

SHORELINE MASTER PROGRAM RULE AMENDMENTS: Preliminary Draft (1 of 5)

Periodic review of Shoreline Master Programs

This document presents preliminary draft rule amendments¹ addressing the “periodic review” of Shoreline Master Programs (SMPs).

Introduction

The SMA requires each city and county to review, and, if necessary, revise their SMP at least once every eight years. The legislature set a staggered schedule that alternates with similar reviews under the Growth Management Act (GMA) (Figure 1).²

The preliminary draft rule amendments are modeled after [Department of Commerce rules](#) that guide local governments in meeting the analogous GMA “periodic review” requirement, modified to reflect Ecology’s approval role.³ The three main sections are summarized below.

1. Locally-initiated reviews

Ecology’s existing rule recommends local governments amend SMPs to reflect changing local circumstances, new information or improved data. **Section 1** of the preliminary draft adds a numbered heading for these “locally-initiated” reviews, to distinguish them from the statutorily-mandated reviews. The proposed rule also encourages local governments to consult guidance materials available from Ecology that may inform their reviews, using guidance on sea level rise as an example ([see Sea Level rise issue paper](#)).

2. Periodic review requirements

Section 2 summarizes statutory requirements. It clarifies that local legislative action is required to complete the review, even when a local government determines no changes are needed. The draft clarifies the scope of the periodic review is defined by the statutory purpose, i.e., to assure the SMP complies with new state laws or rules that were not in effect when the SMP was last amended,

The Department of Ecology (Ecology) is updating rules implementing the Shoreline Management Act (SMA). Ecology is seeking comments on preliminary draft rules during summer 2016 before initiating formal rule-making in winter 2016.

Please send comments by August 26, 2016, at 5:00pm. Instructions are at <http://www.ecy.wa.gov/programs/sea/rules/1506ov.html>

For other questions contact [Michelle Wilcox](#) at (360) 407-7676.

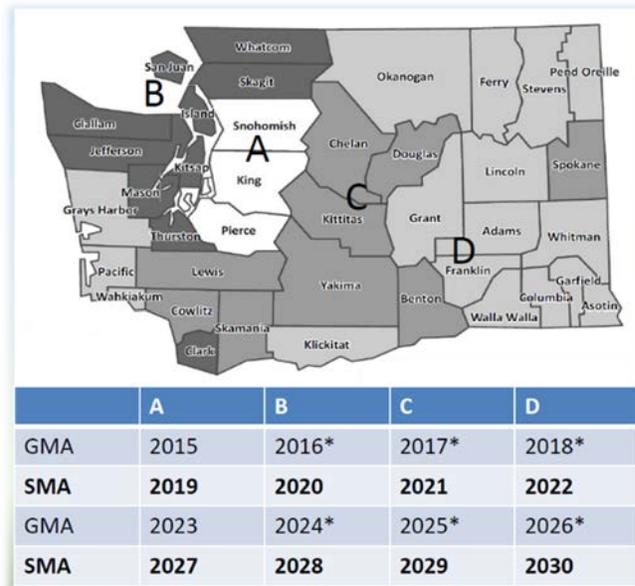


Figure 1. Periodic review schedules under the SMA and GMA. *For GMA reviews: extra 2 years for smaller, slower-growing jurisdictions in groups B, C, D.

¹ Ecology’s rule amendments are required by RCW 90.58.060.

² RCW 90.58.080(4)

³ Commerce rules are found at [WAC 365-196-610](#).

and to assure the SMP is consistent with changes to local plans and regulations.

3. Procedural steps clarify local and state roles

Section 3 outlines local and state procedures for conducting periodic reviews. The preliminary rule follows the GMA periodic review process, with unique steps to reflect Ecology’s formal approval role (see *Figure 2*).

