

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.** Shoreline master programs are both planning and regulatory tools. Master programs serve a planning function in several ways. First, 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). Second, they address the full variety of conditions on the shoreline. Third, 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). Fourth, master programs address conditions and opportunities of specific shoreline segments by classifying the shorelines into "environment designations" as described in WAC 173-26-211.

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. 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. Some development requires 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. Except where specifically provided in statute, the 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.

(b) **Master program elements.** 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 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.

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) (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 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."

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.]"

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 the ecology'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. 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 sections in these guidelines include methods to achieve the consistency required by both the Shoreline Management Act and the Growth Management Act.

First, 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, 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.

Finally, 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: The terms "shall," "must," and "are required" and the imperative voice, mean a mandate; the action is required; 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 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 a map or 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 173-26-210;

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

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

(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 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 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 insuring 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.

(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 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 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 conform to the Shoreline Management Act, specifically RCW 90.58.140, 90.58.143, 90.58.210 and 90.58.220 and to chapter 173-27 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.

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

Master programs or other local permit review ordinances addressing shoreline project review shall include a mechanism for documenting all project review actions in shoreline areas. Local governments shall also identify a process for periodically evaluating the cumulative effects of authorized development on shoreline conditions. This process could involve a joint effort by local governments, state resource agencies, affected Indian tribes, 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 area ordinance. For the purposes of completeness and consistency, local governments 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 proc-

ess 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.** Local governments may integrate master program policies and regulations into their comprehensive plan policies and implementing development regulations rather than preparing a discrete master program in a single document. 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 90.58.130.

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 master program.** Two or more adjacent local governments are encouraged to jointly prepare master programs. Jointly proposed master programs may offer opportunities to effectively and efficiently manage natural resources, such as drift cells or watersheds, that cross jurisdictional boundaries. Local governments jointly preparing master programs shall provide the opportunity for public participation locally in each jurisdiction, as called for in WAC 173-26-201 (3)(b), and submit the multijurisdictional master program to the department for approval.

[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.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.