planned and carried out so as to prevent impacts to the resource. Impacts to neighboring properties and other shore uses should be limited to temporary or reasonable levels.

(D) Owners of property containing identified historic, cultural, or archaeological sites are encouraged to make substantial development plans known well in advance of application, so that appropriate affected Tribes, DAHP, and others may have ample time to assess the site and make arrangements to preserve historical, cultural and archaeological values as applicable.

(E) If development is proposed adjacent to an identified historic, cultural, or archaeological site, then the proposed development should be designed and operated so as to be compatible with continued protection of the historic, cultural, or archaeological site.

(ii) Master programs shall include the following regulations related to the protection and preservation of archaeological and cultural resources.

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(A) Historic, cultural, or archaeological resource site assessment. Upon receipt of application for a shoreline permit or request for a statement of exemption for development on properties within 500 feet of a site known to contain a historic, cultural, or archaeological resource(s), the local government shall require a cultural resource site assessment. The site assessment shall be conducted by a professional archaeologist or historic preservation professional, as applicable, to determine the presence of historic or archaeological resources. The fee for the services of the professional archaeologist or historic preservation professional shall be paid by the landowner or responsible party.

(B) If the cultural resource site assessment identifies the presence of significant historic, cultural, or archaeological resources, a Cultural Resource Management Plan (CRMP) shall be prepared by a professional archaeologist or historic preservation professional, as applicable. The fee for the services of the professional archaeologist or historic preservation professional shall be paid by the landowner or responsible party. In the preparation of such plans, the professional archaeologist or historic preservation professional shall solicit comments from affected Tribes and DAHP. Comments received shall be incorporated into the conclusions and recommended conditions of the CRMP to the maximum extent practicable. The CRMP requirements from subsection (e) below shall be the minimum submittal requirements for this review.

(C) Within 15 days of receipt of a complete application for a shoreline permit or request for an exemption in an area of known historic/archaeological resources, the local government shall notify and request a recommendation from the affected Tribes and DAHP. Recommendations shall be duly considered and adhered to whenever possible and

reasonable. This notification shall include the information as required for shoreline permits pursuant to chapter 173-27 WAC.

(D) In granting shoreline permits or statements of exemption for such development, the local government may attach conditions to require consultation with the affected Tribes and DAHP, and to ensure that historic/archaeological resources are properly protected, or for appropriate agencies to contact property owners regarding purchase or other long-term arrangements. Provision for the protection and preservation of historic/archaeological sites shall be incorporated to the maximum extent practicable.

(e) **Cultural Resource Management Plan (CRMP) requirements.**

(i) A CRMP shall contain all of the following, at a minimum:

(A) The purpose of the project; a site plan for proposed on-site development; depth and location of all ground-disturbing activities, including, but not limited to, utilities, driveways, clearing, and grading; an examination of project on-site design alternatives; and an explanation of why the proposed activity requires a location on, or access across and/or through, ~~a~~ historic or significant archaeological resource.

(B) A description of the historic/archaeological resources affected by the proposal.

(C) An evaluation of the historic/archaeological resource and an analysis of the potential adverse impacts as a result of the activity.

(D) An analysis of how these impacts have been avoided, or where avoidance is not possible, how these impacts have been or will be mitigated/minimized. A recommendation of appropriate mitigation measures may include but are not limited to the following:

(I) Recording the site with the DAHP or listing the site in the National Register of Historic Places, Washington Heritage Register, as applicable, or any locally developed historic registry formally adopted by the local government;

(II) Preservation in place;

(III) Reinterment in the case of grave sites;

(IV) Covering an archaeological site with a nonstructural surface (e.g., maintained grass or pavement) to discourage pilferage;

(V) Excavation and recovery of archaeological resources;

(VI) Inventorying prior to covering of archaeological resources with structures or development; and

(VII) Monitoring of construction excavation.

(ii) The recommendations and conclusions of the CRMP shall be used to assist the local government in making final administrative decisions concerning the presence and extent of historic/archaeological resources and appropriate mitigating measures. The administrator shall consult with the affected Tribes and DAHP prior to approval of the CRMP and the related shoreline permits or necessary authorizations.

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(iii) The local government may reject~~,~~ or request revision of the conclusions reached in a CRMP when the administrator can demonstrate that the assessment is inaccurate or does not fully address the historic/archaeological resource management concerns involved.

(f) **Inadvertent Discovery.** While shorelines are known as the location of significant numbers of cultural resources, shorelines are dynamic places where changes in sea level, channel mitigation, flooding events, soil deposition, and erosion allow for unknown numbers of cultural resources to be currently unidentified and unmapped. Historic, cultural, or archaeological sites or artifacts of potential significance may be inadvertently discovered in the process of development on shorelines; when this happens, work on that portion of the development site shall be stopped immediately and the find reported as soon as possible.

(i) As a condition of approval for all shoreline permits or exemptions, r~~R~~equire that developers and property owners immediately stop work and notify the local government, ~~the department of archaeology and historic preservation~~DAHP, and affected ~~Indian t~~Tribes if archaeological resources are uncovered during excavation. The permit decision shall provide the applicant with appropriate contact information for this notification to ensure that they have necessary information to meet this requirement.

(ii) The local government shall then coordinate with DAHP, and the affected Tribes, and other appropriate agencies to require that an immediate site assessment be conducted by a professional archaeologist or historic preservation professional, as applicable, to determine the significance of the discovery and the extent of damage to the resource. The site assessment shall be distributed to DAHP and the affected Tribes for a 15-day review period or, in the case of inadvertent discovery of human remains, a 30-day review period to determine the significance of the discovery.

(A) If the site has been determined not to be significant by the above listed agencies or governments, or if the above listed agencies or governments have failed to respond within the applicable review period following receipt of the site assessment, such stopped work may resume.

(B) Upon receipt of a positive determination of a site's significance, the local government may require a CRMP, description and evaluation of the resources, analysis of potential adverse impacts, and description of actions proposed to avoid impacts.

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~~(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.~~

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(g) **Public access to archaeological and historic resources.**

(i) Private or publicly owned historic sites or structures of historical significance. If a private or publicly owned building or structure of historic significance is identified, public access shall be encouraged as appropriate for purposes of public education; provided that:

(A) The type and/or level of public access is consistent with the long--term protection of both historic resource values and shoreline ecological functions; and

(B) An access management plan is developed in accordance with site- and resource-specific conditions in consultation with the DAHP and the affected Tribes and/or other agencies, as appropriate, to address the following:

(I) Hours of operation;

(II) Interpretive and/or directional signage;

(III) Lighting;

(IV) Pedestrian access; and/or

(V) Traffic and parking.

(ii) For archaeological and cultural resource sites, DAHP and the affected Tribes and/or other agencies, as appropriate, shall be in agreement prior to providing public access to a site. An access and resource management plan shall be developed in consultation with the DAHP and the affected Tribes.

(h) **Historic structures.** Cultural resources of the built environment include buildings, structures, sites, districts, and objects typically associated with listing in the National Register of Historic Places, the Washington Heritage Register or a local historic listings or designations. Within shoreline jurisdiction these may be historic canneries, fishing structures or processing facilities; recreational cabin, lodges, or camps; transportation infrastructure such as bridges; maritime heritage locations; and homes, businesses, and institutions that represent the European-American, African American, Asian/Pacific Islander, Hispanic, Native American, and other heritages.

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(i) Development pressures within shoreline jurisdiction can result in demolition of historical structures during redevelopment of these areas.

(ii) Local governments should address historic preservation in coordination with their other associated obligations under the act and in coordination with their comprehensive plan goal to preserve lands, sites, and structures with historical or archaeological significance.

(iii) Local governments should identify these structures using federal, state, and local resources, such as the National Register of Historic Places, the Washington Heritage Register, properties identified by DAHP to be eligible for listing, and properties listed in a local register of historic places.

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(iv) Master program use allowances and preferences may limit options for alternative uses within historic structures. Local governments should consider these factors when developing, updating, or amending master programs to ensure that the master program is fostering the preservation of these structures consistent with the policy of the act.

~~(2) **Critical areas.**~~

Commented [A9]: Moved to WAC 173-26-226 and further modified there.

~~(i) **Wetlands.**~~

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~~(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 stormwater 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.

(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;

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- 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 stormwater sewer or industrial outfalls,

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~~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.~~

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~~As part of a comprehensive approach to management of critical freshwater habitat and other lake, river and stream values, local governments 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.~~

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~~(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.~~

(2) **Nonconforming uses, developments, and lots.** Nonconforming uses, developments, and lots were either established before the master program was originally adopted or were legally established consistent with previous master program provisions. These uses, developments, and lots have subsequently become nonconforming due to master program updates or amendments; or as the result of changes in the location the shorelines of the state or shorelands.

(a) **Applicability.** This section establishes master program requirements for addressing and accommodating nonconforming uses, developments, and lots.

(i) Master programs must include locally tailored provisions addressing nonconforming uses, nonconforming development, and nonconforming lots. The default provisions of WAC 173-27-080 shall no longer apply after the master program is amended for consistency with this section.

(ii) Local governments shall evaluate the extent and degree to which the master program or changing shoreline conditions are resulting in uses, developments, and lots that do not conform to the master program provisions.

(iii) Master program nonconforming policies, regulations, and allowances shall be evaluated in concert with all other master program allowances to ensure that in the aggregate the master program is still consistent with the policy of the act and the no net loss of shoreline ecological functions principle.

(iv) Master programs shall include policies that implement the following principles:

(A) Encourage ecological restoration, enhancement, and improvements on non-conforming lots and projects proposing alterations to nonconforming development or expansions of nonconforming uses.

(B) Encourage property owners to bring nonconforming development into conformance with the current master program. If this is not feasible due to existing site constraints, encourage other means of minimizing or reducing the impacts of the conforming use or development over- time.

(C) Encourage that nonconforming structure be moved landward out of shoreline buffers; farther from critical areas and their buffers; and away from hazards as much as is practicable as part of any substantive site improvement and redevelopment proposals. The resulting buffer area where the structure was previously located and any other portions of the buffer that are degraded must be enhanced with native vegetation, including trees.

(D) For local governments managing nonconforming uses, developments, and lots that will be within an identified Sea Level Rise Hazard Area, standards for development within Sea Level Rise Hazard Areas must be considered in addition to the principles and standards of this section. If provisions conflict, the more precautionary standards should apply.

(v) Master programs shall include nonconforming development regulations that address the following:

(A) Structures that were legally established and are used for a conforming use but are nonconforming with regard to setback, buffer, area, bulk, height, or density requirements of the current master program may continue as legal nonconforming structures.

Commented [A10]: This entire section is under development. New section on Non-conforming here to require local governments to address non-conforming policies and regulations with tailored provisions that address specific nonconformities at issue in shoreline jurisdiction. Replacing default provisions for nonconforming development found in WAC 173-27-080.

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(B) A structure for which a variance has been issued shall be considered a legal nonconforming structure, and the requirements of this section shall apply as they apply to any other nonconformities.

(C) Establish thresholds for determining and definitions for repair, replacement, and redevelopment of nonconforming structures and developments. Set a clear timeframe to determine when a nonconforming development has been abandoned. Consider including replacement cost thresholds, percentage of structure, timelines, or a combination of those factors. WAC 173-26-261(8) describes standards for repair, replacement, expansion, or redevelopment of structures within Sea Level Rise Hazard Areas.

(D) Nonconforming structures may be maintained and repaired, as long as the improvements do not increase the degree of nonconformity or exposure to hazards.

(E) Nonconforming residential structures should not be expanded, enlarged, or redeveloped within geologically hazardous areas, frequently flooded areas, or Sea Level Rise Hazard Areas.

(F) Expansion of nonconforming development should be allowed only when necessary to support a conforming use.

(G) The local government shall consider the number of existing nonconforming developments that would be eligible for such expansion and evaluate the potential cumulative impacts to the shoreline ecological functions and compatibility with the shoreline environment designation management policies. The footprint and total impervious surface associated with accessory and appurtenant structures should be calculated as separate from footprint of primary structures for the purposes of any nonconforming development expansion allowances.

(H) A single-family residence that is authorized to be enlarged by enclosing a deck or patio to create additional living space may not subsequently add a new deck or patio within a buffer, setback, or critical area to replace the converted deck or patio.

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(I) Redevelopment is an opportunity to seek conformance with the current standards. Any allowances for the redevelopment of nonconforming structures must first demonstrate that conformance with the current standards is not feasible, then apply the mitigation sequence to the project siting and design.

(J) Conditions may be attached to the permit as are deemed necessary to assure compliance with the principles of this section; the requirements of the master program and the Shoreline Management Act; and to assure that the nonconforming development will not become a nuisance or a hazard.

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(vi) Master programs shall include nonconforming use regulations that address the following:

(A) Uses that were legally established and are nonconforming with regard to the use regulations of the master program may continue as legal nonconforming uses.

(B) Expansion, enlargement, and intensification of nonconforming uses should only be allowed through a shoreline conditional use permit to allow for the consideration of cumulative effects; use compatibility; and the adequacy of existing buffer space to buffer the shoreline from the proposed use.

(C) A structure that is being or has been used for a legally established nonconforming use may be used for a different nonconforming use only upon the approval of a conditional use permit. A proposal that meets the conditional use criteria in WAC 173-27-160 may be approved only upon an additional finding that:

(I) No reasonable alternative conforming use is practical; and

(II) The proposed use will be at least as consistent with the policies and provisions of the act and the master program and as compatible with the uses in the area as the pre-existing use.

(D) Establish abatement criteria and clear timeframes for establishing nonconforming uses as abandoned. For example, if a nonconforming use is discontinued for twelve consecutive months or for twelve months during any two-year period, the nonconforming use shall expire, and any subsequent use shall be conforming. Water-dependent uses should not be considered discontinued when they are inactive due to dormancy, or where the use includes phased or rotational operations as part of typical operations.

(E) Conditions may be attached to the permit as are deemed necessary to assure compliance with the principles of this section, the requirements of the master program and the Shoreline Management Act, and to assure that the use will not become a nuisance or a hazard.

(vii) Master programs shall include nonconforming lot regulations that address the following:

(A) A nonconforming lot may be developed if permitted by other land use regulations of the local government and so long as such development conforms to all other requirements of the applicable master program and the act.

(B) Allowance for reasonable use of nonconforming lots. Consider the allowed uses and shoreline environment designations to determine whether special modest home allowances or recreational lot designations are appropriate.

(viii) When modification to nonconforming uses or developments are proposed or new uses or development, redevelopment or the expansion of existing developments and uses are proposed on nonconforming lots with degraded buffers and impaired existing functions, the master program shall require either:

(A) The restoration of the buffer functions as necessary to protect the shoreline waterbody from the impacts of the projects, or

(B) The expansion of the buffer area to a width that will allow the degraded functions to minimize the impacts of the proposed development or use.

(ix) Requirements for addressing floating homes and floating on-water residences.

(A) 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:

(I) "Conforming preferred use" means that applicable development and shoreline master program regulations may only impose reasonable conditions and mitigation that will not

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effectively preclude maintenance, repair, replacement, and remodeling of existing floating homes and floating home moorages by rendering these actions impracticable.

(II) "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.

(B) A floating on-water residence legally established prior to July 1, 2014, must be considered a conforming use and accommodated through reasonable 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. For the purpose of this subsection, "floating on-water residence" means a vessel or any other floating structure other than a floating home that is designed or used primarily as a residence on the water and has detachable utilities; and 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.

(I) A substantial development permit is not required when replacing or remodeling a floating on-water residence if the size of the existing residence is not materially exceeded.

(II) A substantial development permit is required if the replacement or remodel of a floating on-water residence materially exceeds the size of the existing residence.

(III) All replacements and remodels which add one hundred twenty square feet or more to the living space must require on-board graywater containment or a wastewater connection that disposes of the graywater to a wastewater disposal system.

(x) Option for addressing legal status of existing shoreline structures. Pursuant to RCW 90.58.620, master programs may classify some structures as conforming, even if they do not meet the bulk dimensional standards of the effective master program. Provided the local government can demonstrate that this classification will not create a risk of degrading shoreline natural resources or ecological functions, the following may be allowed within a master program:

(A) Residential structures and appurtenant structures that were legally established and are used for a conforming use, but that do not meet the setback, buffer, area, bulk, height, or density standards may be considered a conforming structure. However, the nonconforming development allowances provided within the master program will not apply to these structures if they are considered conforming.

(B) Redevelopment, expansion, change with the class of occupancy, or replacement of the residential structure if it is consistent with the following:

(I) Mitigation sequence is applied, and no net loss of shoreline ecological functions is demonstrated;

(II) The structure is not located within a critical area or its buffer, except where the replacement structure can be relocated away from the critical area, and critical area restoration~~,~~ or enhancement is provided; and

(III) The structure is not located within the Sea Level Rise Hazard Area, unless the structure is replaced to a location outside of the Sea Level Rise Hazard Area.

(C) Nothing in this subsection:

(I) Restricts the ability of a master program to limit redevelopment, expansion, or replacement of over-water structures or structures located in hazardous areas, such as floodplains, geologically hazardous areas, and Sea Level Rise Hazard Areas; or

(II) Affects the application of other federal, state, or local government requirements to residential structures.

Commented [A11]: Relocated here from WAC 173-26-241 residential uses provisions and modified.

(34) **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.

(v) Provide equitable access opportunities for the public, including prioritizing the creation of new public access where it provides access for overburdened communities and vulnerable populations.

(vi) Through the planning process described in subsection (3)(c), maintain or increase the overall level of public access over time by ensuring that if access is lost due to sea level rise or other shoreline change, new or relocated access is available.

(c) **Planning process to address public access.**

(i) 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.

(ii) ~~This~~ Public access planning should be integrated with other relevant comprehensive plan elements, especially transportation and recreation.

(iii) The planning process shall also comply with all relevant constitutional and other legal limitations that protect private property rights.

(iv) 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.

(v) 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.

(vi) Local governments should maintain and update shoreline public access plans as necessary to ensure that plans remain current and relevant.

(vii) Local governments required to plan for sea level rise must consider the vulnerability of their public access system to sea level rise and implement strategies to adapt the system over time to maintain or improve levels of service.

(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 alternative 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 non-water-~~dependent~~ oriented 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 alternative 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.

(vi) Standards for new and existing public access sites in areas vulnerable to sea level rise.

(A) Design new public access to accommodate projected water levels over the life of the site, including assessing elevation of future daily high tides and storms in comparison to planned facilities. Incorporate resilient design principles such as setting back structures, using moveable structures, orienting access perpendicular to the shoreline, incorporating floodable landscaping, and others.

(B) Facilitate and encourage adaptation of existing public access sites as conditions change. This may involve relocating structures, realigning paths and frontage roads, implementing nature-based solutions, and upland expansion.

[Statutory Authority: Chapter 90.58 RCW. WSR 17-17-016 (Order 15-06), § 173-26-221, filed 8/7/17, effective 9/7/17. Statutory Authority: RCW 90.58.120, 90.58.200, 90.58.060 and 43.21A.681. WSR 11-05-064 (Order 10-07), § 173-26-221, filed 2/11/11, effective 3/14/11. Statutory Authority: RCW 90.58.060 and 90.58.200. WSR 04-01-117 (Order 03-02), § 173-26-221, filed 12/17/03, effective 1/17/04.]

WAC 173-26-226 Protection of critical areas and shoreline ecological functions.

(1) Critical areas protection. Critical areas protection policies and regulations shall be embedded directly in the master program and shall be integrated with the master program's shoreline ecological function protection provisions, use and modification regulations, and shoreline permit and authorization system. Critical areas ordinances adopted pursuant to RCW 36.70A cannot be incorporated by reference into the master program to meet these requirements. Local governments must protect critical areas located within shoreline jurisdiction solely with their master program through policies and regulations as outlined below.

(a) **Applicability.** Critical areas that are located within shoreline jurisdiction must be protected with policies and regulations contained within the master program.

(i) 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~~the protection of critical areas designated as such ~~pursuant to RCW 36.70A.170 (1)(d)~~in this section located within the shorelines of the state with policies and regulations that:

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

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

(ii) At a minimum, the master program critical areas provisions apply to the ~~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~~a~~) Wetlands in shoreline jurisdiction~~s~~ and associated wetlands,~~;~~

~~(~~B~~b~~) Geologically hazardous areas,

~~areas with a critical recharging effect on aquifers used for potable waters;~~ (C~~c~~) F~~f~~ish and wildlife habitat conservation areas,~~;~~ including non-shoreline waterbodies; critical saltwater habitat; and critical freshwater habitat,

(D~~d~~) Floodways and ~~f~~frequently flooded areas,~~;~~

(E) Channel migration zones, ~~and~~

(F~~e~~) Critical aquifer recharge areas. ~~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.~~

(iii) As provided in RCW 90.58.030~~(2)(d~~~~f~~~~)(ii)~~ and 36.70A.480, ~~as amended by chapter 321, Laws of 2003 (ESHB 1933),~~ any ~~city or county~~local government may also include in its master program an extension of shoreline jurisdiction to include portions of critical areas and their buffers that extend beyond the standard 200 feet from the ordinary high water mark of the shoreline or shoreline of statewide significance. These areas are referred to as land necessary for buffers for critical areas, as used in this section, and may include the following:

(A) Critical areas that are located partially within shoreline jurisdiction,

(B) Buffers for any of the critical areas designated pursuant to RCW 36.70A.170 (1)(d) and located within, or partially within, shorelines of the state;

(C) Buffers on shorelines of the state only where such shorelines of the state are themselves designated as critical areas, consistent with RCW 36.70A.480(5).

