

SHORELINE MASTER PROGRAM RULE AMENDMENTS: Preliminary Draft (5 of 5)

Housekeeping amendments

Introduction

This document presents preliminary draft “housekeeping” rule amendments¹ to state shoreline rules. These amendments are not intended to be substantive changes that reflect change in agency policy or interpretation.

Proposed changes are presented in two broad categories:

1. changes adopted to reflect **legislative enactments**, and
2. **administrative clarifications** that have resulted from reviewing master programs.²

The preliminary draft presents amendments to the following rules:

- WAC 173-15 - Permits for Oil or Natural Gas Exploration Activities Conducted from State Marine Waters
- WAC 173-18 - SMA—Streams and Rivers Constituting Shorelines of the State
- WAC 173-20 - SMA—Lakes Constituting Shorelines of the State
- WAC 173-22 - Adoption of Designations of Shorelands and Wetlands Associated with Shorelines of the State
- WAC 173-26 - State Master Program Approval/Amendment Procedures and Master Program Guidelines
- WAC 173-27 - Shoreline Management Permit and Enforcement Procedures

Note: Amendments to incorporate legislative enactments that affect WAC 173-26-120 are presented in a separate document presenting a new [optional joint SMP amendment process](#).

Preliminary draft amendments

The following presents Ecology’s preliminary draft housekeeping rule amendments. New language is show in underline, deletions are shown in ~~strikethrough~~.

Colored boxes are explanatory and are not part of the proposed amendment.

The Department of Ecology (Ecology) is updating rules implementing the Shoreline Management Act (SMA). Ecology is seeking comments on preliminary draft rules during summer 2016 before initiating formal rule-making in winter 2016.

Please send comments by August 26, 2016, at 5:00pm. Instructions are at <http://www.ecy.wa.gov/programs/sea/rules/1506ov.html>

For other questions contact [Michelle Wilcox](#) at (360) 407-7676.

¹ Ecology’s rule amendments are required by RCW 90.58.060.

² RCW 90.58.060.

Contents

Amendments to address legislative enactments.....	3
WAC 173-15 – Permits for oil or natural gas exploration activities.....	3
WAC 173-26 – State master program approval/amendment procedures and master program guidelines.....	4
WAC 173-26-020 -- Definitions	4
WAC 173-26-120 -- State process for approving/amending shoreline master programs	4
WAC 173-26-241(3)(j) -- Residential development.....	4
WAC 173-26-360 -- Ocean management.....	6
WAC 173-27 -- Shoreline management permit and enforcement procedures	7
WAC 173-27-040 – Developments exempt from substantial development permit requirement	7
WAC 173-27-044 – Developments not required to obtain shoreline permits or local reviews	8
WAC 173-27-085 – Moratoria.....	9
WAC 173-27-125 – Special procedures for WSDOT projects.....	10
WAC 173-27-130 -- Filing with the department.....	11
WAC 173-27-215 – Proposed new section on restoration projects	11
Administrative clarifications	13
WAC 173-18 – Streams and rivers constituting shorelines of the state	13
WAC 173-20 – Lakes constituting shorelines of the state	13
WAC 173-22 – Adoption of designations of shorelands and wetlands associated with shorelines.....	13
WAC 173-22-010 -- Purpose	13
WAC 173-22-030 -- Definitions	14
WAC 173-22-050 -- Review and update of designations	14
WAC 173-22-060 -- Shoreline designation maps.....	14
WAC 173-22-070 -- Lands within federal boundaries.....	15
WAC 173-26 – State master program approval/amendment procedures and master program guidelines.....	15
WAC 173-26-020 -- Definitions	15
WAC 173-26-030 – Master programs required – State master program contents.....	15
WAC 173-26-060 -- State master program — Records maintained by department	15
WAC 173-26-080 -- Master programs required of local governments.....	16
WAC 173-26-100 & -120	17
WAC 173-26-130 – Appeal procedures for master programs	17

WAC 173-26-160 -- Local government annexation..... 17

WAC 173-26-201 – Process to prepare or amend shoreline master programs..... 17

WAC 173-26-211 – Environment designation system 18

WAC 173-26-221 – General master program provisions 19

WAC 173-26-241(3)(e) – Forest practices..... 19

WAC 173-26-241(3)(h) -- Mining 20

WAC 173-26-360(2) – Geographical application of ocean management guidelines..... 20

WAC 173-27 – Shoreline Management permit and enforcement procedures 20

WAC 173-27-030 -- Definitions 20

WAC 173-27-045 – Developments not subject to the Shoreline Management Act..... 21

WAC 173-27-060 – Applicability of chapter 90.58 RCW to federal lands and agencies..... 22

WAC 173-27-080 – Nonconforming use and development standards..... 22

WAC 173-27-170 – Review criteria for variance permits..... 25

Amendments to address legislative enactments

WAC 173-15 – Permits for oil or natural gas exploration activities

Summary of changes: Amendments incorporate a 1997 law that prohibits surface drilling for oil or natural gas in Puget Sound and the Strait of Juan de Fuca and leasing of tidal or submerged lands from mean high tide seaward three miles along the Washington Coast for purposes of oil or gas exploration, development, or production.

Authority: Ocean Resource Management Act, RCW 43.143.010(2).

WAC 173-15-010 -- Authority and purpose.

These rules are adopted under RCW 90.58.550(6) for the purpose of establishing the basic requirements for the exploration activity permit system.

(1) Surface drilling for oil or gas is prohibited in the waters of Puget Sound north to the Canadian boundary and the Strait of Juan de Fuca seaward from the ordinary high water mark and on all lands within one thousand feet landward from said mark.

(2) 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.

WAC 173-26 – State master program approval/amendment procedures and master program guidelines

WAC 173-26-020 -- Definitions

Summary of changes: Amendments revise the definition of “agricultural land” for consistency with a 2003 amendment to the SMA, and add new statutory definitions for “floating home” and “floating on-water residence.”
Authority: RCW 90.58.270(5); RCW 90.58.065.

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

(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: (i) that is designed or used primarily as a residence on the water and has detachable utilities; and (ii) 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.

Note: Subsequent definitions will be re-numbered.

