

# Shoreline Master Programs

## *A report on the timeliness of the state approval process for Fiscal Year 2012*

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### Summary

The 2011 Washington State Legislature set a performance target for the Department of Ecology's review and approval of new and updated local Shoreline Master Programs (SMPs). The performance target was set at 180 days.

*"The department shall strive to achieve final action on a submitted master program within one hundred eighty days of receipt and shall post an annual assessment related to this performance benchmark on the agency web site." (Shoreline Management Act, RCW 90.58.090)*

This web page is the first annual assessment of Ecology's performance as required by the legislature. It includes both results and analysis for the first time period: Fiscal Year 2012 (July 1, 2011 – June 30, 2012).

Ecology met the performance target for 4 out of 12 shoreline programs submitted during the time period. Many factors affected whether or not Ecology was able to meet the 180 day performance target, including staff capacity, level of collaboration between the local government and Ecology prior to submittal, and the number of public comments received. Ecology is working to improve performance by working more closely with local governments and providing more assistance on controversial issues before the locally adopted programs are sent to Ecology. **MORE RESULTS**

### Overview: Shoreline Master Programs

Ecology and local governments are co-regulators of Washington's shorelines. Shoreline Master Programs (SMPs) are local land use policies and regulations designed to manage shoreline use. These local programs protect natural resources for future generations, provide for public access to public waters and shores, and plan for water-dependent uses. Local programs are tailored to meet the needs of each of city and county – but must comply with the state [Shoreline Management Act](#) (SMA) and [Shoreline Master Program Guidelines](#) (SMP Guidelines, Chapter 173-26 WAC, Part III).

Local governments periodically update their local programs to accommodate growth and development changes. Over 130 local governments are currently modernizing their existing shoreline programs – many for the first time in 40 years.

### State Approval Process

Shoreline Master Programs are perhaps unique in Washington State land use regulation: they must be formally approved and adopted by *both* the local government and the state. Local adoption comes first; then the program and supporting information is submitted to Ecology's Shorelands and Environmental Assistance Program. Ecology must determine if the submitted package is complete, provide an opportunity for public comment, and review the locally adopted program for conformance with state laws and rules. The local government and Ecology must both agree to the final approved shoreline program.

The [State Approval Process](#) is outlined in state regulations ([WAC 173-26-120](#)). The process includes many steps, some of which must be taken by local governments and some by Ecology. The regulations include specific time requirements for some of the steps (e.g. public comment period must be at least 30 days), nuanced time requirements for some steps (e.g. Ecology must provide "reasonable notice and opportunity for written comments"), and no time requirements for other steps (e.g. determining whether the locally submitted package is

complete). Often, the local government and Ecology work closely together during the state approval process to identify shoreline program language acceptable to both parties.

In the state review process, Ecology may take one of three actions:

1. Approve the new or updated program as is.
2. Approve the new or updated program subject to the local government agreeing to required language changes.
3. Deny approval.

If Ecology approves a shoreline program with required language changes, the local government has 30 days after receiving Ecology's decision letter to either:

- Agree to the required changes.
- Propose alternative language.
  - Ecology then evaluates the alternative to ensure consistency with the intent of the original required changes, the SMA, and the Guidelines. **This often entails a lengthy negotiation process to work through unresolved issues and arrive at a mutually-acceptable shoreline program.**
  - If Ecology and the local government are unable to agree, Ecology may either deny the alternative proposal or, at the request of local government, start the review and approval process over.

The final, approved shoreline program is effective 14 days from the date of Ecology's approval letter to the local government. This time was added by the 2011 Legislature at the request of local governments, to provide them time to get ready for implementing the new program.

## **Performance Results: July 1, 2011 – June 30, 2012**

The state review and approval process for 12 shoreline master programs has taken an average of 260 days – 80 days more than the 180 day performance target set by the Legislature in 2011. The range has been 76 to 471 days.

