

OVERWATER COVERAGE

State Guidelines

WAC 173-26-231 Shoreline modifications.

(1) Applicability.

Local governments are encouraged to prepare master program provisions that distinguish between shoreline modifications and shoreline uses. Shoreline modifications are generally related to construction of a physical element such as a dike, breakwater, dredged basin, or fill, but they can include other actions such as clearing, grading, application of chemicals, or significant vegetation removal. Shoreline modifications usually are undertaken in support of or in preparation for a shoreline use; for example, fill (shoreline modification) required for a cargo terminal (industrial use) or dredging (shoreline modification) to allow for a marina (boating facility use).

The provisions in this section apply to all shoreline modifications within shoreline jurisdiction.

(2) General principles applicable to all shoreline modifications.

Master programs shall implement the following principles:

(a) Allow structural shoreline modifications only where they are demonstrated to be necessary to support or protect an allowed primary structure or a legally existing shoreline use that is in danger of loss or substantial damage or are necessary for reconfiguration of the shoreline for mitigation or enhancement purposes.

(b) Reduce the adverse effects of shoreline modifications and, as much as possible, limit shoreline modifications in number and extent.

(c) Allow only shoreline modifications that are appropriate to the specific type of shoreline and environmental conditions for which they are proposed.

(d) Assure that shoreline modifications individually and cumulatively do not result in a net loss of ecological functions. This is to be achieved by giving preference to those types of shoreline modifications that have a lesser impact on ecological functions and requiring mitigation of identified impacts resulting from shoreline modifications.

(e) Where applicable, base provisions on scientific and technical information and a comprehensive analysis of drift cells for marine waters or reach conditions for river and stream systems. Contact the department for available drift cell characterizations.

(f) Plan for the enhancement of impaired ecological functions where feasible and appropriate while accommodating permitted uses. As shoreline modifications occur, incorporate all feasible measures to protect ecological shoreline functions and ecosystem-wide processes.

(g) Avoid and reduce significant ecological impacts according to the mitigation sequence in WAC 173-26- 201(2)(e).

(3) (b) Piers and docks.

New piers and docks shall be allowed only for water-dependent uses or public access. As used here, a dock associated with a single family residence is a water dependent use provided that it is designed and intended as a facility for access to watercraft and otherwise complies with the provisions of this section. Pier and dock construction shall be restricted to the minimum size necessary to meet the needs of the proposed water-dependent use. Water-related and water-enjoyment uses may be allowed as part of mixed-use development on over-water structures where they are clearly auxiliary to and in support of water-dependent uses, provided the minimum size requirement needed to meet the water-dependent use is not violated.

New pier or dock construction, excluding docks accessory to single-family residences, should be permitted only when the applicant has demonstrated that a specific need exists to support the intended water-dependent uses. If a port district or other public or commercial entity involving water-dependent uses has performed a needs analysis or comprehensive master plan projecting the future needs for pier or dock space, and if the plan or analysis is approved by the local government and consistent with these guidelines, it may serve as the necessary justification for pier design, size, and construction. The intent of this provision is to allow ports and other entities the flexibility necessary to provide for existing and future water-dependent uses.

Where new piers or docks are allowed, master programs should contain provisions to require new residential development of two or more dwellings to provide joint use or community dock facilities, when feasible, rather than allow individual docks for each residence.

Piers and docks, including those accessory to single-family residences, shall be designed and constructed to avoid or, if that is not possible, to minimize and mitigate the impacts to ecological functions, critical areas resources such as eelgrass beds and fish habitats and processes such as currents and littoral drift. See WAC 173-26-221 (2)(c)(iii) and (iv). Master programs should require that structures be made of materials that have been approved by applicable state agencies.

EXISTING REGULATIONS

SMC 23.60.020 Substantial development permit required.

Docks accessory to a single family residence that are less than \$2,500 in salt water or less than \$10,000 in fresh water are exempted from obtaining a shoreline substantial development permit. Mitigation is still required per SMC 23.60.030 (B), 23.60.064 (E) and 23.60.152 (H) (I) and (J)

SMC 23.60.030 Criteria for substantial development permits.