(D) If a local government includes the land described above in the master program, forest practices regulated under chapter 76.09 RCW on that extended shorelands are not subject to the provision of WAC 173-26-241-(3)(e), except if that land is converted to non-forest land use.

~~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 located outside of shoreline jurisdiction pursuant to RCW 36.70A.060(2).

(iv) 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.

(v)- Master programs shall provide a level of protection to critical areas located within shorelines of the state that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources as defined by department of ecology guidelines adopted pursuant to RCW 90.58.060. The adoption or update of critical area regulations under the Growth Management Act is not automatically an update to the shoreline master program. Critical areas within shorelines of the state are protected under chapter 90.58 RCW and are not subject to the procedural and substantive requirements of the Growth Management Act (chapter 36.70A RCW), including the provisions of RCW 36.70A.172. Ecology's review of master program provisions for critical areas in shorelines of the state will be based solely on the Shoreline Management Act and these guidelines.

(vi) Shorelines of the state shall not be considered critical areas, except to the extent that specific areas located within shorelines of the state qualify for critical area designation based on the definition of critical areas provided by RCW 36.70A.030(11) and this section. The protection of the ecological function of shorelines of the state is addressed separately from the critical areas provisions pursuant to WAC 173-27-226(2).

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(b) **Principles and general standards for the protection of critical areas in shoreline jurisdiction.** C~~Local master program~~ritical areas policies and regulations~~s~~ shall be based upon the Shoreline Management Act and these guidelines. 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, the master program shall use the most current, accurate, and applicable scientific and technical information available~~, 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; salmon recovery plans; local development regulations; and state, ~~t~~Tribal, and federal programs.

(iv) The planning objectives of shoreline management provisions for critical areas shall be consistent with:

(A) The~~the~~ protection of existing ecological functions and ecosystem-wide processes,

(B) The ~~and~~ restoration of degraded ecological functions and ecosystem-wide processes,

(C) Safeguarding the public from hazards to health and safety.

(v) The regulatory provisions for critical areas shall protect existing ecological functions and ecosystem-wide processes.

(vi) Master programs shall preclude uses and developments that are incompatible with critical areas. This should be achieved with a combination of critical areas protection standards; shoreline environment designation criteria and management policies; and use regulations, including allowances, conditional use permit requirements, and use prohibitions.

(vii) Provided that impacts to ecological functions are first avoided, master programs shall ~~P~~promote human uses and values that are compatible with the other objectives of this section, such as public access and aesthetic values. Compensatory mitigation must be provided for ~~, provided that impacts to ecological functions are first avoided, and a~~any unavoidable impacts ~~are mitigated~~.

(viii) Protection standards for critical areas buffers shall be based on providing protection of existing functions and the width necessary for a fully functioning buffer to protect the critical area from the impacts associated with allowed uses and development. Buffer reduction and common-line setbacks are not appropriate provisions unless included within a framework where a combination of buffer modifications and enhancement requirements will result in both protection of the shoreline ecological functions and enhancement of the remaining buffer.

~~**(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).**~~

(vii) 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.

(viii) Local governments must give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.

(ix) Local governments are encouraged to also protect both surface and groundwater resources, because these waters often recharge wetlands, streams, and lakes.

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(x) Master programs cannot include critical areas impact allowances and reasonable use provisions. The master program shall include only protective standards and allowances for restoration or enhancement. Deviation from these standards can be authorized only through a variance subject to WAC 173-27-140 through 170.

(c) **Critical areas restoration.** Master programs shall include policies and regulations that encourage and foster critical areas restoration and enhancement consistent with the following:~~Provisions for frequently flooded areas are included in WAC 173-26-221(3).~~

(i) Conservation of native riparian vegetation and replanting of vegetation with native species in areas where they were historically present. These actions can stabilize erosive areas, intercept and slow precipitation, trap sediment, reduce volume and rate of overland flow, reduce the area extent of flooding, improve riparian area habitat function, and improve water quality.

(ii) Reconnection of fragmented terrestrial and aquatic habitats, including:

(A) Floodplains to the shoreline waterbody or other critical areas.

(B) Streams, rivers, and lakes to tributaries, wetlands, floodplains, and drainages.

(C) Riparian areas to tributaries, wetlands, and drainage areas.

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(ii) Restoration of frequently flooded area ecological functions through the removal of structures such as bulkheads, seawalls, dikes, levees, and revetments to reconnect sediment supply from bluffs; unconsolidated slopes and migrating dunes to hydrologic transport processes; and allow streams and rivers to migrate laterally.

(iv) Restoration of lost or degraded terrestrial and aquatic habitats that support priority species.

(v) Restoration of ecological functions provided by geologically hazardous areas can be achieved through removal of structures such as bulkheads, seawalls, dikes, levees, and revetments to reconnect sediment supply from bluffs, unconsolidated slopes and migrating dunes to hydrologic transport processes, and allow stream and rivers to migrate laterally.

(vi) Removal of structures, developments, and uses that interrupt sediment sources updrift or upstream from erosion sites, restrict the natural movement of stream channels, or restrict migration pathways of priority species.

(vii) Reduction of impervious surface within and adjacent to critical areas in shoreline jurisdiction.

(viii) Restoration and maintenance of hydrologic connections between water bodies, water courses, and associated wetlands.

(ix) Restoration planning should include incentives and other means to restore water connections, habitat functions, and riparian areas that have been impeded or impacted by previous development.

(d) **Wetlands.** The wetlands of Washington are fragile ecosystems that serve a number of important beneficial functions. Wetlands assist in reducing erosion, siltation, flooding, ground and surface water pollution; and provide wildlife, plant, and fisheries habitats. Wetland destruction or impairment may result in increased public and private costs and property losses.

(i) **Wetland protection.** When preparing, updating, or amending master program wetland protection provisions, local governments shall implement the following standards and use scientific and technical information. Master program provisions shall include wetland protection policies and regulations designed to protect wetland area, functions, and values, and maintain the shoreline ecological functions provided by shoreline-associated wetlands. ~~(i) Wetlands.~~Wetland protection standards are intended to achieve, at a minimum, no net loss of wetland area and functions, including lost time when the wetland does not perform the function.

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

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Wetland protection r~~R~~egulations shall ~~address~~ensure that the following development, activities, or modifications are not allowed within wetlands or their protective buffers~~uses~~ unless proposed as part of a restoration or enhancement project:~~to achieve, at a minimum, no net loss of wetland area and functions, including lost time when the wetland does not perform the function:~~

(A) ~~•~~ The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;

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(B) ~~•~~ The dumping, discharging, or filling with any material, including discharges of untreated stormwater and domestic, commercial, or industrial wastewater;

(C) ~~•~~ The draining, flooding, or disturbing of the water level, duration of inundation, or water table;

(D) ~~•~~ The driving of pilings;

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(E) ~~•~~ The placing of obstructions;

(F) ~~•~~ The construction, reconstruction, demolition, or expansion of any structure;

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

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(H) ~~•~~ Other uses or development that results in an ecological impact ~~to~~on the physical, chemical, or biological characteristics of wetlands; ~~or~~

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

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(iii~~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.

(iv~~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 173-26-020(11).~~201 (2)(e).~~

(v~~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~~consider 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.

(vi~~E~~) **Mitigation.** Master programs shall contain wetland protection standards that ~~mitigation~~ require the application of the mitigation sequence~~ments that are consistent with WAC 173-26-201 (2)(e)~~ and ~~which~~that are based on the wetland rating.

(vii~~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.

(A) Requirements for compensatory mitigation must include provisions for~~:~~

~~(I) M~~mitigation replacement ratios or a similar method of addressing the following:

(I) ~~•~~ The risk of failure of the compensatory mitigation action;

(II) ~~•~~ The length of time it will take the compensatory mitigation action to adequately replace the impacted wetland functions and values;

(III) ~~•~~ The gain or loss of the type, quality, and quantity of the ecological functions of the compensation wetland as compared with the impacted wetland.

(B~~II~~) Establish~~ment of~~ performance standards for evaluating the success of compensatory mitigation actions.~~;~~

(C~~III~~) Establish~~ment of~~ long-term monitoring and reporting procedures to determine ~~if~~whether performance standards are met.~~; and~~

(D~~IV~~) Establish~~ment of~~ long-term protection and management of compensatory mitigation sites.

(E) Credits from a certified wetland mitigation bank may be used to compensate for unavoidable impacts to wetlands located within shoreline jurisdiction only if no net loss of shoreline ecological function are demonstrated.~~.~~

(e~~ii~~) **Geologically hazardous areas.** Geologically hazardous areas include areas susceptible to erosion, sliding, unstable slope collapse, channel avulsion, earthquake, avalanche~~s~~, volcanic eruption, or other geological events. Geologically hazardous areas are areas that because of their susceptibility to erosion or other geological events are not suitable for siting commercial, residential, or industrial development consistent with public health or safety concerns. Natural processes drive the erosion and geomorphic movement that characterize these areas. They are important in sustaining sediment transport and shoreline ecological functions. These areas must be managed to protect existing ecological functions and ecosystem-wide processes, to restore degraded ecological

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functions and ecosystem-wide processes, and to safeguard the public from hazards to health and safety.

(i) **Geologically hazardous area protection~~s~~.** When preparing, updating, or amending master program geologically hazardous area protection provisions, local governments shall implement the following standards and use scientific and technical information. Master program provisions shall include geologically hazardous area protection policies and regulations designed to protect people from the hazardous area and protect the ecological functions and values these areas provide. Geologically hazardous areas shall be regulated in accordance with the following:

(A) Local governments must consult with the department of natural resources' department of geology, the department of emergency management, the department of fish and wildlife, and ecology to identify and map geologically hazardous areas and the ecological functions they provide.

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(B) The ecological functions of geologically hazardous areas are affected by ecosystem processes of shorelands and submerged aquatic areas. Therefore, effective protection and restoration of geologically hazardous areas must integrate management of upland shorelands as well as submerged areas.

(ii) **Geologically hazardous areas protection standards.** Local governments shall protect geological hazardous areas by:

(A) Establishing adequate buffer zones in aquatic and upland areas to separate incompatible uses from geological hazardous areas to ensure protection of shoreline ecological functions, human health, and safety.

(iii) **Geologically hazardous areas development regulations.** 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.~~

(A~~B~~) Not allowing 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.

(B) Not allowing new development or uses in designated geologically hazardous areas that would adversely affect the ecosystem processes and shoreline functions supported by the geologically hazardous area.

~~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) Not allowing ~~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~~water-dependent uses and developments 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) Stabilization of existing structures or measures to protect existing primary residential structures from erosion or geomorphic movement may be allowed only when relocation is demonstrated to be infeasible and only if no net loss of ecological functions will result. All

stabilization must be designed in accordance with the shoreline modification provisions for shoreline stabilization in WAC 173-26-231.

~~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.~~

(f) **Fish and wildlife habitat conservation areas.** Fish and wildlife habitat conservation areas are areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and that, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include, but are not limited to, rare or vulnerable ecological systems, communities, and habitat or habitat elements, including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness. Local governments may also designate locally important habitats and species as fish and wildlife habitat conservation areas.

(i) **Fish and wildlife habitat conservation area protection.** When preparing, updating, or amending master program fish and wildlife habitat conservation area protection provisions, local governments shall implement the following standards and use scientific and technical information. Fish and wildlife habitat conservation areas shall be regulated in accordance with the following:

(A) Local governments must consult with the priority habitats and species categories and recommendations from the Washington state department of fish and wildlife, the high quality ecosystem and rare plant categories and listings from the department of natural resources natural heritage program, and ecology to identify, protect, and map the following fish and wildlife habitat conservation areas within shoreline jurisdiction:

(I) Non-shoreline waterbodies.

(II) Critical freshwater habitats.

(III) Critical saltwater habitats.

(IV) Other priority habitats and priority species.

(B) The ecological functions of fish and wildlife habitat conservation areas are affected by ecosystem processes of shorelands and submerged aquatic areas. Therefore, effective protection and restoration of these areas must integrate management of upland shorelands as well as submerged areas.

(C) Provide for the protection of ecological functions associated with fish and wildlife habitat conservation areas as necessary to ensure no net loss of ecological functions.

(D) Integrate protection of non-shoreline waterbodies, critical freshwater habitat, critical saltwater habitat, and priority habitat and species with other critical areas protection standards and the shoreline ecological protection requirements.

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

(F) The protection of ecological functions associated with shorelines of the state and shorelines of statewide significance are addressed separately in WAC 173-26-226(2).

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(ii) **Non-shoreline waterbodies standards.** Streams or stream segments upstream of a point where the mean annual flow is twenty cubic feet per second or less and naturally occurring lakes and ponds under 20 acres and their submerged aquatic beds that exist within shoreline jurisdiction contribute to the shoreline ecological functions. 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 uplands on either side of river channel and lake basin. Master program shall include the following protection provisions for non-shoreline waterbodies located in shoreline jurisdiction:

(A) Establish adequate buffer zones around aquatic and upland areas to separate incompatible uses from non-shoreline streams, lakes, and ponds. Master programs shall contain requirements for buffer zones that extend from the ordinary high water mark of each bank of non-shoreline waterbodies. Buffer requirements shall be adequate to ensure that the functions are protected and maintained in the long term. Requirements for buffer zone widths and management shall consider the ecological functions of the non-shoreline streams and lakes, the characteristics and setting of the buffer, the potential impacts associated with the adjacent land use, and other relevant factors.

(B) All proposed over-water and near-shore developments within non-shoreline waterbodies located in shoreline jurisdiction require an inventory of the site to assess the presence of critical freshwater 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.

(C) Identify and protect existing connections between these non-shoreline waterbodies, critical freshwater habitats, critical saltwater habitats, other critical areas, and the shorelines of the state.

(iii) **Critical freshwater habitats standards.** Areas within shoreline jurisdiction where endangered, threatened, and sensitive species have a primary freshwater association; and waterbodies planted with game fish by a governmental or ŧTribal entity.

(A) Local governments, in conjunction with state resource agencies and affected Indian tribes, shall identify critical freshwater habitats and the seasonal ranges and habitat elements with which federally and state-listed endangered, threatened, and priority species have a primary freshwater association and that, if altered, may reduce the likelihood that a species will maintain its population and reproduce over the long term.

(B) Local governments shall protect identified priority species habitat by applying information from the department of natural resources' aquatic resources division, the department of fish and wildlife, the department, and affected Indian ŧTribes to identify and protect critical freshwater habitats. Local governments, in conjunction with state resource agencies and affected Indian ŧTribes, may designate additional habitats and species of local importance.

(iv) **Critical saltwater habitats standards.** 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.

(A) Local governments, in conjunction with state resource agencies and affected Indian ~~t~~Tribes, shall identify critical saltwater habitats and the seasonal ranges and habitat elements with which federally and state-listed endangered, threatened, and priority species have a primary saltwater association and that, if altered, may reduce the likelihood that a species will maintain its population and reproduce over the long term.

(B) Local governments shall protect native kelp and eelgrass beds, forage fish spawning and holding areas, and priority species habitat by applying information from the department of natural resources' aquatic resources division, the department of fish and wildlife, the department, and affected Indian ~~t~~Tribes to identify and protect critical saltwater habitats. Local governments, in conjunction with state resource agencies and affected Indian T~~t~~ribes, may designate additional habitats and species of local importance.

(C) Local governments shall protect critical saltwater habitats with the following standards;

(I) All proposed over-water and near-shore developments in marine and estuarine waters require 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.

(II) Docks, piers, bulkheads, seawalls, bridges, fill, floats, jetties, utility crossings, other human-made structures, and shoreline modifications shall not intrude into or over critical saltwater habitats.

(III) Establish adequate buffer zones to separate incompatible uses from critical saltwater habitat areas.

(IV) Identify and protect existing connections between critical saltwater habitats and freshwater riparian areas; estuarine ecosystems, such as salt marsh habitats;~~,~~ larger habitat blocks; or open spaces that can provide corridors connecting these habitats.

(v) **Other priority habitats and priority species standards.** As locally applicable, additional priority habitats and priority species shall be identified and protected. The local government shall consult with ecology, the department of fish and wildlife, and the department of natural resources to obtain current information and recommendations.

(g) **Frequently flooded areas.** Frequently flooded areas are floodways, floodplains, and other areas subject to flooding from coastal waters, high groundwater, and surface flows or precipitation. Floodways, floodplains, and coastal areas subject to flooding perform important ecological functions. Such functions include providing water storage and slowing down-stream and down-slope flows. Frequently flooded areas provide for the unique water and moisture requirements of submerged, emergent and riparian vegetation. These vegetation communities, the off-channel flow conditions and episodic wetted conditions provide essential habitat for various life stages, particularly nesting,

Commented [A13]: Definition from WAC 365-190-030 (8) and provisions considered WAC 365-190-110 Frequently flooded areas.

breeding and feeding grounds of priority species. Frequently flooded areas can filter pollutants from runoff and capture and drain overbank, overland, and coastal flood waters to slow flow velocities and reduce erosion. The following applies to master program protection provisions for frequently flooded areas in shoreline jurisdiction including areas that experience flooding from overbank flows from streams, rivers or lakes; precipitation events; storm runoff, or coastal flooding from high tides, storm surge, wind waves, groundwater flooding, and sea level rise.

(i) **Frequently flooded areas protection.** When preparing, updating, or amending master program frequently flooded area protection provisions, local governments shall implement the following standards and use scientific and technical information. Master program provisions shall include frequently flooded area protection policies and regulations designed to protect people from the hazardous area and protect the ecological functions and values these areas provide. Frequently flooded areas shall be regulated in accordance with the following:

(A) Local governments must plan for projected frequently flooded areas that are influenced by lateral channel migration, and effects of global climate change, including increased storm intensity and overland runoff, compound coastal flooding from sea level rise, elevated high tides, storm and wind waves, and elevated groundwater levels as identified through locally completed vulnerability assessments and statewide data provided by federal and state resource agencies, including ecology.

(B) The ecological functions of frequently flooded areas are affected by ecosystem processes of shorelands and submerged aquatic areas. Therefore, effective protection and restoration of frequently flooded areas must integrate management of upland shorelands as well as submerged areas.

(C) Local governments must consult with the department to identify and map frequently flooded areas and the ecological functions they provide, including the following: floodways, floodplains, Sea Level Rise Hazard Areas, coastal flooding areas, storm surge and precipitation event inundation areas, and high groundwater areas.

(D) Flooding of rivers, streams, lakes, coastal areas, and other shorelines is a natural process that is affected by factors and land uses occurring throughout the watershed. Land use practices and development decisions can disrupt the hydrological processes of the floodplain and increase the rate and volume of runoff, thereby exacerbating natural flood hazards and reducing ecological functions.

(E) Local governments must plan for effects of greater surface runoff on frequently flooded areas caused by increased impervious surfaces from shoreline modifications authorized under shoreline master program.

(F) Structural flood hazard reduction measures, such as diking, have proven to be ineffective to reduce flood hazards. While it is observed that these measures reduce flooding in a portion of the watershed, these efforts largely intensify flooding elsewhere. Moreover, structural flood hazard reduction measures damage ecological functions crucial to fish and wildlife species, bank stability, and water quality. Structural flood hazard reduction measures shall be avoided whenever possible. When structural flood hazard reduction measures are necessary, they shall be accomplished in a manner that assures no net loss of ecological functions and ecosystem-wide processes. In all cases where flood hazard reduction

measures are needed, nature-based solutions shall be explored to the greatest extent possible prior to the implementation of new structural flood hazard reduction efforts. See WAC 173-26-231 Shoreline Modification.

(G) Local governments shall protect frequently flooded areas by:

(I) Establishing adequate buffer zones in aquatic and upland areas to separate incompatible uses from frequently flooded areas to ensure protection of shoreline ecological functions, human health, and safety.

(II) Not allowing new development or the creation of new lots that would cause foreseeable risk from flooding conditions to people or improvements during the life of the development.

(III) Not allowing new development that would require flood hazard reduction structures over the life of the development. Exceptions may be made for the limited instances where flood hazard reduction structures are necessary to protect allowed uses where no alternative locations are available, and no net loss of ecological functions will result.

(IV) Installation of flood hazard reduction structures to protect existing primary residential structures from flood damage may be allowed only when relocation is demonstrated to be infeasible and only if no net loss of ecological functions will result.

(H) Development in floodplains shall not significantly or cumulatively increase flood hazards. Additionally, development in floodplains shall be consistent with the community comprehensive flood hazard management plan adopted pursuant to chapter 86.12 RCW.

(I) New development or new uses in shoreline jurisdiction, including the subdivision of land, shall 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 (CMZ) or floodway.

(J) Short plats, long plats, binding site plans, and other land use actions that create new lots shall be authorized only in instances where all lots within the subdivision provide adequate space for future development and uses that are free from hazards caused by the CMZ or floodway without the use of flood hazard reduction measures. This requirement shall not apply to open space lots or tracts that are created for the sole purpose of isolating the CMZ or floodway from buildable lots and that have no development potential through recorded covenant or other standard that ensures the lot remains in perpetual open space.

