

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) The guidelines are subordinate to the act. Any inconsistency between the guidelines and the act must be resolved in accordance with the act.

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

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

(4) 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.

(5) 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 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 Recommended Process for Evaluation 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) 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. RCW 90.58.340. 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) 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.

(8) 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) Local government is guided in its review and amendment of local master programs so that it uses a process that identifies, inventories, and ensures meaningful understanding of current and potential ecological functions provided by affected shorelines.

(b) Local master programs shall include policies and regulations designed to achieve no net loss of those ecological functions.

(i) Local master 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 all relevant constitutional and other legal limitations on the regulation of private property.

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

(c) For counties and cities 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) Local master programs 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 consider:

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

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

(iii) Beneficial 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) The guidelines are not intended to limit the use of regulatory incentives, voluntary modification of development proposals, and voluntary mitigation measures that are designed to restore as well as protect shoreline ecological functions.

(9) 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 programs, and to modify master programs to reflect changing circumstances.

(10) 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) In reviewing and approving local government actions under RCW 90.58.090, the department shall insure 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.]