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

Summary of changes: Amendments incorporate a 2011 law clarifying that the effective date of an approved master program is 14 days from the date of the department’s written notice of its final action to the local government. This time period was adopted to provide local governments time to codify shoreline master programs locally and prepare for implementation. Promptly after approving or disapproving an SMP, Ecology shall publish a notice stating its decision. For local governments not planning under the GMA, Ecology must notify the local government by telephone or electronic means. **Authority:** RCW 90.58.090(2).

Preliminary draft amendments to section 120 are presented in a separate paper addressing [joint review of master program amendments](#).

WAC 173-26-241(3)(j) -- Residential development

Summary of changes: The Legislature adopted several amendments addressing residential development that require new citations and several new subsections.

(i) Single-family residences are the most common form of shoreline development and are identified as a priority use when developed in a manner consistent with control of pollution and prevention of damage to the natural environment. Without proper management, single-family residential use can cause significant damage to the shoreline area through cumulative impacts from shoreline armoring, storm water runoff, septic systems, introduction of pollutants, and vegetation modification and removal. Residential development also includes multifamily development and the creation of new residential lots through land division.

(ii) Master programs shall include policies and regulations that assure no net loss of shoreline ecological functions will result from residential development. Such provisions should include specific regulations for setbacks and buffer areas, density, shoreline armoring, vegetation conservation requirements, and, where applicable, on-site sewage system standards for all residential development and uses and applicable to divisions of land in shoreline jurisdiction.

(iii) Residential development, including appurtenant structures and uses, should be sufficiently set back from steep slopes and shorelines vulnerable to erosion so that structural improvements, including bluff walls and other stabilization structures, are not required to protect such structures and uses. (See RCW 90.58.100(6).)

(iv) Overwater 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.

Summary of new WAC 173-26-241(3)(j)(iv)(B) & (C): Statutory amendment adopted in 2011 and 2014 declare that floating homes permitted or legally established prior to 1/1/2011 must be classified as a conforming preferred use. A floating on-water residence legally established prior to 7/1/14 must be considered a conforming use.

Authority: RCW 90.58.270(5) & (6)

(B) A floating home permitted or legally established prior to January 1, 2011, must be classified as a conforming preferred use. For the purposes of this subsection, "conforming preferred use" means that applicable development and shoreline master program regulations may only impose reasonable conditions and mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating homes and floating home moorages by rendering these actions impracticable.

(C) A floating on-water residence legally established prior to July 1, 2014, must be considered a conforming use and accommodated through reasonable shoreline master program regulations, permit conditions, or mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating on-water residences and their moorages by rendering these actions impracticable.

(v) Multiunit residential development

(A) New multiunit residential development, including the subdivision of land for more than four parcels, should provide community and/or public access in conformance to the local government's public access planning and this chapter.

(B) Master programs shall include standards for the creation of new residential lots through land division that accomplish the following:

(i) Plats and subdivisions must be designed, configured and developed in a manner that assures that no net loss of ecological functions results from the plat or subdivision at full build-out of all lots.

~~(ii)~~ (II) Prevent the need for new shoreline stabilization or flood hazard reduction measures that would cause significant impacts to other properties or public improvements or a net loss of shoreline ecological functions.

~~(iii)~~ (III) Implement the provisions of WAC 173-26-211 and 173-26-221.

Summary of new WAC 173-26-241(3)(j)(vi): SMPs approved by Ecology after 9/1/2011 may include provisions that authorize legally established residential and appurtenant structures used for a conforming use but not meeting dimensional standards for new development to be considered conforming structures. This does not include bulkheads, other shoreline modifications, or overwater structures. **Authority:** RCW 90.58.620

(vi) Option for addressing legal status of existing shoreline structures

(A) New or amended master programs approved by the department on or after September 1, 2011, 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 section, "appurtenant structures" means garages, sheds, and other legally established structures. "Appurtenant structures" does not include bulkheads and other shoreline modifications or overwater structures.

(C) Nothing in this section:

(I) Restricts the ability of a master program to limit redevelopment, expansion, or replacement of overwater structures located in hazardous areas, such as floodplains and geologically hazardous areas; or

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

WAC 173-26-360 -- Ocean management

Summary of changes: Amendments incorporate a 1997 law prohibiting leasing of tidal or submerged lands extending from mean high tide seaward three miles along the coast for oil or gas exploration, development, or production. **Authority:** Ocean Resource Management Act, RCW 43.143.010(2).

(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.

~~(a) Whenever feasible oil and gas facilities should be located and designed to permit joint use in order to minimize adverse impacts to coastal resources and uses and the environment.~~

- (b) Special attention should be given to the availability and adequacy of general disaster response capabilities in reviewing ocean locations for oil and gas facilities.
- (c) Because environmental damage is a very probable impact of oil and gas uses, the adequacy of plans, equipment, staffing, procedures, and demonstrated financial and performance capabilities for preventing, responding to, and mitigating the effects of accidents and disasters such as oil spills should be major considerations in the review of permits for their location and operation. If a permit is issued, it should ensure that adequate prevention, response, and mitigation can be provided before the use is initiated and throughout the life of the use.
- (d) Special attention should be given to the response times for public safety services such as police, fire, emergency medical, and hazardous materials spill response services in providing and reviewing onshore locations for oil and gas facilities.
- (e) Oil and gas facilities including pipelines should be located, designed, constructed, and maintained in conformance with applicable requirements but should at a minimum ensure adequate protection from geological hazards such as liquefaction, hazardous slopes, earthquakes, physical oceanographic processes, and natural disasters.
- (f) Upland disposal of oil and gas construction and operation materials and waste products such as cuttings and drilling muds should be allowed only in sites that meet applicable requirements.

WAC 173-27 -- Shoreline management permit and enforcement procedures

WAC 173-27-040 – Developments exempt from substantial development permit requirement

Summary of changes: Amendments to 2(h) incorporate a 2014 law amending the cost threshold for requiring a Substantial Development Permit (SDP) for replacement docks. The fair market value for purposes of an SDP exemption for a dock in fresh water is raised to \$20,000 (from \$10,000) for jurisdictions with updated SMPs.