B. Conditions may be attached to the approval of a permit as necessary to assure consistency of the proposed development with the Seattle Shoreline Master Program and the Shoreline Management Act.

SMC 23.60.064 Procedures for obtaining substantial development permits, shoreline variance permits, shoreline conditional use permits and special use authorizations.

E. In addition to other requirements provided in this chapter, the Director may attach to the permit or authorization any conditions necessary to carry out the spirit and purpose of and assure compliance with this chapter and RCW 90.58.020. Such conditions may include changes in the location, design, and operating characteristics of the development or use. Performance bonds not to exceed a term of five years may be required to ensure compliance with the conditions.

SMC 23.60.152 General development.

H. All shoreline developments and uses shall be located, designed, constructed and managed to avoid disturbance, minimize adverse impacts and protect fish and wildlife habitat conservation areas including, but not limited to, spawning, nesting, rearing and habitat areas, commercial and recreational shellfish areas, kelp and eel grass beds, and migratory routes. Where avoidance of adverse impacts is not practicable, project mitigation measures relating the type, quantity and extent of mitigation to the protection of species and habitat functions may be approved by the Director in consultation with state resource management agencies and federally recognized tribes.

I. All shoreline developments and uses shall be located, designed, constructed and managed to minimize interference with or adverse impacts to beneficial natural shoreline processes such as water circulation, littoral drift, sand movement, erosion and accretion.

J. All shoreline developments and uses shall be located, designed, constructed and managed in a manner that minimizes adverse impacts to surrounding land and water uses and is compatible with the affected area.

SMC 23.60.204 Piers and floats accessory to residential development.

Only Piers and Floats accessory to residential piers have specific development standards per SMC 23.60.204 (Table 1.)

For other overwater structures and dock, piers and floats that are not accessory to residential development the size of these overwater structures are governed by the lot coverage on submerged lands for all the specific shoreline environments (Table 2)

PROPOSALS FOR SMP UPDATE**Proposed goals and policies**

1. Allow new and expansion of overwater structures only for water dependent and water-related uses or public access.
2. The new or expanded overwater structure should be the minimum necessary.
3. No new residential or commercial buildings over water (provisions for lots with little dry land to be discussed)

4. Avoid critical marine and fresh water habitat when building or expanding overwater structures.

Proposed regulatory changes

General Provisions

We are currently considering keeping the following regulations from the current code:

- Maximum overwater coverage via the lot coverage standards for each shoreline environment as shown in Table 2 (Document 1B).

We are currently considering the following changes to the current regulations regarding overwater coverage for all shoreline environments:

- Limit overwater structures to water-dependent and water-related uses and public access only.
- Allow only the minimum necessary for the water-dependent and water-related use

Residential Piers

Specific development standards for residential piers have been developed by the Army Corps of Engineers with input from NOAA Fisheries. These standards are part of Army Corps of Engineers' Regional General Permit 3 (RGP3). Table 3 (Document 1 (C)) explains these development standards.

DPD's proposal is to require RGP 3 standards for new piers but allow for flexibility when rebuilding existing residential pier structures that do not meet the RGP 3 standards. When replacing piers that are larger than the size permitted under the Army Corps' RGP 3 permit, the size of the replacement pier may 80% of the original pier or the maximum size allowed by RGP 3 standards, whichever is greater.

The current code does not have a threshold to determine when the ongoing incremental repair of a pier actually constitutes replacement. DPD is proposing to define repair of more than 50% of a dock or pier over a five year period as replacement. This change means that when 50% or more of a pier is replaced within a five year period then the pier is considered to be a replacement and the regulations for replaced piers apply.

Clarifications

Additionally, we are proposing to make the following changes clarifying existing regulations:

1. Current code requires mitigation of impacts from overwater structures. DPD intends to add additional language that explicitly states the need to achieve no net loss of ecological function for proposed projects.
2. Clarify what impacts are associated with overwater coverage and what the appropriate mitigation is for the impacts.
3. Add development standards to keep the bulk of the overwater structure out of the shallow water habitat and the first 30 feet from the shoreline in order to provide specificity regarding the requirement to prevent impacts to migration routes.