

**WAC 173-27-080 Nonconforming use and development standards.** 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.

(1) Definitions.

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

(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.

(2) Nonconforming structures.

(a) Structures that were legally established and are used for a conforming use but 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.

(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 not increase the extent of nonconformity by further encroaching upon or extending into areas where construction would not be allowed for new 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.

(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.

(e) In the absence of other more specific regulations, 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

(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.

(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.

(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 two years of the date the damage occurred.

(3) Nonconforming uses.

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

(b) In the absence of other more specific regulations in the master program, such uses shall not be enlarged or expanded, except upon approval of a conditional use permit.

(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 reestablishment 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 (2)(e) of this section shall be considered a conforming use for purposes of this section.

(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.

[Statutory Authority: Chapter 90.58 RCW. WSR 17-17-016 (Order 15-06), § 173-27-080, filed 8/7/17, effective 9/7/17. Statutory Authority: RCW 90.58.140(3) and [90.58].200. WSR 96-20-075 (Order 95-17), § 173-27-080, filed 9/30/96, effective 10/31/96.]