(K) The following uses, developments, and activities may be appropriate and/or necessary within the CMZ or floodway:

(I) Actions and developments with the primary purpose of protecting or restoring the shoreline ecosystem-wide processes or ecological functions.

(III) Existing and ongoing agricultural practices, provided that no new restrictions to channel movement occur.

(IV) 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.

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

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

(VII) 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.

(h) **Channel migration zones.** ~~(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 stormwater 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 stormwater 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 natural and 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~~unpredictable flooding, increased sedimentation, and altered erosion patterns. Human

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interference ~~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.

(i) **Channel migration zone protection.**

~~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.)~~

(A) The ~~channel migration zone~~CMZ should be established in a manner that ~~to~~ identifies~~y~~ 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 river action is not a perfect predictor of the future, and that human-caused 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.

(B) 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~~historical migration zone. 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.

(C) 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~~CMZ indicates that in ~~defining~~delineating 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 shoreline management purposes~~:~~.

~~(D) • Within incorporated municipalities and urban growth areas, areas~~Lands separated from the active river channel by legally existing artificial channel constraints that limit channel movement and legally existing structure(s), including transportation facilities~~, which~~that are built above or constructed to remain intact should not be considered within the ~~channel migration zone~~CMZ when all of the following criteria are strictly adhered to:~~.~~

(I) ~~(i)~~ The channel constraints limit lateral channel movement,

(II) ~~(ii)~~ The channel constraints remain foundationally stable through 100-year flows (i.e., have a design with adequate scour considerations),

(III) ~~(iii)~~ The channel constraints undergo ongoing and continu~~ous~~al maintenance that retains the original engineered structure and design, and

(IV) ~~(iv)~~ The channel constraints are built to exceed the design life of the CMZ.

(E) Local governments are encouraged to plan for and facilitate the removal of artificial restrictions to natural channel migration, restoration of off-channel hydrological

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connections, and returning of river processes to a more natural state where feasible and appropriate.

~~• 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.~~

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~~• 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 migration zone unless demonstrated otherwise using scientific and technical information.~~

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(ii) **Channel migration zone standards.** When preparing, updating, or amending master program CMZ protection provisions, local governments shall implement the following standards and use scientific and technical information. Master program provisions shall include CMZ protection policies and regulations designed to protect people from the hazardous area and protect the ecological functions and values these areas provide. CMZs shall be regulated in accordance with the following:

(A) Master programs should include provisions to limit development and shoreline modifications within shoreline jurisdiction CMZs that would result in interference with the natural 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.

(B) The following uses and activities may be appropriate and/or necessary within the CMZ when modern scientific and technical standards demonstrate minimal risk from channel migration:

(I) Modifications or additions to an existing nonagricultural legal use or development, provided that channel migration is not further limited, and that the new development includes appropriate protection of ecological functions, and the provisions of applicable frequently flooded areas and flood hazard reduction modification provisions are met.

(II) Development in urban growth areas, as defined in chapter 36.70A RCW, where existing structures prevent active channel movement and flooding.

(III) 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.

(IV) Development consistent with WAC 173-26-226(1)(f)(i)(I). ~~Master programs shall implement the following principles:~~

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~~(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):

• Stormwater 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

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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.~~

(C) Master programs can protect CMZs using the critical area protection standards of this section or by incorporating these principles and standards within their fish and wildlife habitat conservation area, frequently flooded area, or geologically hazardous area regulations. Alternatively, a local government may choose to designate the channel migration zone as its own shoreline environment designation to provide additional management over allowed uses.

(i) **Critical aquifer recharge areas.** Critical aquifer recharge areas are areas with a critical recharging effect on aquifers used for potable water, including areas where an aquifer that is a source of drinking water is vulnerable to contamination that would affect the potability of the water, or is susceptible to reduced recharge. Aquifer recharge occurs where rainfall; snowmelt; infiltration from lakes, wetlands and streams; or irrigation water infiltrates into the ground and adds to the underground water that can supply a well. Discharge areas are where groundwater meets the ground surface and ultimately flows out from a spring, wetland, stream, lake, estuary, or ocean shore. Wells can also serve as discharge areas.

(i) **Critical aquifer recharge area protection.** Critical aquifer recharge areas have prevailing geologic conditions that allow an infiltration rate that creates a high potential for contamination of groundwater resources or contributes to the replenishment of groundwater. These areas play an essential role in supporting shoreline ecological functions by maintaining stream base flows, filtering water before it reaches the aquifer, ensuring availability of freshwater for riparian vegetation, and cool freshwater storage seeps for replenishing waterbodies during warm seasons. The water table of groundwater aquifers within shoreline jurisdiction is typically close to the surface and shallow. They are therefore susceptible to contamination transported from adjacent upland and aquatic areas and require frequent recharge to maintain their storage volume. Aquifers located in the shoreline jurisdiction of tidally influenced marine waters are at risk ~~to~~of saltwater intrusion with increasing withdrawals as shorelands are developed and sea levels rise.

(A) Local governments must consult with the department of commerce, department of health, and ecology to identify and map critical aquifer recharge areas and the ecological functions they provide.

(B) Local governments shall apply information from department of natural resources' natural heritage program, the department of fish and wildlife, the department, and affected Indian ~~t~~Tribes to identify areas within shoreline jurisdiction where low flow, high water temperatures, and drought conditions threaten terrestrial and aquatic priority species and habitats.

(C) Local governments shall consult with the department to identify aquifers in shoreline jurisdiction along tidally influenced marine waters that are currently or projected to be vulnerable to saltwater intrusion with sea level rise.

(ii) **Critical aquifer recharge area standards.** When preparing, updating, or amending master program critical aquifer recharge area protection provisions, local governments shall implement the following standards and use scientific and technical information. Master program provisions

shall include critical aquifer recharge areas protection policies and regulations designed to protect the functions and values of a community's drinking water by preventing pollution and maintaining supply. Critical aquifer recharge areas shall be regulated in accordance with the following:

(A) Master programs shall consider information relevant to critical aquifer recharge area protection from available water supply planning studies, streamflow restoration plans, and watershed plans.

(B) Master programs shall include critical aquifer recharge area designations, policies, and regulations that manage these areas to prevent uses and development that pose a high risk for polluting sensitive aquifers and impacting their functions.

(2) **Protection of shoreline ecological functions.** Ecological 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. This section 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.

(a) **Applicability.** The protection of shoreline ecological functions is accomplished through the application of the policy of the act and these guidelines at both the planning level when developing, updating, and amending master programs and through the application of the mitigation sequence during implementation of the master program policies and regulations designed to protect ecological functions.

(i) Shoreline ecological function protection shall be integrated into the master program and implemented during project review. These provisions apply throughout shoreline jurisdiction and shall be met for all activities, developments, and uses regardless of the permit or other authorization pathway required.

(ii) These provisions also apply to review during compliance, violation investigation, and enforcement actions.

(iii) Natural and climate change-driven modifications are outside the scope and purview of the master program and cannot be subject to the shoreline ecological protection requirement or the master program no net loss of shoreline ecological function principle. These factors should be considered as part of the master program planning related to sea level rise, frequently flooded areas, geologically hazardous areas, and channel migration zones.

(b) **Principles.** As described in WAC 173-26-186(8), protection of the shoreline environment is an essential statewide policy goal of the act. It is recognized that shoreline ecological functions may be impaired not only by shoreline development subject to the substantial development permit requirement of the act but also by past actions, unregulated activities, and development that is exempt from the act's permit requirements. The principle regarding protecting shoreline ecological

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functions shall be accomplished by master program using an interdisciplinary system of policies and regulations addressing the following:

(i) **Protect existing shoreline ecological functions.** Protect the identified existing in-water shoreline ecological functions and those located within the shorelands. Master programs shall include density, lot size, and impervious surface limitations by shoreline environment designation. Master programs cannot rely on zoning codes or other regulations outside of the master program for these standards.

(ii) **Achieve no net loss.** All new uses or developments have potential or actual short-term or long-term impacts, and 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. As established in WAC 173-26-186(8), these guidelines are designed to ensure, 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:

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(A) 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.

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(B) 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.

(iii) **Restore lost ecological functions.** When new uses or development, redevelopment, or the expansion of existing developments and uses are proposed on sites with degraded buffers and impaired existing functions, the master program shall require the restoration of those functions as necessary to protect the shoreline waterbody from the impacts of the projects.

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(iv) **Identify other opportunities for recovery.** The guidelines are not intended to limit the use of regulatory incentives, voluntary modification of development proposals, and or voluntary mitigation measures that are designed to restore and protect shoreline ecological functions.

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(c) **General standards.** Master programs shall contain policies and regulations that ensure, at a minimum, no net loss of ecological functions necessary to sustain shoreline natural resources.

(i) To achieve this standard while accommodating appropriate and necessary shoreline uses and development, master programs should establish and apply:

(A) Environment designations with appropriate use and development standards consistent with WAC 173-26-211,

(B) Provisions to address the impacts of specific common shoreline uses pursuant to WAC 173-26-241,

(C) Provisions to address impacts of specific common shoreline modifications pursuant to WAC 173-26-231,

(D) Provisions for the protection of critical areas within the shoreline consistent with WAC 173-26-226(1),

(E) Provisions that require the application of mitigation sequencing as defined by WAC 173-26-020(11), including mitigation measures and methods to address unforeseen impacts.

(F) Shoreline buffers as prescribed in WAC 173-26-226(2)(d).

(G) Provisions that conserve vegetation within shoreline jurisdiction consistent with WAC 173-26-226(2)(e).

(H) Water quality protection standards as prescribed in WAC 173-26-226(2)(f).

(ii) To ensure 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. No net loss of shoreline ecological function is the principle from which many master program regulatory standards derive and is not a performance standard that can be varied. Master programs shall require that mitigation sequencing be applied to all projects occurring within shorelines of the state and on shorelands in the following sequence of steps listed in order of 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.

(iii) When new uses or development, redevelopment, or the expansion of existing developments and uses are proposed on sites with degraded buffers and impaired existing functions, the master program shall require either:

(A) The restoration of the buffer functions as necessary to protect the shoreline waterbody from the impacts of the projects, or

(B) The expansion of the buffer area to a width that will allow the degraded functions to minimize the impacts of the proposed development or use.

(iv) 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. Compensatory mitigation measures shall be monitored for a minimum of five years to ensure that performance standards are met.

(v) Master programs shall evaluate and consider cumulative impacts of reasonably foreseeable future development on shoreline ecological functions. To ensure no net loss of ecological functions and protection of other shoreline functions and/or uses, master programs shall contain policies, programs, and regulations that address potential adverse cumulative impacts and fairly allocate the burden of addressing cumulative impacts among development opportunities. The methods of determining reasonably foreseeable future development may vary according to local circumstances, including demographic and economic characteristics and the nature and extent of local shorelines. Evaluation of such cumulative impacts should be undertaken at least once every ten years, during or just prior to the master program periodic review, and should consider:

(A) Current trends and circumstances affecting the shorelines and relevant natural processes,

(B) Reasonably foreseeable future development and use of the shoreline, and

(C) Beneficial or detrimental effects of any established regulatory programs under other local, state, and federal laws.

(d) **Shoreline buffers.** Shoreline buffers are the management areas landward of the ordinary high water mark of the shoreline waterbody, with the shorelands, where development is limited to water-oriented or public access facilities to protect shoreline ecological functions while still fostering appropriate shoreline uses consistent with the act. The purpose of the shoreline buffer is to protect existing shoreline ecological functions and provide space for those functions to protect the shoreline waterbody from the impacts of new uses and development.

(i) **Shoreline buffer/setback standards**. During master program development, update, and amendments, shoreline buffer widths shall be established by considering existing human development, existing shoreline conditions, the science around the protection of shoreline ecological functions, and protecting the built environment from flooding and erosion. The buffer area provides protection of existing functions by limiting uses and developments to only those necessarily located at the water's edge, such as water-dependent, water-related, and water-access components of a project.

(ii) **Degraded shoreline buffers.** If the existing buffer is degrading and not performing essential functions, it may not be adequate to protect the shoreline from all uses, densities, and intensity of development allowed under the master program. In these cases, the buffer may need to be expanded or enhanced to ensure that proposed uses and developments will not adversely impact the shoreline or result in a net loss of shoreline ecological function.

(ii) **Shoreline buffer impacts.** Shoreline buffers may be impacted by water-oriented uses, water access, water-dependent recreational facilities, or as approved through a shoreline variance. Impacts of necessary or appropriate development and uses within shoreline buffers shall be mitigated using the mitigation sequence to assess functional impacts and compensate as necessary to achieve no net loss of shoreline ecological function. This may require the buffer to be extended and/or enhanced.

(e~~5~~) **Shoreline vegetation conservation.**

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~~(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.

(i) **Shoreline vegetation functions and values.** 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. The most commonly recognized functions of shoreline vegetation include, but are not limited to:

(A) Providing the shade necessary to maintain the cool temperatures required by salmonids, spawning forage fish, and other aquatic biota.

(B) Providing organic inputs critical for aquatic life.

(C) Providing food in the form of various insects and other benthic macroinvertebrates.

(D) Stabilizing banks, minimizing erosion, and reducing the occurrence of landslides. The roots of trees and other riparian vegetation provide the bulk of this function.

(E) Reducing fine sediment input into the aquatic environment through stormwater retention and vegetative filtering.

(F) Filtering and vegetative uptake of nutrients and pollutants from ground water and surface runoff.

(G) 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 salmonid rearing and refuge habitat. Abundant large woody debris increases aquatic diversity and stabilization.

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

(I) Providing critical wildlife habitat, including migration corridors and feeding, watering, rearing, and refugia areas.

(ii) **Shoreline v~~V~~egetation ~~conservation~~protection**. Shoreline vegetation conservation provisions include the prevention or restriction of plant clearing and earth grading, vegetation restoration and enhancement, and the control of invasive weeds and nonnative species.

(A) Vegetation conservation policies and regulations shall be applied throughout shoreline jurisdiction, within shoreline water bodies and shorelands. Implementation of vegetation conservation policies applies to upland terrestrial, emergent, and submerged vegetation.

(B) 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.

(C) 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 substantial development permit. Like other master program provisions, vegetation conservation standards do not apply retroactively to existing uses and structures, such as existing agricultural practices.

(D) ~~(b) **Principles.**~~ The intent of vegetation conservation is to protect and restore the ecological functions and ecosystem-wide processes performed by vegetation along shorelines. Vegetated areas along streams that 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.

(E) Vegetation conservation should also be undertaken to protect human safety and property~~,~~ to increase the stability of shorelines, such as river banks, beaches, and coastal bluffs~~,~~ to reduce the need for structural shoreline stabilization measures~~,~~ to support water quality; to slow overland runoff and trap contaminants; to improve the visual and aesthetic qualities of the shoreline~~,~~ to protect plant and animal species and their habitats~~,~~ and to enhance shoreline uses.

(F) In establishing these vegetation conservation guidelines, Ecology has consulted with the Washington state department of fish and wildlife and incorporated applicable shoreline management assistance materials and *Riparian Ecosystem, Volume 2: Management Recommendations*.

(G) Conserving and restoring physical connections between conserved and restored vegetation patches in shoreline environments provides habitat connectivity across parcels~~,~~ and can significantly contribute to ecosystem-wide processes and functions, such providing habitat for species as regional and statewide or even greater scales.

(H) Local governments should implement these objectives through a variety of measures, including clearing and grading regulations, the application of mitigation sequencing, tree retention requirements, and impervious surface limitations. These vegetation conservation provisions should work in concert with shoreline setback and buffer standards, critical area regulations, conditional use requirements for specific uses or areas, and incentives and nonregulatory programs.

(iii) **Shoreline vegetation standards**. In addition to the shoreline and critical area buffers and setbacks required by these guidelines, m~~M~~aster programs shall include p~~: P~~lanning provisions that address vegetation conservation and restoration, and regulatory provisions that ~~address conservation of~~conserve native vegetation throughout shoreline jurisdiction. When preparing, updating, or amending a master program, local governments shall implement the following standards and use scientific and technical information. Master program provisions shall include shoreline vegetation protection policies and regulations designed to achieve no net loss of shoreline ecological functions. Master programs shall:

(A)~~; 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.~~

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~~• 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 stormwater 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 salmonid 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~~C~~ should identify which ecological processes and functions are important to the local aquatic and terrestrial ecology and c~~onserve ~~sufficient~~and protect native vegetation within shoreline jurisdiction~~to maintain them~~. Such vegetation conservation areas are not necessarily intended to be closed to use and development but ~~should~~shall provide for the management of vegetation in a manner adequate to assure no net loss of shoreline ecological functions as demonstrated through the application of the mitigation sequence.~~.~~

(B)

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

Establish vegetation conservation standards that implement the principles in WAC 173-26-22~~61~~ (~~25~~)(~~d~~b)(i) and (ii). Methods to do this ~~may~~should include~~ setback or buffer requirements,~~ clearing and grading standards, tree retention provisions, vegetation replacement ratios, impervious surface limitations based upon ~~regulatory incentives,~~ environment designation, and~~ standards~~ regulatory incentives~~, or other master program provisions~~.

(C) Allow s~~S~~elective ~~pruning of~~ tree prunings~~ for safety and view protection~~ may be allowed~~, provided that the tree's viability and health is not adversely impacted, and tree topping is prohibited. Tree removal can be authorized only after demonstration of mitigation sequencing, and tree replacement ratios must exceed 3:1.

(D) Allow the ~~and the~~ removal of noxious weeds consistent with state or county noxious weed board requirements and recommendations~~sh~~. The removal of non-native and invasive species should be allowed provided that significant non-native and invasive species removal projects include restoration and enhancement with native species.~~ould be authorized.~~

(E) Landscaping and ornamental plantings cannot be used to meet the vegetation conservation, restoration, or enhancement requirements of this chapter.

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

(~~f6~~) **Water quality, stormwater, and nonpoint pollution.**

(~~i~~a) ~~**Applicability**~~**Water Quality.** Ecology's water quality program gathers data and uses it to determine ~~if~~whether Washington's streams, lakes, and marine waters meet the water quality

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and sediment management standards or are polluted. If water bodies are found to be polluted, they are listed as Category 5, which is also called the 303(d) list. Category 4 listings may also be relevant to master program planning, as they can include waterbodies impaired by stream channelization and invasive plant species. Additionally, Category 1 waterbodies meeting the test standards for clean water, may warrant additional protections under the master program to ensure that new uses and development do not create impairments.

(A) The most common water pollution problems are elevated water temperature and high bacteria levels. Other common pollution problems include low dissolved oxygen and toxics, such as harmful algae blooms.

(B) Water quality degradation can adversely impact the ecological function of a waterbody and impair its ability to provide drinking water, recreation, or harvest opportunities.

~~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.~~

(ii~~b~~) ~~**Principles**~~**Water quality, stormwater, and nonpoint pollution protection.** 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:

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

(B) Consider the 303(d) listing when developing, updating, or amending master programs and reflect this data in the master program water quality protection, use regulations, and provisions intended to encourage and foster shoreline restoration.

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

(D) Consider stormwater management program planning as part of master program development, updates, and amendments. This shall include watershed characterizations, stormwater management action plans, stormwater retrofit prioritization, and watershed-scale stormwater plans, if available and applicable.

(iii~~c~~) **Water quality, stormwater, and nonpoint pollution prevention s~~S~~tandards.** When preparing, updating, or amending a master program, local governments shall implement the following standards and use scientific and technical information. Master program provisions shall include shoreline water quality protection policies and regulations designed to achieve no net loss of shoreline ecological functions. Local governments~~Shoreline master programs~~ shall: ~~include provisions to implement the principles of this section.~~

(A) Rely on ecology's stormwater management manuals for western and eastern Washington, as applicable, along with accompanying resources and guidance to manage stormwater generated from new uses and developments within shoreline jurisdiction.

(B) Coordinate and use other master program provisions such as shoreline buffers, vegetation conservation, critical aquifer recharge areas, wetlands, and fish and wildlife habitat conservation protections; shoreline stabilization provisions; channel migration zone protections; use prohibition standards; and regulations that incentivize riparian area restoration as water quality protection standards.

WAC 173-26-231 Shoreline modifications.

(1) **Applicability.** ~~Local governments are encouraged to prepare m~~Master programs must contain provisions ~~that~~ that distinguish the relationship between shoreline modifications and shoreline uses. Shoreline modifications are generally related to construction of a physical element such as a dike, breakwater, dredged basin, or fill, but they can include other actions such as clearing, grading, application of chemicals, or significant vegetation removal. Shoreline modifications ~~usually~~ are undertaken in support of or in preparation for a shoreline use~~.~~; ~~F~~for example, fill is a type of ~~(~~shoreline modification that may be~~)~~ required for a cargo terminal, which is an ~~(~~industrial use, ~~)~~ or dredging ~~(~~may be a shoreline modification necessary~~)~~ to allow for a ~~marina (~~boating facility use such as a marina~~)~~.

The provisions in this section apply to all shoreline modifications within shoreline jurisdiction. Master programs shall reflect the following principles and contain the following standards for each modification type reasonably anticipated to occur within the local government's shoreline jurisdiction.