In general, the 180 day performance target for the state approval process was achieved when:

- Ecology and the local government came to general agreement on the program prior to the local government's adoption and submittal to Ecology.
- No significant policy issues or public controversy emerged during Ecology's review and approval process.
- The amount of public comment received during Ecology's public comment period was non-existent or small.
- Both Ecology and the local government had sufficient staff capacity.

Alternatively, the 180 day performance target was not met when:

- Ecology did not have adequate time and opportunity to identify significant issues of non-compliance prior to the local government's submittal of the program.
- Extensive public comment was received that required more time for the local government to respond.
- The issues were complex or highly controversial, and led to an iterative, negotiated process between the local government and Ecology to identify final program language which both could support.
- Staff capacity was insufficient at Ecology or the local government.

Ecology is improving the timeliness of the state review and approval process by working more closely with local governments prior to submittal, and providing more robust and timely guidance and technical assistance on controversial policy issues facing local governments.

## Results for Fiscal Year 2012 (July 1, 2011 – June 30, 2012)

Average SMP review and approval time = **260** days (Target = 180 Days)

Number of SMPs approved by Ecology = **12**

Jurisdiction	State Approval Process (Days)	Key Factors Affecting Timeliness
Bucoda	76	Ecology reviewed all comments prior to local adoption and the city addressed all comments. No public comments received. Ecology approved as submitted.
Tenino	76	Ecology reviewed all comments prior to local adoption and the City addressed all comments. No public comments received. Ecology approved as submitted.
Covington	106	The City and its consultants worked closely with Ecology. The update was straightforward and without controversy. The SMP was approved as submitted.
Lynnwood	107	No public comments received, no required changes, and the SMP was approved as submitted.
Carnation	203	No public comments received and most steps went smoothly. Final approval was delayed as Ecology worked with the City and internally to resolve a policy issue related to the city's formal referencing of a draft FEMA flood map in its SMP.
Lacey	280	The City added several provisions to the locally adopted SMP that had not been in draft versions. Ecology provided a number of comments to the city at the close of the public comment period. Ecology and the city conducted further analysis and negotiated final language.
Mukilteo	281	Public process delayed by questions raised by the City Attorney. Ecology worked with the City to developing conditions for final approval. Ecology approved the SMP with changes. The City agreed to the changes.
Federal Way	304	Good collaboration with the City prior to local adoption. Several changes required by Ecology in response to public comment. Ecology approved the SMP with required changes and the City ultimately agreed (76 days after Ecology's approval letter).
Renton	381	Ecology approved the SMP with required changes, including limiting dock/pier width consistent with federal standard for protecting juvenile salmon. The City disagreed and significant delays resulted as Ecology re-evaluated and documented the science, consulted with state and federal regulatory agencies, and ultimately reaffirmed the required change. The City ultimately agreed and the SMP was approved.
Kenmore	399	The review of the SMP was initially delayed due to heavy workload at Ecology's Northwest Regional Office and a local submittal that didn't

		include all the required information. After completing the public review process, Ecology approved the SMP with required and recommended changes. During their review, the city requested additional time to respond to the required and recommended changes. The city then responded to Ecology's conditional approval with proposed alternative language. During Ecology's review of the alternative language, the City requested that Ecology not take action on the SMP until after the City could locally adopt the alternative language. Ecology concurred and then, once the local adoption was completed, accepted the City's alternative language and approved the SMP.
Sammamish	436	Ecology had a number of concerns with the submitted SMP, many of which were shared with the City before local adoption. Some delay in approval due to heavy workload at Ecology's Northwest Regional Office and need to resolve internal policy questions. Ecology and City took significant time to resolve policy issues, especially concerning docks and setbacks. Ecology approved SMP with several required changes. The City proposed alternative language for some changes and eventually both parties came to full agreement.
Tukwila	471	Ecology approved SMP with required changes. Some delay in approval due to heavy workload at Ecology's Northwest Regional Office and need to resolve internal policy questions. The City took five months to respond to the conditional approval.