Authority: RCW 90.58.030(3)(e)(vii)

(2)(h) Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single-family and multiple-family residences. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. This exception applies if either:

- (i) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or
- (ii) In fresh waters the fair market value of the dock does not exceed ~~ten thousand dollars,~~ twenty thousand dollars for docks that are constructed to replace existing docks, are of equal or lesser square footage than the existing dock being replaced, and are located in a county, city, or town that has updated its master program consistent with the master program guidelines in chapter 173-26 WAC as adopted in 2003; or ten thousand dollars, for all other docks constructed in fresh waters, but if subsequent construction having a fair market value exceeding two thousand five hundred dollars occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this chapter.

Summary of changes: New § 2(q) incorporates provisions of a 2016 law that adds a permit exemption for retrofitting an existing structure for compliance with the Americans with Disabilities Act or to provide physical access to structure by individuals with disabilities. **Authority:** ESHB 2847, not yet codified.

(q) The external or internal retrofitting of an existing structure with the exclusive purpose of compliance with the Americans with disabilities act of 1990 (42 U.S.C. Sec. 12101 et seq.) or to otherwise provide physical access to the structure by individuals with disabilities.

WAC 173-27-044 – Developments not required to obtain shoreline permits or local reviews

Summary of changes: This proposed new WAC incorporates legislative enactments adopted in 2012 and 2015 exempting boatyard improvements to meet NPDES requirements, and WSDOT facility maintenance and safety improvements from SMP permitting. These new exemptions were combined with an existing exemption from permitting for remedial hazardous substance cleanup actions pursuant to a consent decree or order. **Authority:** RCW 90.58.355 and RCW 90.58.356

WAC 173-27-044 Developments not required to obtain shoreline permits or local reviews

Requirements to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other review conducted by a local government to implement this chapter do not apply to the following:

(1) Remedial actions. Pursuant to RCW 90.58.355, any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department must ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70.105D.090.

(2) Boatyard improvements to meet NPDES permit requirements. Pursuant to RCW 90.58.355, any person installing site improvements for storm water treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system storm water general permit. The department must ensure compliance with the substantive requirements of this chapter through the review of engineering reports, site plans, and other documents related to the installation of boatyard storm water treatment facilities.

(3) WSDOT facility maintenance and safety improvements. Pursuant to RCW 90.58.356, Department of Transportation projects and activities meeting the following conditions:

Types of projects:

(i) Maintenance, repair, or replacement that occurs within the roadway prism of a state highway as defined in RCW 46.04.560, the lease or ownership area of a state ferry terminal, or the lease or ownership area of a transit facility, including ancillary transportation facilities such as pedestrian paths, bicycle paths, or both, and bike lanes;

(ii) Construction or installation of safety structures and equipment, including pavement marking, freeway surveillance and control systems, railroad protective devices not including grade separated crossings, grooving, glare screen, safety barriers, energy attenuators, and hazardous or dangerous tree removal;

(iii) Maintenance occurring within the right-of-way; or

(iv) Construction undertaken in response to unforeseen, extraordinary circumstances that is necessary to prevent a decline, lapse, or cessation of service from a lawfully established transportation facility.

(b) The department of transportation must provide written notification of projects and activities authorized under this section with a cost in excess of one million dollars before the design or plan is finalized to all agencies with jurisdiction, agencies with facilities or services that may be impacted, and adjacent property owners.

(c) For purposes of this section, the following definitions apply:

(i) "Maintenance" means the preservation of the transportation facility, including surface, shoulders, roadsides, structures, and such traffic control devices as are necessary for safe and efficient utilization of the highway in a manner that substantially conforms to the preexisting design, function, and location as the original except to meet current engineering standards or environmental permit requirements.

(ii) "Repair" means to restore a structure or development to a state comparable to its original condition including, but not limited to, restoring the development's size, shape, configuration, location, and external appearance, within a reasonable period after decay or partial destruction. Repair of a structure or development may not cause substantial adverse effects to shoreline resources or the shoreline environment. Replacement of a structure or development may be considered a repair if:

- replacement is the common method of repair for the type of structure or development;
- the replacement structure or development is comparable to the original structure or development, including, but not limited to, the size, shape, configuration, location, and external appearance of the original structure or development; and
- the replacement does not cause substantial adverse effects to shoreline resources or the shoreline environment.

WAC 173-27-085 – Moratoria

Summary of changes: This proposed new WAC incorporates a 2009 law providing local governments authority and procedures for adopting moratoria or other interim controls as necessary to implement the SMP. **Authority:** RCW 90.58.590.

WAC 173-27-085 – Moratoria

(1) Local governments may adopt moratoria or other interim official controls as necessary and appropriate to implement RCW 90.58.

(2) A local government adopting a moratorium or control under this section must:

(a) Hold a public hearing on the moratorium or control within sixty days of its adoption;

(b) Adopt detailed findings of fact that include, but are not limited to, justifications for the proposed or adopted actions and explanations of the desired and likely outcomes;

(c) Notify the department of the moratorium or control immediately after its adoption. The notification must specify the time, place, and date of any public hearing required by this subsection;

d) Provide that all lawfully existing uses, structures, or other development shall continue to be deemed lawful conforming uses and may continue to be maintained, repaired, and redeveloped, so long as the use is not expanded, under the terms of the land use and shoreline rules and regulations in place at the time of the moratorium.

(3) A moratorium or control may be effective for up to six months if a detailed work plan for remedying the issues and circumstances necessitating the moratorium or control is developed and made available for public review. A moratorium or control may be renewed for two six-month periods if the local government complies with subsection (2)(a) of this section before each renewal. If a moratorium or control is in effect on the date a proposed master program or amendment is submitted to the department, the moratorium or control must remain in effect until the department's final action under RCW 90.58.090; however, the moratorium expires six months after the date of submittal if the department has not taken final action.