Checklist

The draft rule would require Ecology to maintain a checklist that includes potential review elements. The checklist would identify all amended statutory and guidelines provisions. This checklist would be analogous to the Department of Commerce GMA checklist.⁴ *(The checklist could also be useful at the end of the review process to identify where each issue is addressed in the SMP.)*

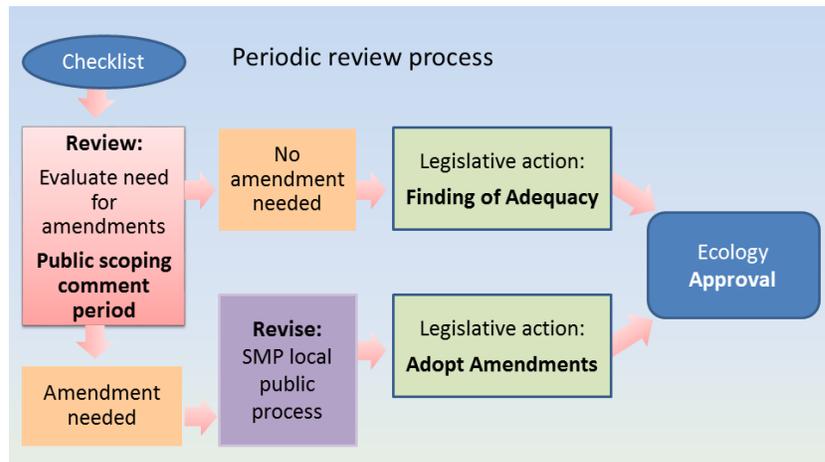


Figure 2. Schematic outline of SMA periodic review process. Ecology final approval triggers an appeal period.

Review and public involvement

Existing laws and rules already require consultation with interested parties on all amendments. The preliminary draft rule clarifies that for the periodic review process, early public scoping should be provided based on the checklist. This step would provide the public an opportunity to inform the review, provide a definitive work plan for local governments, and ensure Ecology and local governments are on the same page about the scope of review early in the review process. For jurisdictions that find no amendments are needed, the scoping step could lead directly to final legislative action determining that no amendments are needed (“Finding of Adequacy”).

Affirmatively concluding review by ordinance

Under the SMA, amendments to SMPs are final only after approval by Ecology. By logical extension, even when it is determined locally that no amendments are necessary under the periodic review, Ecology will need to take formal action to review the local determination and ensure a definitive conclusion to the periodic review process. The draft rule would require local governments that find no SMP amendments are needed to adopt a “Finding of Adequacy” (based on the two statutory purposes in the statute) which would then be submitted to Ecology for formal approval.

If in agreement, Ecology would issue a formal approval. This would provide certainty to all parties that Ecology has concurred with the local determination. Ecology’s approval triggers the appeal period. Any appeals would be of Ecology’s action as well as the local government action.

⁴ [WAC 365-196-610\(2\)\(b\)\(i\)](#).

Preliminary draft amendments to WAC 173-26-090

The following presents Ecology’s preliminary draft amendments to WAC 173-26-090 addressing the periodic review. New language is shown in underline. Deletions are shown in ~~strikethrough~~.

Colored boxes are explanatory and are not part of the proposed amendment.

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(1) Locally-initiated master program review

Summary of changes to WAC 173-26-090(1)

The existing rule starts with a call for each local government to “periodically review” its master program to reflect “changing local circumstances, new information or improved data.” The next sentence states local governments should “also” conduct the statutorily-mandated review required by the SMA at RCW 90.58.080.

The preliminary draft rule amendments build on this existing distinction by creating a new § **(1)** titled “locally-initiated” reviews.

Ecology proposes to remove the word “periodically” from § **1(a)** to more clearly distinguish locally-initiated reviews from the statutorily-mandated 8-year “periodic” reviews discussed in new § **(2)** and § **(3)**. Ecology proposes to add a new sentence encouraging local governments to consult Ecology guidance for information on emerging issues to help inform locally-initiated reviews. It includes sea level rise as a good example of regionally targeted guidance Ecology can provide ([see separate Sea Level Rise paper](#)).

Proposed new § **1(b)** clarifies that the kinds of “locally-initiated” amendments identified here could be combined with the mandatory periodic review. This is highlighted again under § **(3)(b)(iii)**.

WAC 173-26-090 Locally-initiated review — Periodic review—Public involvement and approval procedures encouraged—Amendment of comprehensive plans, development regulations and master programs.