(2) **General principles applicable to all shoreline modifications.** Master programs shall implement the following principles, which pertain to all modifications within shoreline jurisdiction, whether or not they are listed herein:

~~(a) Allow structural shoreline modifications only where they are demonstrated to be necessary to support or protect an allowed primary structure or a legally existing shoreline use that is in danger of loss or substantial damage or are necessary for reconfiguration of the shoreline for mitigation or enhancement purposes.~~

(a~~b~~) Reduce the adverse effects of shoreline modifications and, as much as possible, limit shoreline modifications in number and extent, except for those modifications and reconfigurations necessary for shoreline ecological restoration or enhancement purposes, which should be fostered, encouraged, and supported.

(b~~f~~) Plan for the enhancement of impaired ecological functions where feasible and appropriate while accommodating permitted uses. As shoreline modifications occur, incorporate all feasible measures to protect ~~ecological~~ shoreline ecological functions and ecosystem-wide processes.

(c) Assure that shoreline modifications individually and cumulatively do not result in a net loss of ecological functions. This is to be achieved by giving preference to those types of shoreline modifications that have a lesser impact on ecological functions and requiring mitigation of identified impacts resulting from shoreline modifications consistent with the mitigation sequence in WAC 173-27-030(11).

(d~~c~~) Allow only shoreline modifications that are appropriate to the specific type of shoreline and environmental conditions for which they are proposed. This shall include consideration of shoreline environment designation and management policies when determining the appropriateness of each modification type within a given shoreline environment designation.

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~~(d) Assure that shoreline modifications individually and cumulatively do not result in a net loss of ecological functions. This is to be achieved by giving preference to those types of shoreline modifications that have a lesser impact on ecological functions and requiring mitigation of identified impacts resulting from shoreline modifications.~~

(e) Where applicable, base provisions on scientific and technical information and a comprehensive analysis of drift cells for marine waters or reach conditions for river and stream systems. Contact the department for available drift cell characterizations.

~~(f) Plan for the enhancement of impaired ecological functions where feasible and appropriate while accommodating permitted uses. As shoreline modifications occur, incorporate all feasible measures to protect ecological shoreline functions and ecosystem-wide processes.~~

(~~f~~g) Where shoreline modifications to address erosion or flooding are warranted and permissible, nature-based solutions should be prioritized over other types of interventions. In order to be classified as a nature-based solution, projects must demonstrate how they are aligned with local shoreline processes. ~~Avoid and reduce significant ecological impacts according to the mitigation sequence in WAC 173-26-201 (2)(e).~~

(3) **Standards for specific shoreline modifications.** Each master program shall include regulations that apply the following standards. Master programs may also include standards for specific shoreline modification types not listed below.

(a) **Access structures**. Access structures provide public or private physical or visual access to the shoreline and include stairs, trams, trails, viewing platforms, towers, and the like.

(i) Master programs should specify where and what types of access structures are allowed. Criteria can include, but are not limited to, shoreline environment designations, bluff height, erosion rates, and visual impacts.

(ii) Adjacent shoreline property owners are encouraged to construct joint access structures where access structures are allowed.

(iii) Access structures shall be designed to be resilient to shoreline change and may need to be adapted overtime.

(iv) Shoreline access structures may not be practical, feasible, or appropriate in all shoreline environments due to dynamic shoreline processes, cumulative impacts, or where the ecological impacts cannot be mitigated.

(b) **Boat launches**. A boat launch is an inclined slab, set of pads, rails, planks, or graded slope used for launching boats with trailers or by hand. Boat launches can be public or private. Boat launches can impact coastal processes similar to a groin by breaking water and sediment flow, displacing vegetation, and inviting more--intensive use of the shoreline.

(i) Boat launches are not appropriate for private residential or recreational properties.

(ii) Boat launches shall be allowed only where necessary to support a water-dependent use or public access facility supported by the management policies of the shoreline environment designation where it will be located.

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(iii) Boat launches should be designed to minimize impacts shoreline ecological functions, including but not limited to minimizing new impervious surfaces within shoreline buffers and the removal of shoreline vegetation to extent feasible.

(ce) **Beach and dunes management.** Washington's beaches and their associated dunes are sensitive ecological areas that require careful management. Much of the state's dune ecosystems lie along the Pacific Ocean coast ~~between Point Grenville and Cape Disappointment~~coinciding with ~~, and as~~ shorelines of statewide significance, which are mandated to be managed from a statewide perspective by the act.

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(i) Beaches and dunes within shoreline jurisdiction shall be managed to conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beaches.

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(ii) Beaches and dunes should also be managed to reduce the hazard to human life and property from natural or human-induced actions associated with these areas.

(iii) Shoreline master programs in coastal marine areas shall provide for diverse and appropriate use of beach and dune areas consistent with their ecological, recreational, aesthetic, and economic values, and consistent with the natural limitations of beaches, dunes, and dune vegetation for development. Coastal master programs shall institute development setbacks from the shoreline to prevent impacts to the natural, functional, ecological, and aesthetic qualities of ~~the~~ dunes.

(iv) "Dune modification" is the removal or addition of material to a dune, the reforming or reconfiguration of a dune, or the removal or addition of vegetation that will alter the dune's shape or sediment migration. Dune modification may be proposed for a number of purposes, including protection of property, flood and storm hazard reduction, erosion prevention, and ecological restoration.

(v) Coastal dune modification shall be allowed only when consistent with state and federal flood protection standards and when it will not result in a net loss of shoreline ecological functions or significant adverse impacts to other shoreline resources and values.

~~Dune modification to protect views of the water shall be allowed only on properties subdivided and developed prior to the adoption of the master program and where the view is completely obstructed for residences or water-enjoyment uses and where it can be demonstrated that the dunes did not obstruct views at the time of original occupancy, and then only in conformance with the above provisions.~~

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(d) **Breakwaters, jetties, groins, and weirs.** These structures are designed to modify the water waves or flow or otherwise impede or alter the water course. As such, breakwaters, jetties, groins, and weirs impact shoreline processes. Local governments should carefully consider where to allow such structures to ensure consistency with the policy of the act, the master program, and the shoreline environment designation management policies.

(i) Breakwater means a barrier built out into a body of water to protect a coast or harbor from the force of waves. -Weir means a low dam built across a river to raise the level of water upstream or regulate its flow. Jetty means a human-made structure that protrudes from land out into water. A jetty may serve as a breakwater, a walkway, or both; or, in pairs, as a means of constricting a channel. Groin means a rigid hydraulic structure built perpendicularly

from an ocean shore or a river bank, interrupting water flow and limiting the movement of sediment. It is usually made out of wood, concrete, or stone.

(ii) Breakwaters, jetties, groins, and weirs located waterward of the ordinary high-water mark shall be allowed only where necessary to support water-dependent uses, public access, shoreline stabilization, or other specific public purpose.

(iii) Breakwaters, jetties, groins, weirs, and similar structures should require a conditional use permit, except for those structures installed to protect or restore ecological functions, such as woody debris installed in streams.

(iv) Breakwaters, jetties, groins, and weirs shall be designed to protect critical areas ~~and shall provide for mitigation according to the sequence defined in WAC 173-26-201 (2)(e)~~.

(e~~f~~) **Dredging and dredge material disposal.** Dredging is the removal of material from the bed of a shoreline waterbody waterward of the ordinary high water mark. Dredge material disposal is the release of dredge material into a shoreline waterbody or the placement of dredge material onto shorelands.

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(i) Dredging and dredge material disposal shall be done in a manner ~~which~~ that avoids or minimizes significant ecological impacts, and impacts ~~which~~ that cannot be avoided should be mitigated in a manner that assures no net loss of shoreline ecological functions.

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(ii) New development should be sited and designed to avoid or, if that is not possible, to minimize the need for new and maintenance dredging.

(iii) Dredging for the purpose of establishing, expanding, ~~or~~ relocating, or reconfiguring navigation channels and basins should be allowed where necessary for assuring safe and efficient accommodation of existing navigational uses, and then only when significant ecological impacts are minimized and when mitigation is provided.

(iv) Maintenance dredging of established navigation channels and basins should be restricted to maintaining previously dredged ~~and/or~~ areas to the existing authorized location, depth, and width.

(v) Dredging ~~waterward of the ordinary high-water mark~~ for the primary purpose of obtaining fill material shall not be allowed, except when the material is necessary for the restoration of ecological functions. ~~When allowed, the site where the fill is to be placed must be located waterward of the ordinary high-water mark.~~ The project must be either associated with a Model ~~T~~Toxics Control Act (MTCA) or Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) habitat restoration project or~~, if approved through a shoreline conditional use permit, any~~ other significant habitat enhancement project.

(vi) Master programs should include provisions for uses of suitable dredge material that benefit shoreline resources and ecological functions. Where applicable, master programs should provide for the implementation of adopted regional interagency dredge material management plans or watershed management planning.

(vii) Disposal of dredge material on shorelands ~~or wetlands~~ within a river's channel migration zone shall be discouraged. In the limited instances where it is allowed, such disposal shall require a conditional use permit. This provision is not intended to address discharge of dredge material

into the flowing current of the river or in deep water within the channel where it does not substantially affect the geohydrologic character of the channel migration zone.

(viii) Dredge material disposal shall not be allowed to negatively impact critical areas, including wetlands, critical saltwater habitats, and critical freshwater habitats. Applications for dredge material disposal may require an aquatic vegetation survey unless there is current information about the presence or absence of aquatic vegetation at a site. Current information means it is collected no more than two years before application submittal.

(iv) A shoreline substantial development permit, exemption from the substantial development permit process, conditional use permit, or variance shall not be required in order to dispose of dredge materials at a disposal site approved through the cooperative planning process referenced in RCW 79.105.500, provided the dredge material disposal proponent obtains a valid site use authorization from the dredge material management program office within the department of natural resources pursuant to RCW 90.58.140(12).

(f) **Fencing**. Fencing is used to demarcate property lines, enclose yards, contain or exclude animals, for safety purposes, to protect mitigation sites, and for other purposes.

(i) Fencing shall be allowed only when consistent with the master program shoreline and critical area protection and buffer standards. This means fencing can be authorized only outside of buffers and setbacks or at the edge of existing development.

(ii) Fencing for safety near steep bluffs that cannot be located outside the buffer and setback may be allowed by master programs and shall be located as far landward from the bluff's edge or top of slope as is feasible. Fencing in this circumstance shall not destabilize the slope or require the removal of trees and other vegetation.

(iii) Fencing proposals shall minimize impacts to views of the shoreline from public spaces, roadways, and nearby properties or homes.

(iv) Fencing proposals shall consider and accommodate the need for wildlife passage and shall otherwise not impact habitat corridors between the shoreline and other critical areas or priority habitats.

(v) Split-rail fencing is allowed around mitigation sites to protect these areas from animal browse and limit human encroachment.

(vii) Fencing to entrain sand to stabilize dunes should be allowed if it is determined by a geotechnical report that the fencing is necessary and sufficient for the proposed purpose.

(viii) Temporary erosion control, tree protection, and other construction fencing shall be allowed associated with authorized shoreline development.

(g~~e~~) **Fill.** 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.

(i) Fills shall be located, designed, and constructed to protect shoreline ecological functions and ecosystem-wide processes, including channel migration.

(ii) Fills waterward of the ordinary high-water mark shall be allowed only when necessary to support:

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(A) A w~~W~~ater-dependent use,

(B) P~~p~~ublic access,

(C) C~~c~~leanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan,

(D) ~~disposal~~ Disposal of dredge~~d~~ material considered suitable under~~,~~ and conducted in accordance with the dredged material management program of the department of natural resources,

(E) ~~expansion~~ Expansion or alteration of transportation facilities of statewide significance currently located on the shoreline, and then only upon a demonstration that alternatives to fill are not feasible,

(F) A mitigation action,

(G) E~~e~~nvironmental restoration,

(H) A beach nourishment or enhancement project.

(iii) Fills waterward of the ordinary high-water mark for any use except ecological restoration should require a conditional use permit.

(iv) Fill in wetlands shall not be allowed. Consistent with the master program critical area protection standards of WAC 173-26-226(1), wetlands area and function shall be protected from impacts such as the placement of fill within wetlands.

(v) Fill on shorelands that creates dry land shall not be allowed.

(h) **Grading and excavation**. Grading is the process of reshaping the land's surface, often using heavy equipment such as a bulldozer, in order to obtain a desired slope.

(i) Grading provisions shall apply to the entirety of shoreline jurisdiction, including areas landward of buffers and setbacks.

(ii) Grading is often done in preparation for authorized shoreline development and should be reviewed together with the use and other development components of the project.

(iii) Grading can cause soil and slope destabilization, result in sediment-laden runoff, and result in loss or redistribution of topsoil.

(iv) Grading is an activity that meets the definition of development; therefore, a permit or other authorization under the master program is needed before grading begins.

(v) All soil exposed as a result of grading must be stabilized and covered to prevent erosion and runoff.

(i) **Mooring buoys**. Mooring buoys are overwater/in-water structures that include an anchor, anchor line, and surface float. Commercial buoys are typically used to temporarily moor a commercial vessel awaiting tide changes or loading or offloading materials. Recreational buoys are used as semi-permanent moorage for recreational vessels.

(i) The preferred buoy system is a mid-line float and an embedded anchor. The mid-line float prevents the anchor line from dragging on the bottom and scouring the benthic environment.

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(ii) Master programs should identify the number, spacing, distance from shore, system design, and ecological siting considerations for mooring buoys.

(iii) Master programs should identify where mooring buoys are allowed, allowed with a conditional use permit, and prohibited.

(iv) All mooring buoy proposals must be reviewed for SMP consistency, whether a shoreline permit is required or not. Even if a mooring buoy project meets the cost threshold for an exemption from the shoreline substantial development permit (SDP) process, the local government may require an SDP where a proposal will impact navigation or interfere with the normal public use of the water or shorelines.

(v) Mooring buoys are prohibited in areas of eelgrass, kelp, or other critical saltwater habitats. Applications for mooring buoys may require an aquatic vegetation survey unless there is current information about the presence or absence of aquatic vegetation at a site. Current information means it is collected no more than two years before application submittal.

(vi) Mooring buoys are preferred over docks when possible. When appropriately located and designed, mooring buoys result in fewer ecological impacts than piers and docks.

(vii) Mooring buoys are commonly located on state-owned aquatic lands. Master programs shall require coordination with the Washington state department of natural resources for all mooring buoy proposals on state-owned aquatic lands. All permit authorizations that include mooring buoys sited on state-owned aquatic lands shall require confirmation of the department of natural resources' authorization through a license, lease, or registration as a condition of approval.

(viii) Mooring buoy siting shall consider potential impacts to navigation, recreational access and uses, and Tribal fisheries. Mooring buoy should not be authorized where they would impact the ability of Tribes to fish in their usual and accustom areas.

(j) **On-site sewage systems (OSS)**. Often referred to as septic systems, on-site sewage systems (OSS) treat wastewater from private residences and other buildings. OSS are common in rural and low-density areas without public sewer systems. OSS can include tanks, pipes, drain fields, reserve drain fields, and other associated components. Local governments are encouraged to coordinate among planning and health departments to ensure that new OSS comply with the requirements of the master program and health code.

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(i) New OSS shall meet all bulk, dimensional, and performance standards of the master program, unless a shoreline variance is granted. Approval by the local health department does not guarantee that an OSS complies with the master program.

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(ii) New OSS must be sited so that shoreline stabilization is not necessary for the life of the development consistent with the shoreline stabilization provisions. To ensure this requirement is met, local governments can require a geotechnical analysis.

(iii) New OSS shall be located outside of flood-prone areas or areas likely to experience inundation from sea level rise. Risk of OSS damage is highest in areas mapped as V Zones and velocity flow A Zones on a Flood Insurance Rate Map. Saltwater intrusion is also likely to damage OSS or render them ineffective.

(iv) Structural flood hazard reduction methods shall not be employed to protect OSS.

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(v) Proposals for new or replacement shoreline stabilization to protect existing OSS must first demonstrate the following:

(A) The existing OSS cannot be relocated

(B) Uses at the site cannot be served by public sewer.

(k) **Outfalls and drainage dispersion systems.** An outfall is a pipe that discharges wastewater, stormwater, or a piped stream to the shoreline water body. Outfalls can discharge above or below the water surface. Drainage dispersion systems, like dispersion trenches and areas, are designed to slow and spread stormwater runoff, promoting infiltration and reducing the volume entering storm drains, while also helping to remove pollutants.

(i) New development and redevelopment shall be designed to manage its wastewater and stormwater onsite, with a preference for drainage dispersion systems over piped outfalls discharging directly into shoreline waterbodies.

(ii) New outfalls shall not be allowed in support of non-water-dependent uses.

(iii) Design and siting of outfalls must comply with the mitigation sequencing in WAC 173-27-030(11).

(iv) To prevent scouring, protect the shoreline bank and bed at the point of discharge using bioengineering methods or other methods approved by the shoreline administrator.

(v) The design and location of outfalls, outflow, and any associated energy dissipaters must not cause adverse effects to the shoreline environment.

(vi) Energy dispersion methods for outfalls should include the following, if applicable, in order of preference:

(A) Maintain all existing natural habitat features, such as large logs, root wads, natural large rocks, or rock shelves;

(B) Pads of native plants (shrubs and grasses) and biodegradable fabric;

(C) Imported habitat components, such as large woody material;

(D) Manufactured in-line energy dissipaters, such as a tee diffuser;

(E) Rounded rock energy dissipation pads; or

(F) Angular rock energy dissipation pads, only if the shoreline administrator or ecology determines that other options are not feasible.

(vii) An outfall pipe or other structural element that crosses a marine beach must be buried deep enough to avoid interrupting the along-shore sediment drift.

(viii) To minimize impacts to in-water habitat, the local government may require that the outlet of submerged outfall piping not protrude above grade landward of minus thirty feet MLLW.

(ix) A seagrass/macroalgae habitat survey is required for new outfall construction adjacent to or within marine waters unless the shoreline administrator can determine the project will not impact seagrass and kelp beds, herring spawning beds, or other macroalgae used as spawning substrate.

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(x) The location and design of outfalls should not conflict with existing public use of the shoreline or adversely impact shoreline views.

(~~l~~b) **Piers and docks.** Docks are structures extending alongshore or out from the shore into a body of water, to which boats may be moored. Piers are raised structures that rise above a body of water and extend out from its shore, typically supported by piles or pillars, and provide above-water access to offshore areas. Common uses of docks and piers include fishing, boat docking, access for both passengers and cargo, and water-related recreation.

(i) New piers and docks shall be allowed only for water-dependent uses or public access. As used here, a dock associated with a single-family residence is a water-dependent use provided that it is designed and intended as a facility for access to watercraft and otherwise complies with the provisions of this section.

(ii) Pier and dock construction shall be restricted to the minimum size necessary to meet the needs of the proposed water-dependent use. Water-related and water-enjoyment uses may be allowed as part of mixed-use development on over-water structures where they are clearly auxiliary to and in support of water-dependent uses, provided the minimum size requirement needed to meet the water-dependent use is not violated.

(iii) New pier or dock construction, excluding docks accessory to single-family residences, should be permitted only when the applicant has demonstrated that a specific need exists to support the intended water-dependent uses. If a port district or other public or commercial entity involving water-dependent uses has performed a needs analysis or comprehensive master plan projecting the future needs for pier or dock space, and if the plan or analysis is approved by the local government and consistent with these guidelines, it may serve as the necessary justification for pier design, size, and construction. The intent of this provision is to allow ports and other entities the flexibility necessary to provide for existing and future water-dependent uses.

(iv) Where new piers or docks are allowed, master programs ~~should~~ shall contain provisions to require new residential development of two or more adjacent dwellings to provide joint use or community dock facilities, ~~when feasible,~~ rather than allow individual docks for each residence. Joint use dock provisions are intended to reduce the number of adjacent single-use docks and are applicable only where multiple adjacent shoreline properties are combining their access to a single point. Community dock facilities provide water access to the public, group, or community as defined by a subdivision to ensure that the subdivision of shoreline property provides shared water access to the full set of parcels, lots, or tracts created by the subdivision.

(v) Piers and docks, including those accessory to single-family residences, shall be designed and constructed to avoid or, if that is not possible, to minimize and mitigate the impacts to ecological functions~~,~~; critical areas ~~resources~~ such as native kelp and eelgrass beds, ~~and~~ fish habitats, and wetlands; and processes such as currents, ~~and~~ littoral drift, lake waves, and riverine flood stage flow velocity. See WAC 173-26-~~221~~ 226-(1~~2~~)~~(c)(iii) and (iv)~~.

(vi) Master programs should require that structures be made of materials that have been approved by all ~~applicable~~ state agencies with regulatory authority over piers and docks.

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(vii) Docks and piers are commonly proposed on state-owned aquatic lands. The master program shall require coordination with the Washington state department of natural resources for all docks and piers proposed on state-owned aquatic lands. All permit authorizations that include docks or piers sited on state-owned aquatic lands shall require confirmation of the department of natural resources' authorization through a license, lease, or registration as a condition of approval.

(m) **Scientific data-collection or monitoring devices.** Scientific data-collection or monitoring devices are installed in water or on shorelands and are intended to collect data or monitor conditions in or near the water. Examples are acoustic receivers anchored to the seafloor to track salmonid migration, passive acoustic monitoring devices, or seismic monitoring devices installed near a dam. Scientific monitoring devices are an appropriate use of the shoreline and shall not require a conditional use permit.

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(i) Master programs should include provisions fostering installation of scientific data-collection or monitoring devices as appropriate uses of the shoreline.