WAC 173-27-125 – Special procedures for WSDOT projects

Summary of changes: This proposed new WAC incorporates a 2015 law establishing a target of 90 days review time for local governments reviewing permits for a Washington State Department of Transportation (WSDOT) project with an estimated cost under \$500 million. WSDOT projects that address significant public safety risks may begin 21 days after the date of filing if all components of the project will achieve no net loss of shoreline ecological functions. The Shorelines Hearings Board is not precluded from concluding that the project is inconsistent with the SMA, the local SMP, or SEPA. **Authority:** RCW 90.58.140(5) and RCW 90.58.355.

WAC 173-27-125 Special procedures for WSDOT projects.

(1) Permit review time for projects under 500 million dollars: To the greatest extent practicable, a city, town, code city, or county must make a final determination on all permits required for a project on a state highway as defined in RCW 46.04.560 no later than ninety days after the department of transportation's submission of a complete permit application for a project with an estimated cost of less than five hundred million dollars.

(2) Optional process allowing construction to commence twenty-one days after date of filing:

(a) Pursuant to RCW 90.58.140, this optional process applies to any shoreline permit or decision to issue any shoreline permit for a transportation project of the Washington State Department of Transportation addressing significant public safety risks, as defined by the Department of Transportation. Such projects may begin twenty-one days after the date of filing if all components of the project achieve a no net loss of shoreline ecological functions, as defined by department guidelines adopted pursuant to RCW 90.58.060 and as determined through the following process:

(i) The department of transportation, as part of the permit review process, must provide the local government with an assessment of how the project affects shoreline ecological functions. The assessment must include specific actions for avoiding, minimizing, and mitigating impacts to shoreline ecological functions, developed in consultation with the department, that ensure there is no net loss of shoreline ecological functions; and

(ii) The local government, after reviewing the assessment required in subsection (i) and prior to the final issuance of all appropriate shoreline permits and variances, must determine that the project will result in no net loss of shoreline ecological functions.

(b) Nothing in this section precludes the Shorelines Hearings Board from concluding that the shoreline project or any element of the project is inconsistent with this chapter, the local shoreline master program, chapter 43.21C RCW and its implementing regulations, or the applicable shoreline regulations.

(c) This section does not apply to permit decisions for the replacement of the floating bridge and landings of the state route number 520 Evergreen Point bridge on or adjacent to Lake Washington.

WAC 173-27-130 -- Filing with the department

Summary of changes: Amendments incorporate a 2011 law relating to notifications and appeals timelines. The law clarifies that local permit decisions shall be submitted to Ecology by return receipt requested mail; and that Ecology shall notify local government and the applicant of the date of filing by telephone or electronic means followed by written communication. **Authority:** 90.58.140(6)

(1) All applications for a permit or a permit revision shall be submitted to the department by return receipt requested mail upon a final decision by local government. Final decision by local government shall mean the order or ruling, whether it be an approval or denial, which is established after all local administrative appeals related to the permit have concluded or the opportunity to initiate such appeals have lapsed.

....

(7) "Date of filing" involving approval or denial of a variance or conditional use permit, is the date of transmittal of the department's final decision on the variance or conditional use permit to local government and the applicant.

(8) Date of filing for a substantial development permit transmitted simultaneously with a shoreline conditional use permit or variance, or both, has the same meaning as (7) above.

(9) The department shall provide a written notice to the local government and the applicant of the "date of filing" notify the local government and applicant of the date of filing by telephone or electronic means, followed by written communication, to ensure that the applicant has received the full written decision.

(The subsequent sections will be re-numbered to 10 and 11.)

WAC 173-27-215 – Proposed new section on restoration projects

Summary of changes: Amendments incorporate a 2009 law intended to remove unintentional disincentives to restoration projects. Where shoreline jurisdiction is impacted by a shoreline restoration project, the law authorizes relief from SMP standards within urban growth areas when certain conditions apply. **Authority:** 90.58.580

Shoreline restoration projects—relief from shoreline master program development standards and use regulations.

(1) Purpose of section. In adopting RCW 90.58.580, the legislature found that restoration of degraded shoreline conditions is important to the ecological function of our waters. However, restoration projects that shift the location of the shoreline can inadvertently create hardships for property owners,

particularly in urban areas. Hardship may occur when a shoreline restoration project shifts shoreline management act regulations into areas that had not previously been regulated under the act or shifts the location of required shoreline buffers. The intent of this section to provide relief to property owners in such cases, while protecting the viability of shoreline restoration projects.

(2) Conditions and criteria for providing relief. The local government may grant relief from shoreline master program development standards and use regulations within urban growth areas when the following apply:

(a) A shoreline restoration project causes or would cause a landward shift in the ordinary high water mark, resulting in the following:

(i) (A) Land that had not been regulated under this chapter prior to construction of the restoration project is brought under shoreline jurisdiction; or

(B) Additional regulatory requirements apply due to a landward shift in required shoreline buffers or other regulations of the applicable shoreline master program; and

(ii) Application of shoreline master program regulations would preclude or interfere with use of the property permitted by local development regulations, thus presenting a hardship to the project proponent;

(b) The proposed relief meets the following criteria:

(i) The proposed relief is the minimum necessary to relieve the hardship;

(ii) After granting the proposed relief, there is net environmental benefit from the restoration project;

(iii) Granting the proposed relief is consistent with the objectives of the shoreline restoration project and consistent with the shoreline master program; and

(iv) Where a shoreline restoration project is created as mitigation to obtain a development permit, the project proponent required to perform the mitigation is not eligible for relief under this section; and

(c) The application for relief must be submitted to the department for written approval or disapproval. This review must occur during the department's normal review of a shoreline substantial development permit, conditional use permit, or variance. If no such permit is required, then the department shall conduct its review when the local government provides a copy of a complete application and all supporting information necessary to conduct the review.

(i) Except as otherwise provided in subsection (3) of this section, the department shall provide at least twenty days notice to parties that have indicated interest to the department in reviewing applications for relief under this section, and post the notice on its web site.

(ii) The department shall act within thirty calendar days of the close of the public notice period, or within thirty days of receipt of the proposal from the local government if additional public notice is not required.