(1) Locally-initiated master program review

(a) Each local government should ~~periodically~~ review a its shoreline master program ~~under its jurisdiction~~ and make amendments ~~to the master program~~ deemed necessary to reflect changing local

circumstances, new information or improved data. Local governments are encouraged to consult department guidance for applicable new information on emerging topics such as sea level rise.

(b) At the discretion of local governments, amendments to address changing local circumstances, new information or improved data may be combined with statutorily-mandated periodic reviews.

(2) Periodic review requirements

Summary of changes to WAC 173-26-090(2)

Proposed § 2 follows the outline of the GMA periodic update rule which summarizes statutory requirements [WAC 365-196-610(1)]. This section reiterates statutory directives from RCW 90.58.080, with clarifications.

§ 2(a) replaces a generalized reference to the periodic review with a direct quote from statute, with an additional clarification that the rule uses the term “periodic review” for the mandatory eight-year review.

§ 2(b) is from statute, with a summary table based on the table in the GMA periodic update rule.

§ 2(c) is a modified version of the GMA rule. It clarifies that statutory review must be concluded with legislative action, even where the review reveals no amendments are necessary. § 2(c)(i) creates a new term – findings that no revisions are needed are “Findings of Adequacy.” § 2(c)(iii) clarifies Ecology approval is needed to conclude local reviews.

§ 2(d) defines the minimum required scope of review as the purpose set in statute.

§ 2(d)(i) is derived from the GMA update rule [WAC 365-196-610(1)(e)]. The proposed rule emphasizes the periodic review is not a “re-do” of the comprehensive SMP update, but a focused review for compliance with amendments to the Act and rules that have been enacted since the comprehensive update or the most recent periodic review, together with a review for consistency with the local GMA comprehensive plan and regulations.

(2) Periodic review requirements.

~~Each local government shall also review any master program under its jurisdiction and make amendments to the master program necessary to comply with the requirements of RCW 90.58.080 and any applicable guidelines issued by the department. When the amendment is consistent with chapter 90.58 RCW and its applicable guidelines, it may be approved by local government and the department or adopted by rule when appropriate by the department.~~

(a) Following the comprehensive updates required by RCW 90.58.080(2), each local government shall conduct a review of their master program at least once every eight years on a schedule established in the act. Following the review, local governments shall, if necessary, revise their master programs. This review and revision is referred to in this section as the periodic review.

(b) Deadlines for periodic review.

Local governments must take action to review, and if necessary, revise their master programs according to the schedule established in RCW 90.58.080(4)(b). Deadlines for completion of periodic review are as follows:

Table WAC 173-26-090.1 Deadlines for Completion of Periodic Review

<u>Reviews must be completed on or before June 30 of:</u>	<u>Affected counties and the cities and towns within:</u>
<u>2019/2027*</u>	<u>King, Pierce, Snohomish</u>
<u>2020/2028*</u>	<u>Clallam, Clark, Island, Jefferson, Kitsap, Mason, San Juan, Skagit, Thurston, Whatcom</u>
<u>2021/2029*</u>	<u>Benton, Chelan, Cowlitz, Douglas, Kittitas, Lewis, Skamania, Spokane, Yakima</u>
<u>2022/2030*</u>	<u>Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, Whitman</u>

** And every eight years thereafter*

(c) Taking legislative action.

(i) The periodic review must be accomplished through legislative action. Legislative action means the adoption of a resolution, motion, or ordinance following notice and a public hearing including, at a minimum, findings that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefore. Legislative findings that no revisions are needed are referred to in this section as Findings of Adequacy.

(ii) Legislative action includes two components. It includes a review of the shoreline master program and it includes the adoption of either Findings of Adequacy or any amendments necessary to bring the program into compliance with the requirements of the act.

(iii) Legislative actions concluding the periodic review must be followed by department approval.

(d) The required scope of review.

The purpose and scope of the periodic review as established by the act is:

(i) To assure that the master program complies with applicable law and guidelines in effect at the time of the review.