(ii) Installation of scientific data-collection or monitoring devices requires review by the local government and may meet the definition of development and require a shoreline substantial development permit.

(iii) Installation, use, and removal of scientific data-collection or monitoring devices must follow the mitigation sequence and meet no net loss of shoreline ecological functions.

(ng) **Shoreline restoration and habitat ~~and natural systems~~ enhancement projects.** Shoreline restoration and habitat ~~and natural systems~~ enhancement projects include those activities proposed and conducted specifically for the primary purpose of establishing, restoring, or enhancing shoreline ecological functions or habitat for priority species in shoreline jurisdiction~~s~~. Shoreline restoration and habitat enhancement are appropriate uses of the shoreline and shorelands and shall not require a conditional use permit.

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(i) Master programs ~~should~~ shall include provisions fostering shoreline restoration and habitat ~~and natural system~~ enhancement projects. Such projects may include shoreline modification actions such as modification of vegetation, removal of nonnative or invasive plants, nature-based shoreline stabilization, dredging, and filling, provided that the primary purpose of such actions is clearly restoration of the natural character, process, and shoreline ecological functions, and mitigation sequencing is followed. ~~of the shoreline.~~

(ii) Master program provisions ~~should~~ shall ~~assure~~ ensure that the projects address legitimate restoration or habitat enhancement needs and priorities. Local governments shall rely on local watershed restoration plans, salmon recovery plans or the master program restoration plan as sources of local and regional needs and priorities. ~~and facilitate implementation of the restoration plan developed pursuant to WAC 173-26-201 (2)(f).~~

(o) **Tide gates.** Tide gates are structures used to protect personal property, agricultural land, and public infrastructure from flooding due to extreme tides and storm surges by restricting tidal flow to intertidal, shallow subtidal, and brackish estuarine environments.

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(p) **Vertical evacuation structures**. A vertical evacuation structure is a building or tower specially designed to resist earthquake and tsunami forces, and its height allows people to evacuate above the level of tsunami inundation.

(i) Evacuation structures may exceed the height limits otherwise applied to development by the master program, except that any height over 35 feet must still demonstrate consistency with RCW 90.58.320 by ensuring that the views of a substantial number of residences are not obstructed by the siting of the structure.

(ii) Evacuation structures shall be placed outside of shoreline buffers and setbacks whenever possible.

(q) **Upland retaining walls**. Upland retaining walls are structures constructed on shorelands for the purpose of stabilizing steep slopes, creating flat areas, or other purposes unrelated to wave- or current-based shoreline erosion.

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(i) Upland retaining walls shall be located outside of shoreline and critical area buffers except when necessary to stabilize a slope within a shoreline adjacent to a geologically hazardous area.

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(ii) Upland retaining walls intended to create flat areas for landscaping or development envelopes for construction shall be sited landward of shoreline buffers and outside wetland buffers.

(iii) A geotechnical report is required as part of the application submittal package for all retaining walls proposed within or adjacent to geologically hazardous areas. The report must be written by a qualified professional and demonstrate that the retaining wall is necessary and sufficient to prevent slope or bluff failure.

(r) **Vegetation modifications**. Vegetation modification is the clearing, removal, or enhancement of existing vegetation within shoreline jurisdiction.

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(i) Vegetation contributes to the shoreline ecological function. Vegetation modification within shoreline jurisdiction is subject to the mitigation sequence.

(ii) Vegetation modification shall be allowed only if consistent with the master program shoreline vegetation conservation standards.

(iii) Vegetation removal, clearing, or grading occurring landward of required shoreline buffers or setbacks and outside of critical areas and their buffers may be authorized as part of a development proposal in support of an authorized shoreline use, provided the ecological functional impact of the vegetation modification is considered in the application of mitigation sequencing, and all vegetation related impacts are fully minimized and compensated for.

(iv) Vegetation removal, clearing, or grading must occur only landward of required shoreline buffers or setbacks and outside of critical areas and their buffers as part of a development proposal in support of an authorized shoreline use unless:

(A) Necessary to support a water-oriented use or development,

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(B) Necessary to provide shoreline access, or

(C) Necessary as part of a shoreline restoration or enhancement project.

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(v) Vegetation modification standards do not apply to timber harvests under the Forest Practices Act (chapter 76.09 RCW) or agricultural activities occurring on agricultural lands consistent with RCW 90.58.065.

(vi) Noxious weed removal. Noxious weeds are invasive, non-native plants that threaten local ecosystems, fish and wildlife habitats, and agricultural crops. Noxious weeds can include grasses, shrubs, trees, and aquatic plants.

(A) Master programs shall encourage to remove noxious weeds identified on the Washington State Noxious Weed Control Board's noxious weeds lists. Eradication of all Class A plants is required by law.

(B) When revegetation is necessary to discourage re-infestation of noxious weeds or to stabilize bare soils, native plants shall be used.

(C) Aquatic herbicides can be used or applied only by certified applicators or persons under the direct supervision of a certified applicator, and only for those uses covered by the certified applicator's license category. Applicators shall comply with all conditions of the Noxious Weed Control Permit.

(vii) Vegetation modification for the removal of non-native or invasive species not included on the Washington State Noxious Weed Control Board's noxious weed list, shall be authorized either:

(A) As part of a shoreline restoration or habitat enhancement project permit review; or

(B) As part of the associated construction permit (grading or clearing permit). This action is still subject to the mitigation sequence. Significant non-native or invasive vegetation removal will require re-vegetation with native species as both site stabilization and to ensure no net loss of shoreline ecological function.

(s) **In-stream ~~structural uses~~structures.** "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.

(i) In-stream structures shall provide for the protection and preservation of ecosystem-wide processes, ecological functions, and cultural resources including, but not limited to, fish and fish passage, wildlife and water resources, critical areas, hydrogeological processes, and natural scenic vistas.

(ii) 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.

(3) ***~~Provisions for specific shoreline modifications.~~***

~~(a)~~ **Shoreline stabilization.**

(~~a~~i) **Applicability.** Shoreline stabilization includes actions taken to address the impacts of erosion ~~impacts to property~~on development ~~and dwellings, businesses, or structures~~ caused by the natural process~~es of es, such as~~ current~~s~~, ~~flood,~~ tides, ~~wind, or~~ wave action, stream flow or velocity, or wind wearing down and carrying away material over time. These actions include structural and nonstructural methods intended to mitigate shoreline erosion. Nonstructural methods include building setbacks, relocation of the at-risk structure, groundwater management, and planning and regulatory measures to avoid the need for structural stabilization. Shoreline erosion risks can be

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mitigated by measures including avoiding development in erosion hazard areas, relocating at-risk structures, and managing runoff to reduce or stop the loss of material. Therefore, shoreline stabilization represents one of a set of options. Shoreline stabilization is not an appropriate approach to mitigate the impacts of coastal flooding, which is addressed below in subsection (4) flood hazard reduction modifications. ~~These actions include structural and nonstructural methods.~~

~~Nonstructural methods include building setbacks, relocation of the structure to be protected, groundwater management, planning and regulatory measures to avoid the need for structural stabilization.~~

(b~~ii~~) **Principles.** Shorelines are by nature unstable, although in varying degrees. Erosion and accretion are natural processes that provide ecological functions and thereby contribute to sustaining the natural resource and shoreline ecological function~~y of the shoreline~~. Master programs must protect the ecological functions of the shoreline from the impacts of stabilization.~~Human use of the shoreline has typically led to hardening of the shoreline for various reasons including reduction of erosion or providing useful space at the shore or providing access to docks and piers.~~

~~The impacts of hardening any one property may be minimal but cumulatively the impact of this shoreline modification is significant.~~

(i) Hard shoreline stabilization measures refer to those with solid, hard surfaces, such as rock revetments, bulkheads, and sheet pile walls. Hard s~~S~~horeline ~~hardening~~ stabilization~~typically~~ results in adverse impacts to shoreline ecological functions~~, such as:~~including sediment impoundment and beach starvation, beach or channel scour, channel restrictions, loss of shoreline vegetation, decrease in large woody debris and other organic material inputs, habitat degradation, and loss of critical saltwater and freshwater habitat.

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~~• Beach starvation. Sediment supply to nearby beaches is cut off, leading to "starvation" of the beaches for the gravel, sand, and other fine-grained materials that typically constitute a beach.~~

~~• Habitat degradation. Vegetation that shades the upper beach or bank is eliminated, thus degrading the value of the shoreline for many ecological functions, including spawning habitat for salmonids and forage fish.~~

~~• Sediment impoundment. As a result of shoreline hardening, the sources of sediment on beaches (eroding "feeder" bluffs) are progressively lost and longshore transport is diminished. This leads to lowering of down-drift beaches, the narrowing of the high tide beach, and the coarsening of beach sediment. As beaches become more coarse, less prey for juvenile fish is produced. Sediment starvation may lead to accelerated erosion in down-drift areas.~~

~~• Exacerbation of erosion. The hard face of shoreline armoring, particularly concrete bulkheads, reflects wave energy back onto the beach, exacerbating erosion.~~

~~• Groundwater impacts. Erosion control structures often raise the water table on the landward side, which leads to higher pore pressures in the beach itself. In some cases, this may lead to accelerated erosion of sand-sized material from the beach.~~

~~• Hydraulic impacts. Shoreline armoring generally increases the reflectivity of the shoreline and redirects wave energy back onto the beach. This leads to scouring and lowering of the beach, to coarsening of the beach, and to ultimate failure of the structure.~~

~~• Loss of shoreline vegetation. Vegetation provides important "softer" erosion control functions. Vegetation is also critical in maintaining ecological functions.~~

~~• Loss of large woody debris. Changed hydraulic regimes and the loss of the high tide beach, along with the prevention of natural erosion of vegetated shorelines, lead to the loss of beached organic material. This material can increase biological diversity, can serve as a stabilizing influence on natural shorelines, and is habitat for many aquatic-based organisms, which are, in turn, important prey for larger organisms.~~

~~• Restriction of channel movement and creation of side channels. Hardened shorelines along rivers slow the movement of channels, which, in turn, prevents the input of larger woody debris, gravels for spawning, and the creation of side channels important for juvenile salmon rearing, and can result in increased floods and scour.~~

(ii) The impacts of hardening any one property may ~~be~~seem minimal, but cumulatively the impact of this shoreline modification ~~is~~can be significant.

(iii) Structural shoreline stabilization often results in vegetation removal and damage to near-shore or in-stream habitat and can disconnect shoreline habitat corridors. Therefore, master program provisions related to shoreline stabilization shall also be consistent with and implement the shoreline ecological protection provisions of WAC 173-26-226(2), vegetation conservation requirements, and where applicable, WAC 173-26-226(1), critical areas.

(iv) ~~Additionally, hard structures, especially vertical walls, often create conditions that lead to failure of the structure. In time, the substrate of the beach coarsens and scours down to bedrock or a hard clay.~~ The hard face of some shoreline stabilization structures, particularly vertical walls and bulkheads, reflect wave and stream energy, which can lead to scouring and lowering of the substrate, coarsening, and ultimate failure of the structure when t~~T~~he footings of bulkheads are exposed~~, leading to~~ and undermined~~ing and failure~~. ~~This process is exacerbated when the original cause of the erosion and "need" for the bulkhead was from upland water drainage problems.~~ In addition, shoreline stabilization structures may raise water tables on the landward side, which may also accelerate the erosion of sand-sized material from the beach. Failed bulkheads and walls adversely impact beach aesthetics, may be a safety or navigational hazard, and may adversely impact shoreline ecological functions. Master programs must ensure that any shoreline stabilization that is allowed is suitable for the environment for which it is proposed and that plans are made to maintain and eventually decommission stabilization structures at the end of their lifespan.

(v) Master programs must prioritize nature-based solutions to address shoreline erosion over other shoreline stabilization approaches. Nature-based solutions employ naturally occurring ~~"Hard" structural stabilization measures refer to those with solid, hard surfaces, such as concrete bulkheads, while "soft" structural measures rely on less rigid~~ materials and softer measures, such as ~~biotechnical~~ vegetation, ~~-~~large woody material, or naturally occurring substrate. ~~measures or beach enhancement. There is a range of measures varying from soft to hard that include:~~In some cases, nature-based solutions may use hard materials, though only when aligned with the natural shoreline processes of the site. Hard materials refers to rocks, large wood, gravel/cobble, and other solid natural materials. Generally, the harder the construction measure, the greater the impact on shoreline processes, including sediment transport, geomorphology, and biological functions. There is a range of nature-based solution alternatives varying from soft to hard that include:

(A) ~~•~~ Vegetation enhancement;

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- (B) Upland drainage control;
- (C) Biotechnical measures;
- (D) Beach enhancementnourishment;
- (E) Wood placement or aAnchor trees;
- (F) Gravel/cobble placement;
- (G) Rock Dynamic revetments;
- ~~Gabions;~~
- ~~Concrete groins;~~
- ~~Retaining walls and bluff walls;~~
- ~~Bulkheads; and~~
- ~~Seawalls.~~

~~Generally, the harder the construction measure, the greater the impact on shoreline processes, including sediment transport, geomorphology, and biological functions.~~

~~Structural shoreline stabilization often results in vegetation removal and damage to near-shore habitat and shoreline corridors. Therefore, master program shoreline stabilization provisions shall also be consistent with WAC 173-26-221(5), vegetation conservation, and where applicable, WAC 173-26-221(2), critical areas.~~

(vi) In order to implement RCW 90.58.100(6), ~~and avoid or mitigate adverse impacts to shoreline ecological functions where shoreline alterations are necessary to protect single-family residences and principal appurtenant structures in danger from active shoreline erosion, master programs should include standards setting forth the circumstances under which alteration of the~~ shoreline stabilization may be authorized for the protection of existing single-family residences and principal appurtenant structures documented to be in danger of damage or loss from active shoreline erosion, provided the design avoids impacts by employing nature-based solutions and results in no net loss of shoreline ecological functions. ~~is permitted, and for the design and type of protective measures and devices.~~

(vii) Limit the size of stabilization measures to the minimum necessary to abate the shoreline erosion hazard to an existing residence or primary structure.

(viii) Ensure that shoreline stabilization measures do not restrict appropriate public access to the shoreline or reduce public access opportunities on public lands. Shoreline stabilization projects on public lands shall incorporate ecological restoration and public access improvements into the project.

(ix) New and replacement shoreline stabilization measures should not affect beach sediment-producing areas and should not be allowed on feeder bluffs. If total avoidance is not possible, the shoreline stabilization alternative chosen should minimize impacts to sediment conveyance systems and processes.

(x) Where sediment conveyance systems cross jurisdictional boundaries, local governments should coordinate shoreline management efforts. If beach erosion is threatening existing development, local governments should adopt master program provisions for a beach management district or other institutional mechanism to provide comprehensive mitigation for the cumulative adverse impacts.

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(c~~iii~~) **General shoreline stabilization standards.** In order to avoid the individual and cumulative net loss of ecological functions attributable to shoreline stabilization, master programs shall implement the above principles and apply the following standards:

(i~~A~~) New development ~~should~~ shall be located and designed to avoid the need for future shoreline stabilization ~~to the extent feasible~~.

~~Subdivision of land must be regulated to assure that the lots created will not require shoreline stabilization in order for reasonable development to occur using geotechnical analysis of the site and shoreline characteristics.~~ (ii) New development shall demonstrate that shoreline stabilization will not be necessary for the life of the development, use, and/or structure. A lack of sufficient demonstration shall be grounds for denial of the development proposal. New development on steep slopes or bluffs shall be set back sufficiently to ensure that shoreline stabilization is unlikely to be necessary during the life of the structure, as demonstrated by a geotechnical analysis consistent with the geologically hazardous critical area provisions of WAC 173-26-226. ~~New development that would require shoreline stabilization which causes significant impacts to adjacent or down-current properties and shoreline areas should not be allowed.~~

(iii) Subdivision regulations must ensure that all lots created will not require shoreline stabilization to accommodate reasonably foreseeable allowed uses. In shoreline jurisdiction, this will require a geotechnical analysis of the site and shoreline characteristics prepared by a qualified professional.

(iv) Nature-based solutions are the preferred approach to address erosion when stabilization is necessary. Nature-based solutions use naturally occurring processes and materials and offer multiple benefits.

(A) If a nature-based solution to address erosion is proposed, the requirement to demonstrate danger to the primary structure within three years can be waived. Nature-based solutions may need to be implemented earlier before erosion has reached a critical threshold. A geotechnical report providing conclusive evidence of erosion, and containing all the other components in subsection (d) below, is still required.

(v) In order to implement RCW 90.58.100(6), master programs shall include standards setting forth the circumstances under which shoreline stabilization may be authorized for the protection of existing single-family residences and principal appurtenant structures documented to be in danger of damage or loss from active shoreline erosion. These standards shall apply to existing structures occupied prior to January 1, 1992, and may be applied to structures permitted prior to the effective date of the comprehensive master program update. For the purposes of this provision, principal appurtenance to a single-family residence means attached garages and driveways, and does not include decks, fences, grading, or on-site sewage systems or other secondary appurtenances or accessory developments. The master program must still require demonstration of the mitigation sequence and other applicable master program provisions for demonstration of need and effectiveness of the proposed shoreline stabilization to protect the structure.

(vi~~B~~) For the protection of legally established existing primary structures and water-oriented development, allow new, enlarged, or expanded shoreline stabilization only when demonstrated to be necessary to protect such structures or developments from loss or substantial damage from erosion caused by currents, tides, wave action, flowing water, or wind. If need is demonstrated through a geotechnical analysis, the proposed alternative solution must also:

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(A) Be shown to be appropriate,

(B) Demonstrate that it will ameliorate the hazard,

(C) Prove that the proposed shoreline stabilization will adequately protect the existing structure from erosion, and

(D) Be the least ecologically damaging alternative.

~~New structural stabilization measures shall not be allowed except when necessity is demonstrated in the following manner:~~

~~(I) To protect existing primary structures:~~

~~• New or enlarged structural shoreline stabilization measures for an existing primary structure, including residences, should not be allowed unless there is conclusive evidence, documented by a geotechnical analysis, that the structure is in danger from shoreline erosion caused by tidal action, currents, or waves. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need. The geotechnical analysis should evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural shoreline stabilization.~~

~~• The erosion control structure will not result in a net loss of shoreline ecological functions.~~

~~(II) In support of new nonwater-dependent development, including single-family residences, when all of the conditions below apply:~~

~~• The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.~~

~~• Nonstructural measures, such as placing the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.~~

~~• The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report. The damage must be caused by natural processes, such as tidal action, currents, and waves.~~

~~• The erosion control structure will not result in a net loss of shoreline ecological functions.~~

(vii) Allow new, enlarged, or expanded shoreline stabilization in support of new water-dependent development ~~(III) In support of water-dependent development~~ when all of the conditions below apply:

(A) ~~•~~ The erosion is caused by currents, tides, wave action, flowing water, or wind and is not ~~being caused~~the result of ~~by~~ upland conditions, such as the loss of vegetation and drainage.

~~• Nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.~~

(B) ~~•~~ The need to protect primary water-dependent structures from damage due to erosion is demonstrated through a geotechnical report.

(C) The proposed solution must also be shown to be appropriate, that it will ameliorate the hazard, adequately protect the water-dependent structure, and be the least ecologically damaging solution.

(D) ~~• The erosion control structure will not result in a net loss of shoreline ecological functions.~~All proposals for new, enlarged, or expanded shoreline stabilization must demonstrate that they will not result in a net loss of shoreline ecological functions for the life of the shoreline stabilization structure or measure.

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(viii) All proposal for new, enlarged, or expanded shoreline stabilization must demonstrate that they will not result in a net loss of shoreline ecological functions for the life of the shoreline stabilization structure or measure.

(ix~~IV~~) Allow shoreline stabilization measures as a secondary project component as necessary to achieve shoreline ecological restoration or enhancement~~To protect project~~or ~~s for the restoration of ecological functions or~~ for hazardous substance remediation projects pursuant to chapter 70.105D RCW, provided the substantive and procedural requirements of these guidelines are met.~~when all of the conditions below apply:~~

~~• Nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.~~

~~• The erosion control structure will not result in a net loss of shoreline ecological functions.~~

(x~~C~~) An existing shoreline stabilization ~~structure~~ may be replaced only ~~with a similar structure~~ if there is a demonstrated need to protect an existing legally established ~~principal uses or~~primary structure, road, or water-~~-~~oriented development ~~s~~ from erosion caused by currents, ~~tidal action~~tides, ~~or~~ wave action, flowing water, or winds~~s~~.

(A) For purposes of this provision, "replacement" means the construction of new shoreline stabilization to perform the erosion-control function of an existing shoreline stabilization that can no longer adequately serve its purpose. If any portion of the existing shoreline stabilization is beyond repair, the entire project is subject to this section. Repair and maintenance is limited to minor actions and does not include reconstruction or new construction.

(B) Replacement is an opportunity to consider changing shoreline conditions, plan for resilience, implement less ecologically impactful alternatives, and ensure that health and safety concerns are addressed.

~~• For purposes of this section standards on shoreline stabilization measures, "replacement" means the construction of a new structure to perform a shoreline stabilization function of an existing structure which can no longer adequately serve its purpose. Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.~~The replacement structure should be designed, located, sized, and constructed to assure no net loss of ecological functions.