(3) The public notice requirements of subsection (2)(c) of this section do not apply if the relevant shoreline restoration project was included in a shoreline master program or shoreline restoration plan as defined in WAC 173-26-201, as follows:

(a) The restoration plan has been approved by the department under applicable shoreline master program guidelines;

(b) The shoreline restoration project is specifically identified in the shoreline master program or restoration plan or is located along a shoreline reach identified in the shoreline master program or restoration plan as appropriate for granting relief from shoreline regulations; and

(c) The shoreline master program or restoration plan includes policies addressing the nature of the relief and why, when, and how it would be applied.

(3) A substantial development permit is not required on land within urban growth areas as defined in RCW 36.70A.030 that is brought under shoreline jurisdiction due to a shoreline restoration project creating a landward shift in the ordinary high water mark.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Shoreline restoration project" means a project designed to restore impaired ecological function of a shoreline.

Administrative clarifications

WAC 173-18 – Streams and rivers constituting shorelines of the state

Summary of changes: Streams and rivers subject to the provisions of the Shoreline Management Act are determined through comprehensive shoreline master program updates and subsequent amendments and can be found in SMPs. Streams will be deleted from the current list in WAC 173-18 after Ecology approves SMP updates for counties and all cities and towns within those counties. These revisions, if any, will be provided in the formal rule proposal scheduled for December 2016.

WAC 173-20 – Lakes constituting shorelines of the state

Summary of changes: Lakes subject to the provisions of the Shoreline Management Act are determined through comprehensive shoreline master program updates and subsequent amendments and can be found in SMPs. Lakes will be deleted from the current list in WAC 173-20 after Ecology approves SMP updates for counties and all cities and towns within those counties. These revisions, if any, will be provided in the formal rule proposal scheduled for December 2016.

WAC 173-22 – Adoption of designations of shorelands and wetlands associated with shorelines

WAC 173-22-010 -- Purpose

Summary of changes: The Shoreline Management Act originally used the term “wetlands” for the shorelands of the streams, lakes, and marine waters subject to the Act. The proposed rule changes the word “wetlands” to “shorelands” in keeping with the language currently used in the Act.

Pursuant to RCW 90.58.030 (2)(d) (2)(f), the department of ecology herein designates the shorelands wetland areas associated with the streams, lakes, and tidal waters which are subject to the provisions of chapter 90.58 RCW.

WAC 173-22-030 -- Definitions

Summary of changes: The proposed revision to this definition clarifies that the Shoreline Management Act grants authority to the Department of Ecology to designate the ordinary high water mark. This revision is proposed in response to questions from local planners.

(5) "Ordinary high water mark" on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department. Chapter 90.58.030(2)(d) grants the department the authority to designate the ordinary high water mark.

WAC 173-22-050 -- Review and update of designations

Summary of changes: The proposed amendment deletes the last sentence of this provision for consistency with changes to WAC 173-22-060, shown below.

Review and update of designations.

Each local government master program shall include a map of shorelands constituting shorelines of the state within the jurisdiction of the master program that complies with the requirements of RCW 90.58.030 (2)(d). ~~When such master program is approved by the department subsequent to the effective date of this provision, the list within the master program shall be the official list for that jurisdiction and shall supersede the list contained herein.~~

WAC 173-22-060 -- Shoreline designation maps

Summary of changes: WAC 173-22-060 currently refers to shoreline designation maps prepared by Ecology and maintained in an appendix. Ecology has not maintained this appendix for many years. The proposed rule deletes this dated provision and all individual sub-sections for each of Washington's 39 counties (WAC 173-22-0602 through 0678), which lists dates when the designation maps were originally approved or revised. Other sections in WAC 173-22 will be revised to be consistent with the deletion of 060. Maps are now adopted as part of local Shoreline Master Programs and are maintained by local governments, as outlined in WAC 173-22-050.

~~WAC 173-22-060: Shoreline designation maps until superseded.~~

~~Shoreline designation maps are those maps which have been prepared and adopted by the department in a manner consistent with chapter 34.04 RCW (the Administrative Procedure Act) that designate the location of shorelines of the state and their shoreland areas. Shoreland area designations are applied under the criteria contained in WAC 173-22-040. Due to the bulk of the maps designating the shoreland areas, they are not included in the text of this chapter, but rather are incorporated herein as an appendix hereto, having full legal force and effect as if published herein. Copies of the appendix are available to the public at all reasonable times for inspection in the headquarters of the department of ecology in Lacey, the Washington state code reviser's office, the appropriate county auditor and city clerk. Copies of portions thereof, or of the complete set, will be available from the department at the expense of the party requesting the same. Volumes I, II, and III entitled *Shorelines under the Shoreline Management Act of 1971* (chapter 90.58 RCW, chapter 286, Laws of 1971 1st ex. sess.) were~~

adopted by reference on June 30, 1972. These maps are in effect until superseded by an approved shoreline master program as described in WAC ~~173-22-050~~. WAC 173-22-060: Shoreline designation maps until superseded.

WAC 173-22-070 -- Lands within federal boundaries

Summary of changes: Proposed amendments remove an out-dated reference to a map appendix, consistent with revisions for consistency with changes to WAC 173-22-060, shown above. Minor edits clarify the SMA does not apply to areas under exclusive federal jurisdiction within federal boundaries (e.g., National Parks).

Lands within federal boundaries

~~In addition to those designations contained in the appendix, t~~ Those nonfederal lands lying within the exterior boundaries of federal lands and those federal lands leased by the federal government to other persons, ~~which lands that~~ fall within the definition of shorelands ~~contained herein~~, shall also be subject to the jurisdiction of chapter 90.58 RCW. Areas and uses in those areas that are under exclusive federal jurisdiction as established through federal or state statutes are not subject to the jurisdiction of chapter 90.58 RCW.

WAC 173-26 – State master program approval/amendment procedures and master program guidelines

WAC 173-26-020 -- Definitions

Summary of changes: Proposed revisions remove the word “limited” to clarify that amendments other than comprehensive amendments are simply amendments to the SMP. The qualifier “limited” is misleading, as amendments can cover significant substantive topics. The revision also deletes unnecessary words.