The review process provides the method for bringing master programs into compliance with the requirements of the act that have been added or changed since the last review and for responding to changes in guidelines adopted by the department. This review is a narrow scope compared to the one-time comprehensive updates required by the SMA under RCW 90.58.080(2) and (5). The presumption in the comprehensive update process was that all master programs needed to be revised to comply with the full suite of Ecology guidelines. The comprehensive updates were based on an inventory and analysis of shoreline characteristics and a long-term assessment of shoreline protection. Everything in the existing master program was subject to review. By contrast, the

presumption during the periodic reviews is that each master program was affirmatively approved in its entirety for consistency with the act and implementing rules that were in effect at the time of the department's review. The periodic review addresses only changes in requirements of the act and guidelines requirements since the comprehensive update or the last periodic review. There is no requirement to redo the shoreline characterization work or restoration plans. The review ensures that shoreline master programs do not fall out of compliance with the act or department guidelines over time through inaction.

(ii) To assure consistency of the master program with the local government's comprehensive plan and development regulations adopted under chapter 36.70A RCW, if applicable, and other local requirements.

(3) Procedures for conducting periodic reviews

(a) Public participation program

Summary of changes to WAC 173-26-090(3)(a)

§ 3(a)(i) clarifies that the “review” process should be treated as a public amendment process. Even though conducting the review may lead to the conclusion no actual revisions are necessary, the direction in statute for public involvement applies to the review process. The rule adds clarification that local governments may use the new optional joint review process (*described separately*).

§ 3(a)(ii) modifies the existing rule to require a public participation program for all jurisdictions, not just those fully planning under GMA. The new additions under (A) and (B) are modified from GMA rules [\[WAC 365-196-610\(2\)\(a\)\(i\) and \(ii\)\]](#). The recommendation for a schedule and public scoping addresses Growth Management Hearings Board decisions – highlighting the importance of definitive notice when taking action on periodic reviews.

(a) Public participation program.

(i) In developing master programs and amendments thereto, conducting the periodic review, the department and local governments, pursuant to RCW 90.58.130, shall make all reasonable efforts to inform, fully involve and encourage participation of all interested persons and private entities, tribes, and agencies of the federal, state or local government having interests and responsibilities relating to shorelines of the state and the local master program. Local governments may follow the public participation procedures under either the standard local process outlined in WAC 173-26-100, or the optional joint review process outlined in WAC 173-26-105.

(ii) Counties and cities ~~planning under chapter 36.70A RCW,~~ shall establish and broadly disseminate to the public a public participation program identifying procedures whereby ~~proposed amendments~~ review of the ~~comprehensive plan and development regulations relating to shorelines of the state~~ shoreline master program will be considered by the local governing body consistent with RCW 36.70A.130140. Such procedures shall provide for early and continuous public participation through broad dissemination of informative materials, proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, and consideration of and response to public comments.

The public participation program should include a schedule for the periodic review and identify when legislative action on the review and update component are proposed to occur. The public participation program should also inform the public of when to comment on the scope of the review and proposed changes to the master program. Counties and cities may adjust the public participation program to best meet the intent of the participation requirement.

(b) Review and analysis to determine need for revisions

Summary of new WAC 173-26-090(3)(b)

§ 3(b) is based on the Commerce GMA periodic update rule [\[WAC 365-196-610\(2\)\(b\)\]](#).

§ 3(b)(i) borrows from the Commerce rule in requiring Ecology to maintain a checklist of statutory and rule amendments.

§ 3(b)(ii) references Ecology's existing guidelines on reviewing SMPs for consistency with GMA plans and regulations. Ecology's existing guidelines clarify that local governments are responsible for determining whether their SMP is consistent with other local plans and regulations.

§ 3(b)(iii) acknowledges local governments may combine locally initiated amendments together with the periodic review. It clarifies that this is a local determination, and an update of an inventory is not required to make that decision.

(b) Review and analysis to determine need for revisions.

(i) Review amendments to the act and shoreline master program guidelines.