(C) Any existing~~• Replacement~~ walls or bulkheads being replaced shall not encroach waterward of the ordinary high-water mark or waterward of the existing stabilization structure. The existing wall or bulkhead shall be removed as part of the replacement project. ~~unless the residence was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure.~~

(D) Nature-based solutions and soft shoreline techniques used in replacement projects can be allowed waterward of the ordinary high-water mark.

~~• Where a net loss of ecological functions associated with critical saltwater habitats would occur by leaving the existing structure, remove it as part of the replacement measure.~~

~~• Soft shoreline stabilization measures that provide restoration of shoreline ecological functions may be permitted waterward of the ordinary high-water mark.~~

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~~• For purposes of this section standards on shoreline stabilization measures, "replacement" means the construction of a new structure to perform a shoreline stabilization function of an existing structure which can no longer adequately serve its purpose. Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.~~

~~Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need. The geotechnical analysis should evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural shoreline stabilization.~~

~~(D) Geotechnical reports pursuant to this section that address the need to prevent potential damage to a primary structure shall address the necessity for shoreline stabilization by estimating time frames and rates of erosion and report on the urgency associated with the specific situation.~~ (d) **Geotechnical report.** Require geotechnical reports for demonstration of need for all shoreline stabilization proposals. ~~As a general matter, h~~Hard ~~armoring~~ shoreline stabilization measures ~~solutions should~~ shall not be authorized except when a report confirms that there is a significant possibility that ~~such a structure~~an existing primary structure will be damaged within three years as a result of shoreline erosion in the absence of such hard ~~armoring~~ stabilization measures, or where waiting until the need is that immediate would foreclose the opportunity to use measures that avoid impacts on ecological functions. ~~Thus, where the geotechnical report confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as the three years, that report may still be used to justify more immediate authorization to protect against erosion using soft measures.~~Geotechnical reports sufficient to demonstrate need for shoreline stabilization along marine shorelines must meet the following criteria:

(i) Be prepared by a qualified professional with demonstrated expertise in coastal processes and who holds a valid Professional Engineering or Professional Geologist license in the state of Washington.

(ii) Describe relevant site-specific conditions including, but not limited to, shore type, surface and subsurface geologic conditions, landslide hazards, groundwater influences, site elevations, beach substrate, water levels, relative sea level rise rates and projected inundation, wave conditions, and sediment transport patterns.

(iii) Demonstrate the need for shoreline stabilization, including the cause of erosion, the timescales on which erosion is occurring (episodic, chronic, etc.), and estimated erosion rate relative to setback distance(s) from each primary structure.

(iv) Include a plan and cross-section of the proposed shoreline stabilization relative to site-specific conditions identified in (d)(ii). Elevations must be referenced to standard vertical datum (for example, mean lower low water or North American Vertical Datum of 1988).

(v) Include an alternatives analysis in accordance with (e) below. Demonstrate that the proposed chosen alternative will effectively ameliorate the erosion hazard and protect the structure or development.

(vii) Demonstrate that the design minimizes the size and extent of the proposed stabilization and will not result in unmitigated impacts to the shoreline processes and functions.

(e~~E~~) **Alternatives analysis.** ~~When any structural shoreline stabilization measures are demonstrated to be necessary, pursuant to above provisions.~~If the required geotechnical report identifies an erosion problem that needs management, an analysis of potential alternatives is required.

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(i) The report must review the feasibility of the full set of options available, describe the feasibility and efficacy of options, and select the least ecologically impactful alternative that effectively addresses the erosion hazard. Alternatives evaluated should, at a minimum, include the following, in order of less impactful to more impactful:

(A) Planting vegetation.

(B) Improving upland drainage.

(C) Beach nourishment.

(D) Relocating the threatened structure(s).

(E) Implementing a nature-based solution.

(F) Installing hard stabilization such as a bulkhead or seawall.

(i) The chosen alternative must be shown to be:

(A) Appropriate for the erosion issue identified

(B) Consistent with the shoreline management policies for the shoreline environment designation it is proposed in.

(C) Ameliorate the erosion hazard or otherwise adequately protect the primary structure from the erosion hazard.

(D) The least impactful alternative. All proposal for new, enlarged, or expanded shoreline stabilization must demonstrate that they will be the least impactful to the shoreline natural process during the life of the shoreline stabilization structure or measure.

(f) **Ecological impact analysis.** All proposals for new, enlarged, expanded, or replacement shoreline stabilization must demonstrate that they will not result in a net loss of shoreline ecological functions for the life of the shoreline stabilization structure or measure. This shall include a comparison of the alternatives analysis and a recommendation for the least ecologically impactful alternative. Consistent with the mitigation sequence, proposals shall include an assessment of the site-specific shoreline ecological functions and identify any critical areas, demonstrate avoidance, propose techniques to minimize unavoidable impacts, and include compensatory mitigation for unavoidable impacts as necessary to achieve no net loss of shoreline ecological functions.

~~• Limit the size of stabilization measures to the minimum necessary. Use measures designed to assure no net loss of shoreline ecological functions. Soft approaches shall be used unless demonstrated not to be sufficient to protect primary structures, dwellings, and businesses.~~

~~• Ensure that publicly financed or subsidized shoreline erosion control measures do not restrict appropriate public access to the shoreline except where such access is determined to be infeasible because of incompatible uses, safety, security, or harm to ecological functions. See public access provisions; WAC 173-26-221(4). Where feasible, incorporate ecological restoration and public access improvements into the project.~~

~~• Mitigate new erosion control measures, including replacement structures, on feeder bluffs or other actions that affect beach sediment producing areas to avoid and, if that is not possible, to minimize adverse impacts to sediment conveyance systems. Where~~

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~~sediment conveyance systems cross jurisdictional boundaries, local governments should coordinate shoreline management efforts. If beach erosion is threatening existing development, local governments should adopt master program provisions for a beach management district or other institutional mechanism to provide comprehensive mitigation for the adverse impacts of erosion control measures.~~

~~(F) For erosion or mass wasting due to upland conditions, see WAC 173-26-221 (2)(c)(ii).~~

(g) **Additional standards for marine waters.**

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(i) Master programs shall apply use regulations and development standards to limit stabilization along marine shorelines in order to avoid cumulative and site-scale loss of ecological functions caused by the disruption of the natural processes of erosion, transport, and deposition.

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(ii) Master programs shall protect shoreline development from erosion primarily by locating new development where it is not at risk of coastal erosion or bluff failure, per WAC 173-26-241 and WAC 173-26-226(1).

(iii) Shoreline stabilization is typically not allowed along marine shorelines, except for in the specific circumstances listed in subsection (c). New shoreline stabilization on marine shorelines shall not be allowed in the following circumstances:

(A) Along feeder bluffs. Feeder bluffs play an essential role in marine ecosystems by delivering sediment to beaches. Additionally, feeder bluffs typically have high erosion rates and serious slope stability issues that cannot be safely mitigated by typical stabilization actions.

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(B) Along accretion shoreforms. By definition, these areas are not eroding.

(C) Where coastal flooding, rather than erosion, is the primary hazard.

(D) Where the area landward of the proposed stabilization structure is lower than the elevation of projected water levels (inclusive of sea level rise protections) during daily high tides during the expected lifespan for the structure being protected. If erosion hazards are also present at these locations, stabilization may be allowed if the proposed project includes strategies to effectively address the flooding hazard per section (iv) below, if the stabilization is temporary and part of an adaption pathway, and if all other requirements of this section are met.

(E) New shoreline stabilization to address the erosion hazard should not be approved if the site, its on-site sewage system, or its access is likely to experience regular coastal flooding that cannot be addressed or mitigated with the proposed stabilization structure.

(iv) If the geotechnical report identifies an erosion problem that needs management, additional analysis of the efficacy of the proposed solution is required. The analysis must demonstrate that the proposed solution fully considers the site characteristics, including elevations of the ground, primary structure, and proposed stabilization; projected sea level rise inundation under daily high tides and selected storm scenarios over a logical timeframe for the life of the development being protected; and other attributes including roadway access, utilities, and on-site sewage systems, if applicable.

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(v) Additional standards for managing existing stabilization along marine shorelines.

(A) Shoreline stabilization is common along marine shorelines. Given that stabilization is located near ordinary high water, all marine shoreline stabilization will be exposed to sea level rise in the coming decades. Master programs should facilitate phased adaptation of stabilization and lands and buildings it protects as thresholds are reached and when redevelopment or significant improvements are proposed. This could be accomplished by developing an adaptation pathway where stabilization is maintained until a threshold is reached to allow time to prepare to relocate existing at risk development.

(B) Existing stabilization may be repaired and maintained but should not be raised or otherwise expanded unless it is protecting a water-dependent use. Vertical extensions of shoreline stabilization structures are unlikely to address coastal erosion or flooding issues and should not be authorized unless demonstrated to ameliorate the identified erosion risk.

(C) Proposals for replacement of shoreline stabilization within Sea Level Rise Hazard Areas must go through the same process and provide the same analysis and demonstration of need as new stabilization.

(D) Master programs should establish thresholds for when stabilization is considered derelict or nonfunctional, such as when annual high tides overtop the structure. These stabilization structures should then be prioritized for removal.

(E) WAC 173-26-246(8)(f) requires an adaptation plan for new development within Sea Level Rise Hazard Areas when development cannot be feasibly sited and designed to avoid or accommodate impacts; this also applies to shoreline stabilization. Plans should describe expected triggers, thresholds, or timetables for the future maintenance, and how the structures or elements will be adaptively managed or replaced over time.

(4) **Flood hazard reduction modifications**.

(a) **Applicability.**

(i) Flood hazard reduction modifications are shoreline modifications whose primary purpose is to address the impacts of flooding. Flooding refers to water temporarily covering areas that are normally dry land. Flooding is a natural process that provides ecological benefits, including habitat creation and transport of nutrients and organic material throughout systems. Flooding can also create a hazard for people and development.

(ii) Flood hazard reduction measures may consist of nonstructural measures, such as setbacks, land use controls, wetland restoration, dike removal, use relocation, biotechnical measures, and stormwater management programs; and structural measures, such as dikes, levees, revetments, floodwalls, channel realignment, and elevation of structures consistent with the National Flood Insurance Program.

(iii) Principles and standards for frequently flooded area ecological protection through master programs are described in WAC 173-26-226(1). Principles and standards specific to flood hazard reduction measures that involve modifying the shoreline are described in this subsection.

(b) **Principles.**

(i) Flooding of rivers, streams, lakes, coastal areas and other shorelines is a natural process that is affected by factors and land uses occurring throughout the watershed. -Land use practices and development decisions have disrupted the hydrological processes of the floodplain and has

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increased the rate and volume of runoff, thereby exacerbating natural 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. The most effective means of flood hazard reduction is to prevent or remove development in frequently flooded areas, to effectively manage stormwater within the watershed, and to maintain or restore the natural hydrological and geomorphological processes within the floodplain.

(ii) Structural flood hazard reduction measures, such as diking, have proven to be ineffective to reduce flood hazards. While it is observed that these measures reduce flooding in a portion of the watershed, these efforts largely intensify flooding elsewhere. Moreover, structural flood hazard reduction measures can damage ecological functions crucial to fish and wildlife species, bank stability, and water quality. Structural flood hazard reduction measures shall be avoided whenever possible. When structural flood hazard reduction measures are necessary, they shall be accomplished in a manner that assures no net loss of ecological functions and ecosystem-wide processes. In all cases where flood hazard reduction measures are needed, nature-based solutions shall be explored to the greatest extent possible prior to the implementation of new structural flood hazard reduction efforts.

(iii) Structural shoreline modifications to address flood risk are not preferred. It is preferred that new structures not be sited in areas vulnerable to flooding. For existing development, relocating, removing, and elevating structures are preferred over modifying the shoreline.

(iv) Pursuant to 90.58.100(2)(h), master programs shall include provisions that give consideration to the statewide interest in the prevention and minimization of flood damage. 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 development from being sited in hazardous areas, to relocate existing development out of the hazardous area, to manage stormwater within the floodplain, and to maintain or restore river and stream systems' natural hydrological and geomorphological processes.

(v) Nature-based solutions are the preferred approach to address flooding when shoreline modifications are necessary.

(c) **Standards for fresh water.**

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(i) 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 173-26-226.

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(ii) Require an alternatives analysis to confirm 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.

(iii) 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.

(iv) 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.

(v) Public flood hazard reduction measures, such as dikes and levees, shall 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.

(vi) 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.

(d) **Standards for marine waters.**

(i) Shoreline modifications intended to reduce coastal flood hazards may include berms, levees, dikes, bioswales, floodwalls, revetments, and other similar structures. These structures have the primary purpose of protecting property or assets from impacts of coastal flooding and are different from shoreline stabilization structures intended to mitigate coastal erosion.

(ii) Flood hazard reduction modifications are only one of several options available to mitigate coastal flooding. These shoreline modifications are appropriate only in limited circumstances, such as when an existing water-dependent use must be protected, or as part of an adaptation pathway that involves protecting existing infrastructure until it can be relocated.

(iii) As with requirements for all types of shoreline modifications, flood hazard reduction modifications along marine shorelines must achieve no net loss of shoreline ecological function.

(iv) All flood hazard reduction modifications installed along marine shorelines must be designed for sea level rise by considering water levels, including coastal storms, over the life of the modification and the development it is intended to protect.

(v) Proposed coastal flood hazard reduction modifications, including adaptive management of nature-based solutions, must demonstrate that they will effectively address the flood hazard for their intended lifespan.

[Statutory Authority: RCW 90.58.060 and 90.58.200. WSR 04-01-117 (Order 03-02), § 173-26-231, filed 12/17/03, effective 1/17/04.]

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 developments 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.**

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(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 that 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.

(v) For local governments required to plan for sea level rise, ensure that existing and planned shoreline uses are compatible with sea level rise projections and expected future conditions. Comparison between identified sea level rise vulnerabilities and shoreline uses is required by WAC 173-26-246 (6)(d).

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(b) **Conditional uses.**

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(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:

(A) To effectively address unanticipated uses that are not classified in the master program as described in WAC 173-27-030.

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(B) To address cumulative impacts.

(C) To provide the opportunity to require specially tailored environmental analysis or design criteria for types of uses or developments that may otherwise be inconsistent with a specific environment designation within a master program or with the Shoreline Management Act policies.

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(ii) A 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.

(iii) If master programs permit the following types of uses and developments, 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.

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(B) Uses and development whichthat, 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.

(iv~~ii~~) 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 RCW 90.58.065 and 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) and WAC 173-27-040.

(iv) Master programs shall use definitions ~~consistent with~~ the definitions found in RCW 90.58.065. ~~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 uses 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.

(I) Measures appropriate to meet these requirements include provisions addressing water quality protection~~,~~ and vegetation conservation, as described in WAC 173-26-2260 ~~(5) and (6)~~.

(II) Requirements for buffers for new 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 is subject to the master program and its permit system.

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(vii) County participation in the voluntary stewardship program does not change applicability of the Shoreline Management Act or requirements of the master program.

(vii) ~~, and the conversion of agricultural land to nonagricultural uses~~When agricultural lands are converted to non-agricultural uses, the master program provisions for the new use shall apply. ~~, 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, other aquatic animals, or ~~other~~ aquatic plants and ~~animals~~macroalgae. Aquaculture does not include the harvest of wild geoduck associated with the state ~~-~~managed ~~wildstock~~wild stock 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~~ that 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 only 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

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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 non-geoduck aquaculture to geoduck aquaculture, the requirement for a conditional use permit is at the discretion of local government.

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(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.

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(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 ~~t~~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.

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(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.

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(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.

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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.

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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. A forest practice that ~~only~~ involves only 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~~ shorelands are being converted or are expected to be converted to non-forest uses.

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Forest practice conversions and other Class IV-General forest practices where there is a likelihood of conversion to non-forest 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~~,~~" or "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~~ and 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 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

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activities in the shoreline are authorized, those activities will be properly sited, designed, conducted, and completed so that ~~it~~ they 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

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(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~~,~~; and economic, transportation, and land use factors. This showing may rely on analys~~i~~es 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.

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(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

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(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~~E) 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

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should be appropriately integrated with relevant environmental review requirements of SEPA (chapter 43.21C RCW) and the SEPA rules (chapter 197-11 WAC).

(~~IV~~F) 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~~G) 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~~H) Mining shall be a prohibited use within any channel migration zone, identified consistent with WAC 173-26-226(1), that is within ~~Shoreline Management Act~~shoreline jurisdiction ~~shall require a shoreline conditional use permit~~.

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(i) **Recreational development.** Recreational development includes commercial, ~~and~~ public, and private 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 of, 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.

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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, stormwater runoff, septic systems, introduction of pollutants, and vegetation modification and removal. Residential development also includes ~~the~~ multifamily development, multiunit 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~~ shall include specific regulations for setbacks and buffer areas, density, shoreline ~~armoring~~stabilization, 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) Master programs shall include policies and regulations that assure that residential development is located and designed to avoid impacts from hazards.

(A) 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 others~~shoreline stabilization ~~structures, are~~is not required to protect such structures and uses over the lifespan of the development. (See RCW 90.58.100(6).)

(B) New residential development should be located and built so that it will not be flooded during the functional lifespan of the development.

(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 only 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. Multiunit residential development includes middle housing and any other scales of condos, townhomes, or apartments or multifamily residential use and development.

(A) Growth Management Act middle housing requirements (RCW 36.70A.635) do not apply to master program provisions or development within shoreline jurisdiction.

(B) Multiunit residential development is not a preferred water-oriented use~~,~~ or a priority single-family residential use under the act and shall not be allowed unless the public interest is served through increased public access and ecological benefit:

(I) New multiunit residential development shall provide public access in conformance to the local government's public access planning WAC 173-26-221(3), and

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(II) New multiunit residential development shall include components that increase the shoreline ecological function within the shoreline buffer provided throughout the project site.

(C) New multiunit residential development may also provide community water or recreational access in addition to the required public access. Private recreational or residential piers and docks serving individual parcels, lots, units, or developable tracts shall be prohibited associated with multiunit residential development.

(D) New multiunit residential development shall be permitted only within shoreline environment designations that can support the proposed density and level of intensity of these residential uses and developments as demonstrated through a cumulative impacts assessment.

~~(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) 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) 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) Implement the provisions of WAC 173-26-211 and 173-26-221.~~ (vi) Subdivisions, including plats and short plats, and boundary line adjustments.

(A) Any subdivision of land or modification of parcel boundaries including property located within shoreline jurisdiction shall ensure that all lots, parcels, or development tracts created can be developed consistent with the master program (i.e., with buildable envelopes, site access, and appurtenant structures outside buffers and meeting setbacks and other restrictions).

(B) Master programs shall include standards for the creation of new residential lots through land division that accomplish the following:

(I) 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.

(II) 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, parcels, or tracts.

(III) Implement the provisions of WAC 173-26-211, 173-26-221, 173-26-226, and 173-26-246.

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(C) The subdivision of land that creates more than four parcels, lots, units, or developable tracts~~,~~ shall provide public access in conformance to the local government's public access planning and WAC 173-26-221(3). Subdivisions may also provide community water or recreational access in addition to the required public access. Private recreational or residential piers and docks serving individual parcels, lots, units, or developable tracts shall be prohibited.

(D) Subdivisions of land within or adjacent to shoreline jurisdiction shall be designed to manage the future development on site without the addition of new outfalls within shoreline jurisdiction.

(vii) Accessory Dwelling Units (ADUs). Growth Management Act ADU requirements are not automatically applicable within shoreline jurisdiction.

(A) Master programs shall not allow ADUs in locations where development of a single-family residence is not allowed due to its proximity to the shoreline waterbody, critical areas and their buffers, or other hazards such as channel migration zones or sea level rise risk areas.

(I) ADUs may be allowed within existing single-family residential structures through the conversion of existing space to create an ADU if no new exterior construction, expansion of the footprint, or additional impervious surface is added.

(B) Master programs shall prohibit ADUs on properties not served by a municipal sewer system or otherwise using an on-site sewer (OSS) or septic system.

(C) ADUs as a residential use shall be prohibited within critical areas and their buffers.

(D) ADUs are not necessary for reasonable residential use of a property located within shoreline jurisdiction and shall not be acceptable project components in shoreline variance permit applications.

~~(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:~~

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~~(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.~~

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(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.

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(i) Transportation and parking plans and projects shall be consistent with the master program public access policies, public access plan, and environmental protection provisions.

(ii) 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.

(iii) 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~~ and will not 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.

(iv) The use of shorelands for parking lots and facilities is not preferred, even for water-oriented and preferred uses. When feasible, parking should be located outside of shoreline jurisdiction. When infeasible, parking ~~Parking facilities in shorelines are not a preferred use and~~ shall be allowed only as necessary to support an authorized use and must be sited landward of the primary use and structure.

(v) Shoreline master programs shall include policies and regulations to minimize the environmental and visual impacts of parking facilities.

(l) **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.

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(i) Master programs shall include provisions to assure that:

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(A) 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.

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(B) 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.

(C) 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.

(D) Utilities should be located in existing rights-of-way and corridors whenever possible.

(E) 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~~ that disrupts 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.