- (24)(a) "Master program" or "shoreline master program" shall mean
- (b) "Comprehensive master program update" means a master program that fully achieves the procedural and substantive requirements of the department's shoreline master program guidelines effective January 17, 2004, as now or hereafter amended;
- (c) ~~"Limited M~~master program amendment" means a master program amendment that ~~addresses specific procedural and/or substantive topics and which~~ addresses specific procedural and/or substantive topics and which is not intended to meet the complete requirements of a comprehensive master program update.

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

Summary of changes: The proposed amendment deletes § (2), which references a WAC that was repealed in 1996.

- ~~(1) Chapter 90.58 RCW requires all local governments with shorelines of the state within their boundaries to develop and administer a shoreline master program... are listed in WAC 173-26-080.~~
- ~~(2) All shoreline master programs adopted by reference in chapter 173-19 WAC existing as of the effective date of this chapter, remain in full force and effect and continue to be considered part of the state master program, as defined herein.~~

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

Summary of changes: Proposed amendments adds a reference to the records submitted under WAC 173-26-110 and removes the redundant list of what is contained within the initial submittal.

The department shall maintain records for all master programs currently in effect and subsequent amendments thereto. Master program records shall be organized consistent with the state master program register and shall be available for public viewing and inspection during normal business hours at the headquarters of the department.

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

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

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

- (a) Initial submittal from local government per WAC 173-26-110;
- ~~(b) Record of notice to the public, interested parties, agencies and tribes;~~
- ~~(c) Staff reports, analysis and recommendations;~~
- ~~(d) Pertinent correspondence between local government and the department;~~
- (e) The department's letter denying, approving as submitted, or approving alternatives, together with findings and conclusions and amended text and/or maps;
- (f) Documents related to any appeal of the department's action on the amendment;
- (g) Supplemental materials including:
 - (i) Interested party mailing list;
 - (ii) Comment letters and exhibits from federal, state, local, and tribal agencies;
 - (iii) Comment letters and exhibits from the general public;
 - (iv) Recordings ~~and tapes~~ 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.

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

Summary of changes: The proposed revision updates the lists of local governments required to develop SMPs. No shorelines of the state are located within the boundaries of the cities of Sprague and Pomeroy, so the cities are not required to develop a master program. Due to annexation, a shoreline of the state is located in the city of Battle Ground, so the city is required to develop a master program.

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

Clark County.

- Battle Ground, city of.
- Camas, city of.
- LaCenter, town of.
- Ridgefield, town of.
- Vancouver, city of.
- Washougal, city of.
- Woodland, city of.

Garfield County.

- ~~Pomeroy, city of.~~

Lincoln County
Odessa, town of.
Reardan, town of.
~~Sprague, city of.~~

WAC 173-26-100 & -120

Summary of changes: Several “housekeeping” revisions to WAC 173-26-100 and 120 are presented in a preliminary draft amendments paper regarding joint review of master program amendments. These changes are not presented here to avoid duplication.

WAC 173-26-130 – Appeal procedures for master programs

Summary of changes: Proposed revisions to § 1 add a reference to the statute that addresses appeals of master programs for local governments fully planning under GMA, and standardizes the reference to the Department of Ecology, as “department” is defined as the Department of Ecology in WAC 173-26-020(9).

Proposed revisions to § 2 clarify the deadline for appeals of master programs consistent with the SMA. The last sentence is moved to WAC 173-26-120 where it belongs. See the separate paper describing “Joint Review” of master program amendments.

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

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

WAC 173-26-160 -- Local government annexation

Summary of changes: Adding “or approved” clarifies that Ecology adopts master programs through a rule process or the approval process established in WAC 173-26.

... 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 SMP in effect for the area prior to annexation.

WAC 173-26-201 – Process to prepare or amend shoreline master programs.

Summary of changes: Consistent with other proposed revisions in WAC 173-26, this proposed revision deletes the word “limited.” See proposed change above to WAC 173-26-020 Definition. Ecology proposes to delete the sentence about the priority of comprehensive updates as they will largely be completed by summer 2017, when this rule change is expected to take effect. The criteria in “(i)” are redundant with other provisions of WAC 173-26.

1) **Applicability.** This section outlines the process to prepare a comprehensive shoreline master program adoption or update. This section also establishes approval criteria for ~~limited~~ shoreline master program amendments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WAC 173-26-211 – Environment designation system

Summary of changes: Proposed revisions update the citation to the Department of Commerce procedural criteria and corrects the WAC references for the shoreline use analysis and special area planning.

(2)(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)~~ ~~365-195-300(2)(d)~~.

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

WAC 173-26-221 – General master program provisions

Summary of changes: The first proposed administrative change to the general master program provisions updates the name of the state archaeology office to department. The second eliminates redundancy, as water enjoyment and water related uses are nonwater dependent uses.

(1) Archaeological and historic resources

(a) **Applicability.** The following provisions apply to archaeological and historic resources that are either recorded at the state ~~historic preservation office~~ department of archaeology and historic preservation and/or by local jurisdictions or have been inadvertently uncovered...

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

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

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

(4) Public access

(d) (iii) Provide standards for the dedication and improvement of public access in developments for ~~water enjoyment, water related, and~~ nonwater-dependent uses and for the subdivision of land into more than four parcels.

WAC 173-26-241(3)(e) – Forest practices

Summary of changes: The proposed amendment would clarify that a forest practice that only involves timber cutting is not development under the SMA and does not require a shoreline Substantial Development Permit. This addresses a regularly recurring question which is answered in Forest Practices Board rules but not in SMA rules.

Authority: RCW 76.09.240(6) and WAC 222-50-020(2): "Compliance with the Shoreline Management Act, chapter 90.58 RCW, is required. The Shoreline Management Act is implemented by the department of ecology and the applicable local governmental entity. A substantial development permit must be obtained prior to conducting forest practices which are "substantial developments" within the "shoreline" area as those terms are defined by the Shoreline Management Act."

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 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. ~~However,~~ In addition, local governments shall, where applicable, apply this chapter to Class IV-General forest practices where shorelines are being converted or are expected to be converted to nonforest uses.

WAC 173-26-241(3)(h) -- Mining

Summary of changes: The proposed amendments adds a reference to RCW 77.55 – Construction projects in state waters, the law governing hydraulic project approvals.