Local governments must review amendments to RCW 90.58 and department guidelines that have occurred since the master program was last amended, and determine if local amendments are needed to maintain compliance. The department will maintain a checklist of legislative and rule amendments to assist local governments with this review. The department will provide technical assistance to ensure local governments address applicable changes to the act and master program guidelines.

(ii) Review relevant comprehensive plans and regulations.

Local governments must review changes to the comprehensive plan and development regulations to determine if the shoreline master program policies and regulations remain consistent with them.

WAC 173-26-191(1)(e) and WAC 173-26-211(3) provide guidance on determining internal consistency. 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. Local governments should document the consistency analysis to support proposed changes.

(iii) Optional review and analysis of changed local circumstances.

Local governments may consider during their periodic review whether to incorporate any amendments needed to reflect changed circumstances, new information or improved data as described under WAC 173-26-090(1). Local governments should consider whether the significance of the changed circumstances warrants amendments. The decision as to whether a changed local circumstance warrants a master program amendment rests with the local government. It is not necessary to update a comprehensive inventory and characterization to make that determination.

(c) Take legislative action

Summary of new WAC 173-26-090(3)(c)

§ 3(c)(i) – (iii) is based on the GMA periodic update rule [[WAC 365-196-610\(2\)\(c\)](#)].

§ 3(c)(iv) clarifies that when no changes are needed a local government will adopt formal “Findings of Adequacy.”

(c) Take legislative action.

(i) At the end of the review process, counties and cities must take legislative action declaring the review process complete.

(ii) The notice of hearing for legislative actions that are intended to address the periodic review process must state that the actions to be considered are part of the periodic review process under RCW 90.58.080(4).

(iii) The findings for any legislative action on the periodic review process must state that the action is intended to satisfy the requirements of RCW 90.58.080(4).

(iv) A local government that determines after review that amendments are not needed shall adopt a resolution, motion, or ordinance declaring Findings of Adequacy. Findings of Adequacy are a local written determination that no revisions to a shoreline master program are needed to comply with the requirements of RCW 90.58.080(4).

(d) Submittal to the department

Summary of new WAC 173-26-090(3)(d)

§ 3(d)(i) clarifies that when there are amendments, local governments will follow the normal amendment process.

§ 3(d)(ii) provides submittal requirements when there are no amendments – these are the required elements for complete submittal to accompany “Findings of Adequacy.”

(d) Submittal to the department.

(i) A local government that determines amendments are needed shall submit the amendments to the department consistent with WAC 173-26-110.

(ii) A local government that determines amendments are not needed shall submit the following in lieu of the requirements of WAC 173-26-110:

(A) A resolution or ordinance declaring Findings of Adequacy.

(B) Evidence of compliance with applicable public notice and consultation requirements.

(C) Copies of all public, agency and tribal comments received during any applicable public comment periods, or where no comments have been received, a statement to that effect.

(D) A completed checklist demonstrating review elements have been considered, and are either inapplicable or have already been addressed through previous locally-initiated amendments prior to the scheduled periodic review.

(e) State process for approving periodic reviews

Summary of new WAC 173-26-090(3)(e)

§ 3(e)(i) clarifies that Ecology must approve any amendment as well as the “Findings of Adequacy”. Any appeals would be of Ecology’s approval rather than the local government determination.

§ 3(e)(ii) clarifies that the normal adoption process applies if there are amendments.

§ 3(e)(iii) provides submittal requirements where there are no amendments. Ecology will follow the normal adoption process but substituting review of the local “Findings of Adequacy” with evaluation of actual amendments.

(e) State process for approving periodic reviews.

(i) The department must issue a formal approval of any amendment or Findings of Adequacy. Department approval is necessary to affirmatively conclude the periodic review process, to confirm that state review of local action has occurred, and to establish a definitive appeal window consistent with RCW 90.58.190.

(ii) Where the local government final action includes master program amendments, local governments and the department shall follow applicable adoption procedures described in WAC 173-26-120.

(iii) Where the local government final action is to adopt Findings of Adequacy, the department shall follow applicable adoption procedures described in WAC 173-26-120. The department shall review the Findings of Adequacy solely for consistency with RCW 90.58.080(4) and this section.