[Statutory Authority: Chapter 90.58 RCW. WSR 17-17-016 (Order 15-06), § 173-26-241, filed 8/7/17, effective 9/7/17. Statutory Authority: RCW 90.58.120, 90.58.200, 90.58.060 and 43.21A.681. WSR 11-05-064 (Order 10-07), § 173-26-241, filed 2/11/11, effective 3/14/11. Statutory Authority: RCW 90.58.060 and 90.58.200. WSR 04-01-117 (Order 03-02), § 173-26-241, filed 12/17/03, effective 1/17/04.]

WAC 173-26-246 Sea level rise planning.

(1) **Purpose.**

This section establishes process requirements for how local governments must assess the impact of sea level rise and requirements for the provisions master programs must contain to address these impacts and increase resilience. This section also includes optional recommendations.

(2) **Applicability.**

(a) Prior to the start of each periodic review cycle, the department will publish a list of which local governments are subject to the requirements of this section and notify each local government.* The list of local governments required to plan for sea level rise may change over time as sea level increases and other natural and anthropogenic shoreline changes occur.

(b) Sea level rise will cause or exacerbate hazards, including permanent inundation of land, coastal and compound flooding, beach and bluff erosion, and groundwater rise and salinization. The impacts of coastal storms will be more severe with higher sea levels. Planning for sea level rise requires considering all impacts that are caused by or associated with sea level rise for which information is available. Throughout this rule, references to sea level rise planning are intended to include planning for associated hazards.

(c) This section does not require master program policies and regulations to specifically address tsunamis or other seismic hazards such as sudden land subsidence. Local governments are encouraged to consider how sea level rise may exacerbate tsunami risk, and how sea level rise planning may have co-benefits for resilience to tsunamis and other seismic hazards.

(3) **Timing and phasing.**

(a) During each periodic review, local governments required to plan for sea level rise must review and, if necessary, revise their master programs to address the impacts of sea level rise, as stated in WAC 173-26-090(2)(f). The specific steps local governments must take during the periodic review to address sea level rise are detailed in WAC 173-26-246(6).

(b) Local governments shall have information about sea level rise vulnerability available at the time they start their periodic review. To enable this, local governments should review, conduct, or update a sea level rise vulnerability assessment and initiate seal level rise adaption planning prior to the

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start of the periodic review process. Master program updates are an adaptation action, so adaptation planning may need to occur concurrently with and likely beyond the timeframe of the periodic review.

(c) Local governments are encouraged to build on climate planning conducted under their comprehensive plan update process to inform their master program periodic review.

(d) Local governments will need to adaptively manage their response to sea level rise when thresholds are reached, conditions change, new information becomes available, and priorities evolve. As sea level rise accelerates, local conditions will change, and climate science will continue advancing. Changes to local conditions, new climate science, and improved climate data shall be used to revise the sea level rise provisions during each master program periodic review.

(4) **Exceptions and adjustments to sea level rise planning requirements.**

(a) In limited situations, the department may except a local government from some or all of the requirements of this section. -Exceptions from and adjustments to the requirements of this section may be appropriate when:

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(i) Impacts from sea level rise are expected to be negligible over a long-term planning horizon, based on review of sea level rise projections and hazard modeling; or

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(ii) The extent of shoreline area vulnerable to sea level rise is very limited and has specific or minimal uses that make other types of planning activities more effective, such as a specific facility plan.

(b) Exceptions from or adjustments to the requirements of this section are at the department's discretion. -In cases where a more limited sea level rise planning process is appropriate, the department will work with local governments to tailor the requirements in this section.

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(c) Local governments may request an exception from or an adjustment to the requirements of this section only in advance of or early in the periodic review process.

(5) **Equitable sea level rise adaptation.**

(a) Equitable adaptation to sea level rise requires meaningful engagement of Tribes, overburdened communities, and vulnerable populations in planning processes and requires seeking to eliminate, reduce, or mitigate the harms and equitably distribute benefits of adaptation actions.

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(b) Local governments must seek to initiate meaningful engagement with Tribes while reviewing, conducting, or updating sea level rise vulnerability assessments, sea level rise adaptation planning, and subsequent master program amendment processes. Local governments must, to the fullest extent possible, address Tribes' priorities for sea level rise adaptation in the sea level rise provisions in master programs.

(c) Local governments shall seek meaningful engagement with overburdened communities and vulnerable populations potentially impacted by sea level rise when conducting sea level rise vulnerability assessments, sea level rise adaptation planning, and subsequent master program amendment processes.

(6) **Process to amend master programs to address sea level rise.**

Local governments required to plan for sea level rise must complete the following steps during the periodic review:

(a) **Step 1: Consider sea level rise during the design of the public participation plan.** As described in WAC 173-26-090(3)(b), the periodic review begins with the public participation plan. Local governments must engage the public in sea level rise planning, including by ensuring that public participation activities involve sharing information about sea level rise.

(b) **Step 2: Review information about sea level rise vulnerability.**

(i) Each local government required to plan for sea level rise must conduct, update, or use an existing sea level rise vulnerability assessment to inform master program provisions.

(ii) Sea level rise vulnerability assessments are an analysis of how sea level rise and associated hazards may adversely impact people, development, and ecosystems. They involve using sea level rise projections and hazard and asset mapping to evaluate exposure, sensitivity, and adaptive capacity. Assessments synthesize information to highlight where, when, and why assets are vulnerable. The term asset has a broad meaning, including valued places, habitats, and the elements of the built environment. Sea level rise vulnerability assessments used to inform master program provisions must have a specific focus on shoreline management and must prepare local governments to understand and manage impacts to existing development, siting of new developments and uses, and impacts to existing ecological functions and habitats, as described in subsection (b)(iv) below.

(iii) The sea level rise vulnerability assessment that is used by a local government to inform master program provisions must meet the following technical requirements.

(A) Use current and accurate sea level rise projections, hazard modeling and mapping, and other scientific and technical information, as described in WAC 173-26-246(10).

(B) Evaluate a minimum of two sea level rise scenarios, including a shorter-term and a long-term scenario. Long-term means about 70 years from the deadline for completion of the next periodic review, or 2100, whichever is later. Shorter term means 20-40 years. Sea level rise amounts evaluated for each time horizon should, for scenario-based projections, align with at least the intermediate scenario or a higher amount of sea level rise. For probabilistic projections, the amount of sea level rise should align with the high emissions scenario and a 50% likelihood or a lower likelihood projection. Assessments should use relative sea level rise amounts that incorporate local vertical land movement. Assessments may use scenarios similar to those described here; they do not need to be identical.

(C) Identify and provide maps of the area of future tidal inundation; this is the area expected to be flooded by daily high tides under the long-term sea level rise scenario described in (B).

(D) Identify and provide maps of the area that is projected to be exposed to coastal flooding during a 20-year storm, under the selected long-term sea level rise scenario, or a another locally relevant water level that corresponds to a lower likelihood event. This area will extend landward of the area of future tidal inundation. If available, use flood mapping generated from dynamic modeling of future coastal storm conditions with sea level rise. Use total water level inclusive of wave runup if available from dynamic modeling or other

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appropriate sources. Use extreme still water levels if total water levels are not available and wave runup is not a major factor for the shoreline.

(E) Analyze or describe all additional relevant coastal hazards exacerbated by sea level rise for which information is available at the time of the study, including erosion, compound flooding, and groundwater rise and salinization. These hazards should be mapped if sufficient information is available. If data are not available to model future hazards, assessments should describe anticipated changes in hazard frequency, severity, and impacts.

(F) If information is available, analysis should also consider how shoreline infrastructure may mitigate or further exacerbate impacts, such as stormwater backflow, levee and seawall protection or failure, and other interactions.

(iv) Sea level rise vulnerability assessments used to inform master program provisions must meet the following additional requirements.

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(A) Describe potential impacts to existing shoreline ecological functions, including nearshore habitat. This should include discussing where inland habitat migration may be blocked without intervention and where habitat can likely shift with rising water levels.

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(B) Describe potential impacts to shoreline development, including private and public property. Analysis must include potential impacts to assets that provide public access and support water-dependent uses. Analysis must also include the critical infrastructure necessary to sustain shoreline development, such as public and private roadways and essential utilities.

(C) Describe potential impacts to assets that sustain water quality or have the potential to degrade water quality if they fail or are compromised including on-site sewage systems, contaminated sites, wastewater treatment facilities, and stormwater treatment facilities.

(D) Describe potential impacts to locally valued cultural and natural resources.

(E) Describe any locally relevant environmental justice issues related to sea level rise and shoreline management and overburdened communities or vulnerable populations who are or will be affected by sea level rise.

(F) Align with Tribal priorities for the study, such as including or excluding any specific locations, cultural and natural resources, or other elements depending on Tribes' preferences.

(v) In some cases, local governments may use regional vulnerability assessments or similar information and summarize findings applicable to their jurisdiction, assuming that minimum standards in subsection (b)(iii) and (b)(iv) are met.

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(vi) Local governments are encouraged to coordinate with neighboring jurisdictions when conducting sea level rise vulnerability assessments to support compatible planning.

(vii) Local governments are encouraged to conduct sea level rise vulnerability assessments prior to the start of the periodic review, as described in WAC 173-26-246(3)(b).

(c) **Step 3: Review or determine sea level rise adaptation strategies.**

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(i) Sea level rise adaptation strategies are actions taken to prepare for and respond to the impacts of sea level rise. Adaptation strategies should address the vulnerabilities identified through assessments and observations. Categories of sea level rise adaptation strategies include prepare, avoid, accommodate, protect, relocate or remove, and restore. Shoreline master program policies and regulations have a role in the implementation of many sea level rise adaptation strategies. Many adaptation strategies will also necessitate additional programs, projects, and other types of actions that are outside the scope of the master program.

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(A) Prepare strategies refer to strategies such as monitoring, capacity-building, or laying the foundation for other actions. These strategies are not specifically discussed in these rules, though in general, planning is a preparatory step.

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(B) Avoid strategies refer to avoiding locating new development in vulnerable areas. These strategies are primarily discussed in subsection (8) of this section.

(C) Accommodate strategies, such as designing structures to withstand periodic flooding, are discussed in sections including WAC 173-26-221(3) and subsection (8) of this section.

(D) Protect strategies, including nature-based solutions and conventional shoreline protection, are described in WAC 173-26-231.

(E) Relocate or remove strategies refer to shifting existing development away from hazards. Relocation of structures is discussed in WAC 173-26-226 and subsection (8) of this section. In some cases, it may not be possible to relocate structures, and adaptation will necessitate removal of structures without replacement elsewhere.

(F) Restore strategies focus on restoration of shoreline ecological function to provide climate-resilience co-benefits. These strategies are discussed in several places in the rule.

(ii) Local governments must identify adaptation strategies to address identified vulnerabilities and amend their master programs during the periodic review to enable implementation of these strategies.

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(iii) Requirements for shoreline adaptation strategies include the following.

(A) Adaptation strategies must be consistent with the policy of RCW 90.58.020 and other relevant policy and legal constraints including shoreline environment designations.

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(B) Adaptation strategies must be reflective of community visioning and local priorities.

(C) Adaptation strategies must prioritize nature-based approaches or shoreline restoration wherever feasible.

(D) Implementation of adaptation strategies must not exacerbate environmental injustice. Local governments should implement sea level rise adaptation in ways that eliminate, reduce, or mitigate harms to overburdened communities and vulnerable populations and equitably distribute benefits.

(E) Adaptation strategies and the specific projects that follow should be designed to effectively mitigate projected impacts at the location for which they are proposed over the intended duration of implementation or have the potential to be adaptively managed for effective mitigation. Projects must account for total water levels during coastal storms. Projects must not exacerbate impacts for adjacent locations.

(iv) Local governments are encouraged to develop adaptation pathways to phase sea level rise adaptation over time and enable responding to near-term impacts while preparing for longer-term strategies with sufficient lead time.

(v) Local governments are encouraged to collaborate regionally and with Tribes and neighboring jurisdictions on adaptation planning, particularly for contiguous shorelines on the same waterbody.

(d) **Step 4: Compare vulnerability assessment findings and selected adaptation strategies to current master program policies and regulations.**

(i) This step involves reviewing existing master program provisions and identifying where new policies and regulations or revisions to existing policies and regulations are needed to address vulnerabilities, increase resilience, and avoid maladaptation.

(ii) Principles for master program review.

(A) Review the area identified as vulnerable to sea level rise and use this information to determine the Sea Level Rise Hazard Area described in subsection (e) below.

(B) Review shoreline environment designations and allowed uses in areas vulnerable to sea level rise and consider if uses are compatible with identified risks.

(C) Compare identified vulnerabilities to standards that guide the siting of new development and determine if revisions are needed to avoid creating new hazards and meet the requirements of subsection (8).

(D) Review standards that pertain to existing shoreline development and determine if revisions are needed to guide phased adaptation and meet the requirements of subsection (8).

(E) Review shoreline modifications provisions and determine if provisions sufficiently guide appropriate implementation of adaptation strategies that involve modifying the shoreline.

(F) Review expected impacts to existing public access and determine how to plan for future access to maintain or improve overall level of service.

(G) Review land use adjacent to shoreline jurisdiction that will fall under shoreline jurisdiction as sea level rises and determine if rezoning is needed to ensure land use is compatible with the master program.

(H) Review the shoreline restoration plan and consider updating to include projects that restore habitat and provide climate resilience co-benefits.

(e) **Step 5. Determine the Sea Level Rise Hazard Area.**

Local governments must consider the findings of a sea level rise vulnerability assessment to determine the area where existing and future development may be exposed to impacts from sea level rise under a selected scenario. The local government must designate a Sea Level Rise Hazard Area unless the findings of their assessment do not indicate the need to identify this area, such as in cases where projected exposure does not overlap any areas where development

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could be proposed. The Sea Level Rise Hazard Area is an overlay zone within which additional standards apply.-

(i) Local governments may propose alternative approaches that meet the same objectives, such as establishing a sea level rise vulnerability-based environment designation or another implementation approach. Local governments may use an alternative name for the Hazard Area if the meaning is clear.

(ii) Local governments may implement different requirements for subareas within the Sea Level Rise Hazard Area, as long as they are not less protective than the requirements in this section.

(iii) Depending on the elevation of the shoreline and other characteristics, the Sea Level Rise Hazard Area may extend beyond the current shoreline jurisdiction. A local government may choose to extend shoreline jurisdiction to encompass this additional area as described in WAC 173-22-040(4).

(iv) Local governments may adjust the boundaries of the Sea Level Rise Hazard Area for practical purposes, such as alignment with lot lines, if the area is not reduced, or to reflect more-precise geospatial information from more-detailed studies. Areas surrounded by projected inundation must be included in the Hazard Area.

(v) An additional purpose of mapping the Sea Level Rise Hazard Area is to ensure that local governments, the department, and the public are aware of the area that sea level rise may impact. Local governments shall make maps of the Sea Level Rise Hazard Area readily available. Maps depicting the Sea Level Rise Hazard Area must show its full extent of the area even if that extends beyond the standard 200-foot shorelands area currently regulated by the SMP. Depicting only the minimum shoreline jurisdiction on sea level rise maps could cause people to underestimate their risk and limit the local government's ability to plan for adjacent uses per RCW 90.58.340.

(vi) The Sea Level Rise Hazard Area must be reviewed and updated if needed with every periodic review and may be updated more frequently if needed.

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(f) **Step 6: Determine whether master program amendments are needed.**

Based on the results of the review in step 4 and the need to identify and regulate development in areas with sea level rise risk, determine if master program amendments are needed. If so, amend the master program based on the results of the review. Amendment procedures are described in WAC 173-26-090, 173-26-100, 173-26-104, 173-26-110, and 173-26-120.

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(7) **Sea level rise content requirements for master programs.**

Sea level rise policies and regulations in master programs must reflect the findings of vulnerability assessments and facilitate implementation of adaptation strategies. Master programs must contain the following components to demonstrate that they are addressing the impacts of sea level rise and

facilitating adaptation, unless a local government demonstrates that any of the following are not applicable for their jurisdiction.

(a) Map(s) of the Sea Level Rise Hazard Area and associated development standards. Master programs must identify the area of focus for sea level rise planning, as defined by WAC 173-26-020(x), and as described in subsection (6)(e) above. Mapping must also identify the area of future tidal inundation within the Sea Level Rise Hazard Area.

(i) Local governments must regulate new development and adaptation of existing development within the Sea Level Rise Hazard Area to reduce vulnerability and increase resilience. Required standards are listed in subsection (8).

(ii) The Sea Level Rise Hazard Area cannot be used to prohibit all reasonably foreseeable and appropriate uses, which would be inconsistent with the goals of the act but should apply appropriate siting restrictions and development standards within this area.

(b) General master program provisions. Master programs must include general provisions to mitigate coastal flooding, incorporate consideration of sea level rise in the protection of critical areas, sustain coastal public access, and protect the water quality of shoreline waterbody from sea level rise impacts. Principles and standards are included in WAC 173-26-226.

(c) Shoreline modification provisions. Master programs must include provisions guiding appropriate implementation of shoreline stabilization and flood protection modifications in areas exposed to sea level rise. Principles and standards are included in WAC 173-26-231.

(d) Permitting. Master programs must incorporate sea level rise considerations into permitting processes as described in chapter 173-27 WAC.

(8) **Development in Sea Level Rise Hazard Areas.**

Local governments required to plan for sea level rise must include master program provisions that apply the following standards, unless they demonstrate that a provision is not applicable. Local governments may adopt additional or more precautionary standards than those listed in this subsection.

(a) All development proposed within a Sea Level Rise Hazard Area shall incorporate consideration of sea level rise to ensure that it is appropriately planned, located, and designed for the conditions expected over its functional lifespan to protect the safety and wellbeing of people and shoreline ecological functions.

(b) Local governments must ensure that applicants are aware that the development they are proposing is within a Sea Level Rise Hazard Area. Specific requirements for the information that must be submitted when development is proposed within a Sea Level Rise Hazard Area is listed in WAC 173-27-185.

(c) Local governments must screen all development proposed within a Sea Level Rise Hazard Area to determine the potential for sea level rise impacts. Factors to consider include the type of development, its functional lifespan, the risk tolerance for impacts, and its adaptive capacity.

(d) Development that does not include structures, includes minor or temporary structures, has a short lifespan, or can be flooded or eroded with minimal risk to people or the environment may be

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allowed within Sea Level Rise Hazard Areas without full consideration of the sequence of adaptation alternatives described in subsection (f). These types of development are considered low risk.

(e) Development encompasses both the construction of new structures as well as exterior alterations of existing structures and many other types of actions. New construction; replacement, expansion, or redevelopment; and repair and maintenance of existing structures have different requirements within Sea Level Rise Hazard Areas.

(i) Minor repair and maintenance of existing structures in Sea Level Rise Hazard Areas is allowed without consideration of alternatives in subsection (f), as long as the improvements serve the purpose of maintaining the structure in a state of good repair, and the improvements do not increase the degree of nonconformity or exposure to hazards.

(ii) Replacement, expansion, or redevelopment of structures should be treated like new development, and the alternatives in subsection (f) must be given full consideration.

(iii) New structures proposed within the Sea Level Rise Hazard Area must be the most carefully reviewed, and the standard should be high for justifying selection of a less precautionary alternative as outlined in subsection (f).

(f) When construction of a new structure or replacement, expansion, or redevelopment of an existing structure is proposed within a Sea Level Rise Hazard Area, unless it is considered low-risk development, the following sequence of adaptation alternatives shall be evaluated. Alternatives are listed in the order of most to least precautionary; the most precautionary alternative that is feasible and applicable must be selected.

(i) Avoid locating new structures within the Sea Level Rise Hazard Area or relocate the structure outside of the area.

(ii) If the structure cannot be located outside of the Sea Level Rise Hazard Area, locate structures outside of areas projected to experience impacts from sea level rise during the functional lifespan of the structure.

(iii) If the structure cannot be located to avoid impacts, design or retrofit the structure to accommodate projected sea level rise by elevating it consistent with best practices for flood-resistant design and construction and other necessary design measures. Measures must be sufficient for the functional lifespan of the structure accounting for projected total water levels.

(iv) If none of the above options are feasible or applicable, such as in the case of infrastructure that must be at water level under current conditions, projects must include an adaptation plan for when sea level rise thresholds are reached, such as elevating or relocating the structure.

(g) The type of use that the structure is supporting must be considered when determining if an alternative is feasible and applicable. Structures associated with water-dependent uses must be allowed near the water, which likely makes alternative (f)(i) and (f)(ii) less applicable; alternatives (f)(iii) or (f)(iv) may be more applicable Structures associated with water-enjoyment and water-related uses should be carefully reviewed and avoided within Sea Level Rise Hazard Areas unless they are furthering the goals of the act, such as providing for public access. Structures associated with non-water-oriented uses should be avoided in Sea Level Rise Hazard Areas.

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(h) When evaluating the feasibility and applicability of the alternatives in subsection (f), exceptions to selecting the most precautionary alternative should be limited. Cost alone may not be used to justify a less precautionary alternative.

(i) If new, existing, or replacement structures remain within the Sea Level Rise Hazard Area under alternative (f)(ii), f(iii), or (f)(iv):

(i) Expansion of structures is prohibited, except is associated with a water-dependent use and expansion is necessary to support operations.

(ii) Shoreline stabilization or flood hazard reduction modifications may not subsequently be installed, except in the case that they are associated with a water-dependent use, necessary for sustained operations, and all requirements of WAC 173-26-231 are met. Restrictions for future stabilization or other modifications should be recorded as a notice on title.