(ii) (B) Master program provisions and permit requirements for mining should be coordinated with the requirements of chapter [78.44](#) RCW and chapter [77.55](#) RCW.

WAC 173-26-360(2) – Geographical application of ocean management guidelines

Summary of changes: This language clarifies interpretation of the RCW geographic extent around Cape Disappointment and Columbia River protections. There has been confusion on the geographic scope around Cape Disappointment and whether the line extends south or extends directly west from Cape Disappointment. If a line is drawn directly west from Cape Disappointment, this would leave out an odd, narrow section of the mouth of the Columbia River and Pacific Ocean to the state border (both to the south and west). This would result in an illogical interpretation of the RCW.

Geographical application. The guidelines apply to Washington's coastal waters from Cape Disappointment directly south to the state border, including at the mouth of the Columbia River, and from Cape Disappointment north one hundred sixty miles to Cape Flattery at the entrance to the Strait of Juan De Fuca including the offshore ocean area, the near shore area under state ownership, shorelines of the state, and their adjacent uplands. Their broadest application would include an area seaward two hundred miles (RCW [43.143.020](#)) and landward to include those uplands immediately adjacent to land under permit jurisdiction for which consistent planning is required under RCW [90.58.340](#). The guidelines address uses occurring in Washington's coastal waters, but not impacts generated from activities offshore of Oregon, Alaska, California, or British Columbia or impacts from Washington's offshore on the Strait of Juan de Fuca, the Columbia River east of Cape Disappointment, or other inland marine waters.

[WAC 173-27 – Shoreline Management permit and enforcement procedures](#)

WAC 173-27-030 -- Definitions

Summary of changes: The proposed amendments to the Definitions section clarifies that development does not include the dismantling or removal of structures, consistent with the Washington State Supreme Court case decision in the *Cowiche Canyon v Bosley* (118 Wn.2d 801, 1992).

Amendments also revise the definition of “vessel” for consistency with the Department of Natural Resources definition; strike an incorrect reference; and add references to definitions in two WAC chapters.

6) "Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the act at any stage of water level. "Development" does not include dismantling or removing structures if there is no other associated development or re-development;

18) "Vessel" means a floating structure that is designed primarily for navigation, is normally capable of self propulsion and use as a means of transportation, and meets all applicable laws and regulations pertaining to navigation and safety equipment on vessels, including, but not limited to, registration as a vessel by an appropriate government agency includes ships, boats, barges, or any other floating craft which are designed and used for navigation and do not interfere with the normal public use of the water;

(19) The definitions and concepts set forth in RCW 90.58.030, and chapters ~~173-25~~ and 173-20, 173-22 and 173-26 WAC also apply as used in this chapter.

WAC 173-27-045 – Developments not subject to the Shoreline Management Act

Summary of changes: The proposed revision removes the outdated § (1) and deletes the provision on remedial actions (3), which is now incorporated into new proposed WAC 173-27-044 ([described above under Statutory Amendments](#)).

Certain developments are not required to meet requirements of the Shoreline Management Act as follows:

(1) Pursuant to RCW ~~90.58.390~~, ~~certain secure community transition facilities are not subject to the Shoreline Management Act. An emergency has been caused by the need to expeditiously site facilities to house sexually violent predators who have been committed under chapter 71.09 RCW. To meet this emergency, secure community transition facilities sited pursuant to the preemption provisions of RCW 71.09.342 and secure facilities sited pursuant to the preemption provisions of RCW 71.09.250 are not subject to the provisions of this chapter.~~

~~This section expires June 30, 2009.~~

(2) Pursuant to RCW 90.58.045 regarding environmental excellence program agreements, notwithstanding any other provision of law, any legal requirement under the Shoreline Management Act, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW.

(3) Pursuant to RCW ~~90.58.355~~ regarding hazardous substance remedial actions, ~~the procedural requirements of the Shoreline Management Act shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter (4) 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department of ecology shall ensure compliance with the substantive requirements of chapter 90.58 RCW, chapter 173-26 WAC and the local master program through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or during the department conducted remedial action, through the procedures developed by the department pursuant to RCW 70.105D.090.~~

(2) The holder of a certification from the governor pursuant to chapter [80.50](#) RCW shall not be required to obtain a permit under chapter [90.58](#) RCW.

WAC 173-27-060 – Applicability of chapter 90.58 RCW to federal lands and agencies

Summary of changes: The proposed amendment clarifies that Ecology will consult local Shoreline Master Programs when making federal consistency determinations and clarifies that SMPs themselves are not enforceable policies of the Coastal Zone Management Act, consistent with recent federal agency interpretations.

(1) ...The Shoreline Management Act is incorporated into the Washington state coastal zone management program and, thereby, those direct federal agency activities affecting the uses or resources subject to the act must be consistent to the maximum extent practicable with the enforceable provisions of the act, and regulations adopted pursuant to the act. ~~and~~ The applicable state-approved local master program will inform the department’s consistency determinations.

(a) When the department receives a consistency determination for an activity proposed by the federal government, it shall request that local government review the proposal and provide the department with its views regarding the consistency of the activity or development project with the ~~enforceable policies of the~~ local master program...federal ownership.

WAC 173-27-080 – Nonconforming use and development standards

Overall summary of changes to WAC 173-27-080: Unlike other permit and enforcement rules, this rule is a “default” rule that only applies if a local government has no provisions in their local SMP addressing nonconforming uses. Most comprehensively amended SMPs have adopted specific provisions, so this rule will only apply in the relatively rare cases where a local government had simply adopted this WAC by reference. Proposed amendments borrow from recent locally adopted master programs that make clearer distinctions between shoreline uses and shoreline structures.

Proposed amendments to the opening paragraph below add further clarification that these provisions do not apply unless an SMP is silent on this topic.

Local governments typically develop their own approaches to addressing nonconforming use and development. This section is intended to apply if a shoreline master program does not contain locally-adopted nonconforming use and development standards. When nonconforming use and development standards do not exist in the applicable master program, the following definitions and standards shall apply.:

Summary of changes to § 1 Definitions: The proposed revisions create separate definitions for nonconforming “use,” “structure” and “lots.” The definitions are borrowed from recently amended SMPs.

