

Jim Hansen's Proposed Edits to Title 23

January 4, 2021

[Note: The following shows the text as proposed by staff in black; it does not show staff's proposed language to the existing text. Commissioner Hansen's proposed edits to staff's draft are shown as ~~strikeout~~/underline.]

23.40.140 Mining.

A. General.

1. The removal of gravel for flood management purposes shall be regulated in accordance with the regulations of WCC 23.40.100 (Flood Control Works and Instream Structures) as well as this section.
2. ~~Commercial m~~Mining and associated activities waterward of the high water mark shall be prohibited. ~~designed and conducted to result in no net loss of shoreline ecological functions and processes in accordance with WCC 23.30.010 (Ecological Protection). Application of this standard shall include avoidance and mitigation of adverse impacts during the course of mining and reclamation. The determination of whether there will be no net loss of ecological function shall be based on an evaluation of the reclamation plan required for the site and shall consider impacts on ecological functions during operation. Preference shall be given to mining proposals that result in the creation, restoration, or enhancement of habitat for priority species.~~
3. Mining and associated activities shall be designed and conducted to comply with the regulations of the environment designation and the provisions applicable to critical areas where relevant. Accordingly, meeting the no net loss of ecological function standard shall include avoidance and mitigation of adverse impacts during the course of mining and reclamation. It is appropriate, however, to determine whether there will be no net loss of ecological function based on evaluation of final reclamation required for the site. ~~Preference shall be given to m~~Mining shall be limited to proposals initiated for flood control purposes or that result in the creation, restoration, or enhancement of habitat for priority species.

[Note: Staff had proposed to delete section (3), as it repeated much of the text in (2). However, Commissioner Hansen is proposing instead to delete most of (2) and reinstate this section (with his amendments shown).]

4. Permit requirements for mining should be coordinated with the requirements of chapters 78.44 (Surface Mining) and 77.55 (Construction Projects in State Waters) RCW.
5. The proposed subsequent use of mined property shall be consistent with the provisions of the environment designation in which the property is located. Reclamation of disturbed shoreline areas shall provide appropriate ecological functions consistent with the setting.
6. Pursuant to RCW 90.48.615, motorized or gravity siphon aquatic mining or discharge of effluent from such activity to any waters of the state that has been designated under the endangered species act as critical habitat, or would impact critical habitat for salmon, steelhead, or bull trout is prohibited. This section does not apply to:

- a. Aquatic mining using non-motorized methods, such as gold panning, if the non-motorized method does not involve use of a gravity siphon suction dredge;
- ~~b. Mining operations where no part of the operation or discharge of effluent from the operation is to waters of the state;~~
- ~~c. Surface mining operations regulated by the department of natural resources under Title 78 RCW;~~
- ~~d. Metals mining and milling operations as defined in chapter 78.56 RCW; or~~
- e-b. Activities related to an industrial facility, dredging related to navigability, or activities subject to a clean water act section 404 individual permit.

B. Additional Standards for Rivers and Streams.

1. Mining waterward of the ordinary high-water mark of a river shall not be permitted except that unless:
 - ~~a. Removal of specified quantities of sand and gravel or other materials at specific locations will not adversely affect the natural processes of gravel transportation for the river system as a whole; and~~
 - ~~b. The mining and any associated permitted activities will not have significant adverse impacts to habitat for priority species nor cause a net loss of ecological functions of the shoreline.~~
 - ~~c. The determinations required by this section shall be made consistent with RCW 90.58.100(1) and WAC 173-26-201(2)(a). Such evaluation of impacts should be appropriately integrated with relevant environmental review requirements of SEPA (chapter 43.21C RCW) and the SEPA rules (chapter 197-11 WAC).~~
 - ~~d. In considering renewal, extension, or reauthorization of gravel bar and other in-channel mining operations in locations where they have previously been conducted, the County shall require compliance with this section to the extent that no such review has previously been conducted. Where there has been prior review, the County shall review previous determinations comparable to the requirements of this section to assure compliance with this section under current site conditions.~~
 - e-a. The provisions of this section do not apply to dredging of authorized navigation channels when conducted in accordance with WCC 23.40.080 (Dredging and Dredge Material Disposal).
2. Commercial mining within any channel migration zone (CMZ) shall require be prohibited. a shoreline conditional use.
3. Scalping of accretional point bars may be permitted as a shoreline conditional use for flood control purposes ~~or commercial purposes~~ under the following conditions:
 - a. Removal of specified quantities of sand and gravel or other materials at specific locations will not adversely affect the natural processes of gravel transportation for the river system as a whole. Specific studies accompanying the application shall demonstrate that no adverse flood, erosion, or other environmental impacts occur either upstream or downstream of extraction sites. Mining extraction amounts, rates, timing, and locations shall be based on a scientifically determined sediment budget adjusted periodically according to data provided by a regular monitoring plan.
 - b. Aggregate washing and ponding of waste water are prohibited in floodways.

- c. Storage within the FEMA floodway is prohibited in the shoreline during the flood season (November 1st through March 1st); provided, that temporary stockpiling is permitted during working hours if all such materials are removed from the floodway at the end of each day's operation.
- d. All applicable permits and approvals, including, but not limited to, hydraulic project approval (HPA) from the Department of Fish and Wildlife and a Whatcom County flood permit, shall be obtained and all applicable provisions attached thereto shall be adhered to.

23.50.010 Nonconforming Uses.

- A. The lawfully established use of any building, structure, land, or premises existing or authorized under a permit or approval issued prior to the effective date of initial adoption of this program (August 27, 1976) or any applicable amendment thereafter, but which does not conform to present use regulations due to subsequent changes to the master program, shall be considered legally nonconforming and may be continued, subject to the provisions of this section; provided, that agricultural activities shall conform to WCC Chapter 16.16, Article 8 (Conservation Program on Agricultural Lands).
- B. The expansion, alteration, and/or intensification of a nonconforming use is prohibited.
- C. An existing use designated as a shoreline conditional use under present use regulations that lawfully existed prior to the effective date of the initial adoption of this program (August 27, 1976) or any applicable amendment thereafter and that has not obtained a shoreline conditional use permit shall be considered a legal use and may be continued subject to the provisions of this section without obtaining a shoreline conditional use permit.
- D. Other than agricultural uses complying with WCC 16.16.800, if a use is discontinued for a period of 12 consecutive months or more, then any subsequent use, if allowed, shall be consistent with the provisions of this program and the Act.
- ~~E. The change of a nonconforming use to another type of nonconforming use may only occur upon the approval of a shoreline conditional use permit. In addition to the shoreline conditional use criteria of WCC Title 22 (Land Use and Development), before approving a shoreline conditional use for a change in nonconforming use, the Hearing Examiner shall also find that:~~
 - ~~1. No reasonable alternative conforming use is practical because of the configuration of the structure and/or the property;~~
 - ~~2. The proposed use will be consistent with the policies and provisions of the Act and this program and as compatible with the uses in the area as the preexisting use;~~
 - ~~3. The vegetation management standards of WCC 23.30.050 are met;~~
 - ~~4. The change in use or remodel will not create adverse impacts to shoreline ecological functions and/or processes; and~~
 - ~~5. Uses that are specifically prohibited or that would thwart the intent of the Act or this program shall not be authorized.~~
 - ~~6. Public Access is provided as required by this program.~~
 - ~~7. Vegetation screening and/or view protection is provided as required by this program.~~