(j) New structures and the replacement, expansion, or redevelopment of existing structures are prohibited within the area of future tidal inundation unless they are for a water-dependent use, public access, or restoration. The area of future tidal inundation is within the Sea Level Rise Hazard Area. It encompasses low-lying lands that will become part of the aquatic environment where structures are likely to become partially or fully over water during the functional lifespan of a typical building due to a shift of the ordinary high-water mark. This prohibition is in alignment with the prohibitions for new over-water structures found in WAC 173-26-211(3)(c) and WAC 173-26-241(3)(j)(iv). Local governments may choose a more precautionary standard than the minimum described in the definition of the area of future tidal inundation.

(k) For areas within the Sea Level Rise Hazard Area that are landward of the area of future tidal inundation, new structures and the replacement or redevelopment of existing structures may be allowed if avoidance is not possible, best practices for flood-resistant design and construction are applied, adequate lateral setbacks to avoid erosion hazards and measures to mitigate groundwater flooding can be achieved, the developer or owner assumes the risk of developing the site, and all other requirements are met.

(l) New structures or the replacement, expansion, or redevelopment of existing structures are prohibited within the Sea Level Rise Hazard Area if an on-site sewage system (OSS) is necessary and there is not sufficient high ground, lateral distance, or depth to groundwater to locate the system where it will not be impacted by flooding or erosion during the functional lifespan of the structure it supports. Connecting to sewer is preferable with the Sea Level Rise Hazard Area. OSS standards are discussed in detail in WAC 173-26-231.

(m) New structures or the replacement, expansion, or redevelopment of existing structures are prohibited within the Sea Level Rise Hazard Area if the roads necessary to access the property are not at a sufficient elevation to provide safe access throughout the functional lifespan of the structure.

(n) For any new plats or subdivisions that overlap the Sea Level Rise Hazard Area, the portion of the Hazard Area within the plat or subdivision must be identified, excluded from the developable area, and required to be left open and undeveloped in perpetuity to accommodate hazards and allow for unimpeded natural processes.

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(o) New commercial and industrial development in Sea Level Rise Hazard Areas must not create a risk of soil or water contamination with sea level rise.

(p) Structures should be designed for high-end sea level rise projections to ensure there is minimal risk while minimizing impacts to shoreline ecological functions.

(q) Master programs shall foster phased adaptation over time of development that already exists within the Sea Level Rise Hazard Area. When replacement, expansion, or redevelopment is proposed, it creates an opportunity to relocate structures upland to avoid perpetuating development in the most exposed areas or to retrofit structures to better withstand projected impacts.

(r) Structures located in the Sea Level Rise Hazard Area that existed prior to the adoption of this section of the rules may be elevated consistent with best practices for flood resistant design and construction if structures cannot be relocated per (f)(i) or (f)(ii). This includes those structures that are within the area of future tidal inundation where the building of new structures is prohibited other than for water-dependent uses, public access, or restoration. Life safety and environmental factors must be considered when existing structures are elevated, such as ensuring that safe road access and safe provisioning of drinking water and wastewater treatment.

(s) When existing development located in Sea Level Rise Hazard Areas is relocated landward, buildings associated with the original development footprint must be removed to provide space for habitat shift and avoid impacts to environmental quality.

(t) Existing development within Sea Level Rise Hazard Areas may be nonconforming with regard to setbacks, lot size, building construction, or other standards. In some cases, these nonconformities may exacerbate sea level rise vulnerability. In addition, new sea level rise provisions, such as restrictions on new structures likely to become over water, may create new nonconformities. The requirements of WAC 173-26-221(3) apply to all nonconforming development, including development within Sea Level Rise Hazard Areas. If requirements between this section and WAC 173-26-221 conflict, the more precautionary standards apply.

(u) Conversion to less-intensive uses that do not require permanent structures may be necessary as sea level rise progresses and it becomes untenable to safely retrofit structures in some locations. Low risk development associated with low intensity public and private recreational use should be allowed as an alternative in Sea Level Rise Hazard Areas where more intensive development can no longer supported.

(v) Flexibility may be needed in the management of development in Sea Level Rise Hazard Areas as communities face increasing impacts. Adaptation actions identified in community and neighborhood-scale adaptation plans should be supported, particularly those that are part of an adaptation pathway describing a sequence of near- and long-term actions, as long as actions are consistent with federal, state, and local regulations.

(9) **Additional measures for addressing sea level rise in master programs.**

Local governments may incorporate additional provisions into master programs to address the unique sea level rise vulnerabilities and adaptation needs within their jurisdiction. This subsection lists some additional approaches that local governments are encouraged to enact if needed.

(a) Special area planning. Local governments may undertake special area planning pursuant to WAC 173-26-201(3)(d)(ix) to facilitate sea level rise adaptation. This may involve developing a detailed adaptation strategy for a specific neighborhood or community, designating a resilience district, or other approaches. Special area planning may be particularly beneficial for areas with significant and complex vulnerability to sea level rise, such as developed communities in low-lying areas that are projected to experience permanent inundation in the near-to-medium term and where coordination is essential to address acute challenges. These plans may be included as background documents to the master program and used to inform provisions but should not be incorporated by reference.

(b) Assumption of risk. Local governments are encouraged to require property owners proposing development within a Sea Level Rise Hazard Area to assume the risk of developing in these locations. Policies may require deed restrictions that prohibit future construction of shoreline stabilization or flood-control structures or require owners to assume responsibility for removing development after sea level thresholds are reached.

(c) Disclosure of risk. Local governments are encouraged to implement policies that require sellers of properties located within or overlapping with Sea Level Rise Hazard Areas to disclose to prospective buyers any permit conditions related to coastal hazards or information known about current vulnerability to coastal hazards and future vulnerability to sea level rise. The Sea Level Rise Hazard Area may be considered a local government-designated future flood zone.

(d) Structure removal. Local governments are encouraged to plan for structures becoming unfit for habitation and other uses and the abandonment of structures due to sea level rise. Local governments are encouraged to review policies and regulations that pertain to condemnation and abatement, and work with property owners to develop plans and programs to support the removal of structures that are damaged or destroyed.

(e) Broader sea level rise adaptation programs. Updating master programs is only one of many sea level rise adaptation actions. Sea level rise adaptation needs for many local governments will go beyond what can be accomplished through implementation of the master program alone. Local governments are encouraged to undertake sea level rise adaptation planning and implementation broadly and across all programs and service areas. Sea level rise adaptation under the authority of shoreline management inevitably relies on a development proposal to create an adaptation opportunity. In some locations, impact thresholds may be reached before redevelopment has been proposed. Local governments are encouraged to explore programs beyond implementation of the master program to address these challenges and support community-scale solutions such as community-driven relocation.

(10) **Principles for using sea level rise information in shoreline planning.**

(a) Local governments must use current, accurate, and complete scientific or technical information to inform master program provisions as described in WAC 173-26-201(2)(a). This requirement applies to the use of information to inform sea level rise provisions for master programs.

(b) Climate data, including sea level rise projections and models, are evolving. The newest climate data may not always provide significant improvement over previous versions. Consideration of time, effort, and cost should be compared to the information gains of generating or incorporating newer

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data. Planning processes should not be restarted if new data becomes available during the process, unless it is determined that the original data are flawed, or if using the original data will lead to substantially different and worse outcomes.

(c) The following types of information may be useful to inform sea level rise planning:

(i) Sea level rise projections.

(ii) Geospatial data generated from modeling permanent inundation, periodic flooding, erosion, or other hazards.

(iii) Geospatial data describing the location and types of assets owned or managed by local governments or otherwise important to communities.

(iv) Observations of prior events and current conditions, such as local water levels during storms.

(v) Community experiences.

(vi) Indigenous knowledge, if offered in collaboration with Tribe(s), explicit consent is provided, and stewardship agreements are in place.

(d) Uncertainty is an unavoidable part of working with any type of modeled data, including sea level rise projections and other types of climate data. Evaluating and planning for a range of scenarios is one approach to addressing uncertainty.

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(11) **Aligning climate adaptation across plans.**

Local governments undertake climate adaptation planning under a number of planning frameworks including comprehensive planning, hazard mitigation planning, restoration planning, and others. Aligning climate adaptation priorities across planning frameworks is a priority for coordinated and efficient planning. In addition, there are consistency requirements between comprehensive plans and shoreline master programs that must be met pursuant to RCW 36.70A.480. Other studies, plans, and programs that pertain to climate resilience can serve as valuable supporting information to help inform the development of master program policies and regulations to address sea level rise. However, in order for a local government to implement policies and regulations that pertain to use and development within shoreline jurisdiction, provisions must be included in the master program.

(12) **Department guidance and assistance.**

Local governments should seek technical assistance and consult department guidance on sea level rise planning. Guidance will be provided to support addressing sea level rise in master programs and will be maintained in alignment with advances in scientific information and planning best practices.

**Preliminary proposed list of local governments to which the requirements of WAC 173-26-246 will apply during the upcoming periodic review cycle. Note that this list will not be embedded within the WAC. It will be published separately so that it can be readily updated for future periodic review cycles as needed. We are including it here with this draft for convenient reference. This initial list was developed based on a review of existing mapping, including NOAA's sea level rise viewer and high tide flooding maps. The list includes cities and counties within the state's federally approved coastal zone where impacts from sea level rise are expected. Ecology invites feedback on this list during the comment periods: Aberdeen, Anacortes, Bainbridge Island, Bellingham, Blaine, Bremerton, Burien, Cathlamet, Clallam County, Cosmopolis, Coupeville, Des Moines, DuPont, Edmonds, Everett, Federal Way, Fife, Friday Harbor, Gig*

Harbor, Grays Harbor County, Hoquiam, Ilwaco, Island County, Jefferson County, King County, Kitsap County, La Conner, Lacey, Langley, Long Beach, Lynnwood, Marysville, Mason County, Montesano, Mukilteo, Normandy Park, Oak Harbor, Ocean Shores, Olympia, Pacific County, Pierce County, Port Angeles, Port Orchard, Port Townsend, Poulsbo, Raymond, Ruston, San Juan County, Seattle, Sequim, Shelton, Shoreline, Skagit County, Snohomish County, South Bend, Stanwood, Steilacoom, Tacoma, Thurston County, Tukwila, University Place, Wahkiakum County, Westport, Whatcom County, Woodway.

WAC 173-26-251 Shorelines of statewide significance.

(1) **Applicability.** The following section applies to local governments preparing and amending master programs that include shorelines of statewide significance as defined in RCW 90.58.030.

(2) **Principles.**

(a) The interest of the people of the state shall be paramount in the management of shorelines of statewide significance, as stated in RCW 90.58.020. ~~Chapter 90.58 RCW raises the status of shorelines of statewide significance in two ways. First, the Shoreline Management Act sets specific preferences for uses of shorelines of statewide significance. RCW 90.58.020 states:~~

~~*"The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance. The department, in adopting guidelines for shorelines of statewide significance, and local government, in developing master programs for shorelines of statewide significance, shall give preference to uses in the following order of preference which:*~~

(b) Master programs shall give preference to uses of shorelines of statewide significance that align with the following, listed in order of preference:

~~(1)~~ (i) Recognize and protect the statewide interest over local interest;

~~(2)~~ (ii) Preserve the natural character of the shoreline;

~~(3)~~ (iii) Result in long term over short term benefit;

~~(4)~~ (iv) Protect the resources and ecology of the shoreline;

~~(5)~~ (v) Increase public access to publicly owned areas of the shorelines;

~~(6)~~ (vi) Increase recreational opportunities for the public in the shoreline;

~~(7)~~ (vii) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.~~"~~

(c) Pursuant to RCW 90.58.090(5), shorelines of statewide significance ~~Second, the Shoreline Management Act calls for a~~must be managed with a higher level of effort ~~in implementing its objectives on shorelines of statewide significance. RCW 90.58.090(5) states:~~

~~*"The department shall approve those segments of the master program relating to shorelines of statewide significance only after determining the program provides the*~~to achieve optimum implementation of the policy of ~~this chapter~~the act to satisfy the statewide interest.~~"~~

Optimum implementation involves:

(i) ~~s~~Special emphasis on statewide objectives and consultation with state agencies. The state's interests may vary, depending upon the geographic region, type of shoreline, and local conditions.

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(ii) ~~Optimum implementation may involve e~~Ensuring that other comprehensive planning policies and regulations support Shoreline Management Act objectives.

(iii) ~~Because shoreline ecological resources are linked to other environments, implementation of ecological objectives requires effective management of whole ecosystems. Optimum implementation places a~~ A greater imperative on identifying, understanding, and managing ecosystem-wide processes and ecological functions that sustain resources of statewide importance.

(3) **Master program provisions for shorelines of statewide significance.** ~~-~~Because shorelines of statewide significance are major resources from which all people of the state derive benefit, local governments that are preparing and amending master program provisions for shorelines of statewide significance shall implement the following:

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(a) **Statewide interest.** To recognize and protect statewide interest over local interest, consult with applicable state agencies, affected Indian T~~t~~ribes, and statewide interest groups and consider their recommendations in preparing shoreline master program provisions. Recognize and take into account state agencies' policies, programs, and recommendations in developing use regulations. For example, if an anadromous fish species is affected, refer to the Washington state departments of fish and wildlife and ecology and the governor's salmon recovery office. Tribes must be consulted. ~~, as well as affected Indian tribes, should, at a minimum, be consulted.~~

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(b) **Preserving resources for future generations.** Prepare master program provisions on the basis of preserving the shorelines for future generations. For example, actions that would irreversibly convert resources into ~~irreversible~~ uses or detrimentally alter natural conditions characteristic of shorelines of statewide significance should be severely limited. Where natural resources of statewide importance are being diminished over time, master programs shall include provisions to contribute to the restoration of those resources.

(c) **Priority uses.** Establish shoreline environment designation policies, boundaries, and use provisions that give preference to those uses described in RCW 90.58.020~~-~~(1) through (7). More specifically:

(i) Identify the extent and importance of ecological resources of statewide importance and potential impacts to those resources, both inside and outside the local government's geographic jurisdiction.

(ii) Preserve sufficient shorelands and submerged lands to accommodate current and projected demand for economic resources of statewide importance, such as commercial shellfish beds and navigable harbors. Base projections on statewide or regional analyses~~;~~, requirements for essential public facilities~~;~~ and comment from related industry associations, ~~affected Indian t~~Tribes, and state agencies.

(iii) Base public access and recreation requirements on demand projections that take into account the activities of state agencies and the interests of the citizens of the state to visit public shorelines with special scenic qualities or cultural or recreational opportunities.

(d) **Resources of statewide importance.** Establish development standards that:

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(i) Ensure the long-term protection of ecological resources of statewide importance, such as anadromous fish habitats, forage fish spawning and rearing areas, shellfish beds, and unique environments. Standards shall consider incremental and cumulative impacts of permitted

development and include provisions to ~~e~~ensure no net loss of shoreline ecosystems and ecosystem-wide processes.

(ii) Provide for the shoreline needs of water-oriented uses and other shoreline economic resources of statewide importance.

(iii) Provide for the right of the public to use, access, and enjoy public shoreline resources of statewide importance.

(e) **Comprehensive plan consistency.** Assure that other local comprehensive plan provisions are consistent with and support as a high priority the policies for shorelines of statewide significance. Specifically, shoreline master programs should include policies that incorporate the priorities and optimum implementation directives of chapter 90.58 RCW into comprehensive plan provisions and implementing development regulations.

(f) **Sea level rise adaptation.** Without proactive management, sea level rise impacts may jeopardize the ability to manage shorelines in accordance with the goals of the act. For shorelines of statewide significance, local governments must:

(i) Ensure that policies and regulations enable adaptation to sea level rise and increase the resilience of shorelines of statewide significance.

(ii) Ensure that the sea level rise planning process required by WAC 173-26-246-(6) is rigorous and thorough.

(iii) Prioritize sea level rise adaptation strategies for shorelines of statewide significance that align with the other provisions of this subsection, including preserving shorelines for future generations and protecting resources of statewide importance. Policies and regulations should prioritize long-term resilience over short-term protection, such as by requiring relocation of development rather than protection-in-place, prioritizing large-scale restoration projects, requiring nature-based solutions, and other measures.

[Statutory Authority: RCW 90.58.060 and 90.58.200. WSR 04-01-117 (Order 03-02), § 173-26-251, filed 12/17/03, effective 1/17/04.]

PART IV
OCEAN MANAGEMENT

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 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

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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 ~~t~~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 ~~t~~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 ~~t~~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 attempt 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) Pre-project 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.

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, ~~t~~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.

[Statutory Authority: Chapter 90.58 RCW. WSR 17-17-016 (Order 15-06), § 173-26-360, filed 8/7/17, effective 9/7/17. Statutory Authority: RCW 90.58.120, 90.58.200, 90.58.060 and 43.21A.681. WSR 11-05-064 (Order 10-07), § 173-26-360, filed 2/11/11, effective 3/14/11. Statutory Authority: RCW 90.58.060 and 90.58.200. WSR 00-24-031 (Order 95-17a), recodified as § 173-26-360, filed 11/29/00, effective 12/30/00. Statutory Authority: RCW 90.58.195. WSR 91-10-033 (Order 91-08), § 173-16-064, filed 4/24/91, effective 5/25/91.]

WAC 173-26-365 Marine Spatial Planning

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Adopted in 2018, the Marine Spatial Plan (MSP) for Washington's Pacific Coast is a marine planning document designed to address new ocean use and development off Washington's Pacific coast that have not been previously permitted or approved. The MSP provides data, information, analyses, and maps on ocean uses and resources; provides a framework for evaluating new ocean use proposals; and establishes protections for sensitive areas and fisheries. The current version is available at Ecology publication no. 17-06-027.

(1) **Purpose and intent.** The purpose of this section is to ensure master programs are consistent with the MSP. The MSP is authorized by the 2010 Marine Waters Planning & Management Act (chapter 43.372 RCW) and is based on the policies and regulations found in the Ocean Resources Management Act (chapter 43.143 RCW) and the Ocean Management Guidelines (WAC 173-26-360). The MSP applies to Washington coastal waters from Cape Flattery to Cape Disappointment, from ordinary high water on the shoreward side to 700 fathoms offshore.

(a) Local governments within the geographic area of the MSP shall maintain master programs consistent with the information, recommendations, and policies of the MSP, dated 2018, as amended.

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(2) **Applicability—Geographic application**. The geographic area of the MSP includes Grays Harbor and Willapa Bay estuaries. The following local governments must include policies, regulations, and permit procedures consistent with the MSP: Clallam County, Jefferson County, Grays Harbor County, Pacific County, Ilwaco, Long Beach, Raymond, South Bend, Cosmopolis, Ocean Shores, Hoquiam, Aberdeen, and Westport. -Master programs in the above identified jurisdictions must apply the MSP policies and implementation procedures when:

(a) A new ocean use is proposed within the geographical boundaries of the MSP that will adversely impact renewable resources, marine life, fishing, aquaculture, recreation, navigation, air or water quality, or other existing ocean or coastal uses.

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(3) **Definitions.** Master programs for the jurisdictions identified in subsection (2) shall include the following definitions:

(a) Important, Sensitive, and Unique Areas (ISUs): ISUs are specific areas in state waters that meet one or more of the following criteria:

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(i) Areas that are environmentally sensitive or contain unique or sensitive species or biological communities that must be conserved and warrant protective measures [RCW 43.372.040(6)(c)].

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(ii) Areas with known sensitivity and where the best available science indicates the potential for offshore development to cause irreparable harm to the habitats, species, or cultural resources.

(iii) Areas with features that have limited, fixed, and known occurrence.

(iv) Areas with inherent risk or infrastructure that are incompatible with new ocean uses.

(b) New ocean use: In-water ocean use that has not been previously reviewed or permitted.

(c) Offshore development: Any development proposed for siting in the geographical area of the MSP that also meets the definition of a new ocean use.

(4) **ISU Protection.** Master programs identified in subsection (2) shall require new ocean uses proposed within the MSP geographical area to be consistent with the ISU Protection standards contained in the MSP.

(a) Applicability of ISU Protection standards. ISU Protection standards apply to any ISU, wherever it is identified in state waters.

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(b) ISU Designation. The designation of ISUs is habitat and resource based, wherever these habitats or resources occur within state waters. The state maintains maps of ISUs to assist applicants in identifying where ISUs exist. It is the responsibility of applicants to verify whether ISUs exist in their proposed new ocean use project area and to demonstrate protection standards will be met.

(5) **Fisheries Use Protection.** Master programs identified in subsection (2) shall require new ocean uses proposed within the MSP geographical area to be consistent with the Fisheries Use Protection standards contained in the MSP.

(a) Applicability of Fisheries Use Protection standards. Fisheries Use Protection standards apply to a new ocean use proposed within the MSP geographical area.

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(6) **Additional requirements for new ocean use proposals**. Master programs shall require additional submittal materials as part of an application for new ocean uses. -In addition to the submittal requirements for substantial development, conditional use, or variance permits, an applicant proposing a new ocean use must demonstrate:

(a) The occurrence of a pre-application meeting;

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(b) Review of site-specific inventories and response to requests for additional data or studies;

(c) Submission of an effects evaluation;

(d) Provision of proposed construction and operation plans; and

(e) Coordination with relevant agencies, the Washington Coastal Marine Advisory Council (WCMAC), and the public throughout all aspects of project development and review.