(1) Definitions

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

(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, buffers or yards; area; bulk; height or density standards due to subsequent changes to the master program.

(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.

Summary of changes to proposed § (2) on nonconforming structures:

§ (2)(a) clarifies that existing legal nonconforming structures may continue. This addresses a concern raised during comprehensive updates about the legal rights of nonconforming structures, addressing concerns that existing structures are intended to be phased out over time.

§ (2)(b) provides a general rule for expansions of nonconforming structures. The rule would only apply for circumstances where a comprehensively updated SMPs had not created more specific pathways for expansion of nonconforming structures, and clarifies the general rule that a variance would be required for expansions.

§ (2)(c) retains the existing authorization for expansions of preferred single-family residences or addition of appurtenances through a conditional use permit.

The existing WAC 173-27-080(4) is deleted in its entirety. The rule says that if an updated SMP requires a CUP for an existing use, that use should be considered a nonconforming use. Local governments found this provision puzzling. It is not clear why existing uses that didn’t have a requirement to go through a CUP process should be considered nonconforming. They should be treated no differently from other existing uses.

§ (2)(f) adds a qualifier to an existing provision that required any nonconforming structure that is moved any distance to meet all applicable provisions of the SMP. This could be disincentive to move away from the shoreline in circumstance where all dimensional standards (e.g., buffer width) could not be met because of existing constraints (e.g., lot width, presence of a road). The proposed changes requires a structure that is moved to move “as far as practical” from the shoreline.

§ (2)(g) extends the time period for obtaining permits to replace damaged development from 6 months to 2 years. Even in normal circumstances applications can take 6 months to prepare, so a longer timeframe is warranted where a development has been damaged. Ecology proposes deleting the final clause that creates a timeframe for completion of all the work needed to replace a damaged nonconforming structures. The timeframe would instead be established by the local government from the time the permit is issued, just like for any other permit.

(2) Nonconforming structures

(a) Structures that were legally established and are used for a conforming use but ~~which~~ are nonconforming with regard to setbacks, buffers or yards; area; bulk; height or density may continue as legal nonconforming structures and may be maintained and repaired. ~~and~~

(b) Nonconforming structures may be enlarged or expanded provided that said enlargement meets the applicable provisions of the master program. In the absence of other more specific regulations, proposed expansion shall ~~does~~ not increase the extent of nonconformity by further encroaching upon or extending into areas where construction ~~or use~~ would not be allowed for new ~~development or uses~~ structures, unless a shoreline Variance permit is obtained.

(c) Nonconforming single-family residences that are located landward of the ordinary high water mark may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances as defined in WAC 173-27-040 (2)(g) upon approval of a conditional use permit.

(4) A use ~~which is listed as a conditional use but which existed prior to adoption of the master program or any relevant amendment and for which a conditional use permit has not been obtained shall be~~

~~considered a nonconforming use. A use which is listed as a conditional use but which existed prior to the applicability of the master program to the site and for which a conditional use permit has not been obtained shall be considered a nonconforming use.~~

~~(5) (d)~~ 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 preexisting nonconformities.

~~(6) (e)~~ A structure which is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a conditional use permit. A conditional use permit may be approved only upon a finding that:

~~(i)~~ No reasonable alternative conforming use is practical; and

~~(b) (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 preexisting use.

In addition, such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, 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.

~~(7) (f)~~ A nonconforming structure which is moved any distance must be brought as closely as practicable into conformance with the applicable master program and the act.

~~(8) (g)~~ If a nonconforming development is damaged to an extent not exceeding seventy-five percent of the replacement cost of the original development, it may be reconstructed to those configurations existing immediately prior to the time the development was damaged, provided that application is made for the permits necessary to restore the development within ~~six months~~ two years of the date the damage occurred, ~~all permits are obtained and the restoration is completed within two years of permit issuance.~~

Summary of proposed § 3 addressing nonconforming uses:

The first two are essentially the same as existing regulations, mirroring (2)(a) and (b) that address nonconforming structures.

§ (3)(a) preserves existing regulation (3), clarifying that existing nonconforming uses may continue.

Likewise, § (3)(b) retains the existing regulation, which sets out the general rule that nonconforming uses shall not be enlarged. The regulation retains the existing exception for expansion of nonconforming single-family residential uses, though it would be exceedingly rare for a single-family residential use to be a nonconforming *use*. The regulation clarifies that such expansions should require a CUP.

§ (3)(c) clarifies that discontinued nonconforming uses may be re-established through a CUP. It also clarifies that water-dependent uses that are episodically dormant or include phased or rotational operations should not be considered “discontinued.”

(3) Nonconforming uses

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

(b) In the absence of other more specific regulations in the master program, such uses shall generally not be enlarged or expanded. In rare instances, amended master programs may render existing single family residences nonconforming uses. In such cases, nonconforming single-family residential uses that are located landward of the ordinary high water mark may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances as defined in WAC 173-27-040 (2)(g) upon approval of a conditional use permit.

~~(9)~~ (c) If a nonconforming use is discontinued for twelve consecutive months or for twelve months during any two-year period, the nonconforming rights shall expire and any subsequent use shall be conforming unless re-establishment of the use is authorized through a conditional use permit which must be applied for within the two-year period. 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. A use authorized pursuant to subsection ~~(6)~~ (2)(c) of this section shall be considered a conforming use for purposes of this section.

Summary of proposed § 4 addressing Nonconforming lots: Proposed edits to former § 10 deletes the lengthy introduction to this sentence, because that is replaced with a more concise definition above under § 1.

~~(10) An undeveloped lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was established in accordance with local and state subdivision requirements prior to the effective date of the act or the applicable master program but which does not conform to the present lot size standards~~

(4) Nonconforming lot

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.

WAC 173-27-170 – Review criteria for variance permits

Summary of changes: The proposed amendments correct incorrect citations to RCW 90.58.

(2) Variance permits for development and/or uses that will be located landward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(c)(2)(b), and/or landward of any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:...

(3) Variance permits for development and/or uses that will be located waterward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(c)(2)(b), or within any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:...