

## Chapter 2

# Shoreline Management Overview

### Introduction

Shoreline management in Washington centers on a state law ratified by voters known as the Shoreline Management Act (SMA) and local policies and regulations embodied in a Shoreline Master Program. These planning and regulatory programs are prepared by local governments according to state rules and the Shoreline Master Program Guidelines, which were endorsed by trade, environmental and government groups statewide.



Figure 2-1: The Shoreline Management Act applies to all marine waters, many lakes and streams, as well as upland areas, associated wetlands and all or portions of floodplains. Photos show Lake Union, above; north Puget Sound, upper right; and the Methow River, lower right.



This chapter explains the relationship between the SMA and local Shoreline Master Programs (SMP) as well as the relationship between the state Department of Ecology and local governments in managing shorelines. It reviews the SMA, provides basic information about SMPs, discusses the historical context of the SMP Guidelines and covers the basic concepts in the Guidelines. The planning process for developing new or updating existing SMPs consistent with the Guidelines is described in Chapter 3, “Shoreline Master Program Updates.”

## Shoreline Management Act

The Shoreline Management Act (SMA), RCW 90.58, provides a statewide framework for managing, accessing and protecting shorelines. Now more than 40 years old, the SMA reflects the strong interest of the public in our shorelines and waterways for recreation, protection of natural areas, aesthetics and commerce.

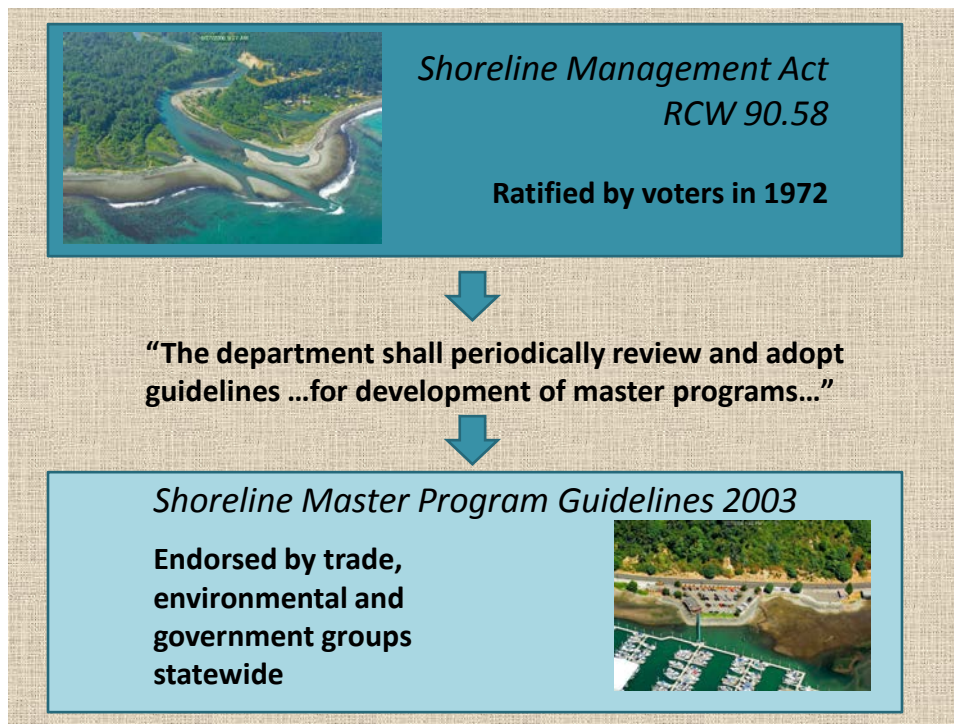


Figure 2-2: The Shoreline Management Act and the Shoreline Master Program Guidelines both have statewide support. Both were adopted after significant public participation.

### Early history

During a time of heightened environmental awareness in the late 1960s, a few events occurred that caused citizens to take action to protect shorelines. In 1967, conservation and outdoor organizations concerned about the loss of wild rivers to development proposed a bill to manage natural rivers, but the bill failed in the State Legislature. Two years later, a Seacoast Management Bill also failed to pass. Meanwhile, proposals for a port development at Nisqually Delta, industrial and “Venice-like” housing development at Padilla Bay, and the filling of Lake Chelan shoreline for a trailer court, were among the catalysts for citizen action. The Washington Supreme Court’s ruling in *Wilbour v. Gallagher* that a Lake Chelan trailer court owner had to remove the fill in order to preserve the right of navigation to the public was a victory for shoreline protection advocates.

In 1970, environmental groups drafted a citizen initiative, the Shoreline Protection Act. In 10 weeks, the initiative was signed by more than 160,000 citizens, the second largest number of signatures for an initiative at that time, and submitted to the Legislature. The Legislature responded with its own law, the Shoreline Management Act of 1971, which became effective on June 1, 1971.

The SMA included a provision to send both shoreline acts to the electorate in the November 1972 election. Voters responded to two questions: 1) Did they favor shoreline management? 2) If yes, which shoreline act did they prefer? Most voters favored both shoreline management and the legislature's alternative by a 2 to 1 margin. The SMA, then, was founded on people's concern for the shoreline environment.

*"The significance of Wilbur (sic) v. Gallagher cannot be exaggerated. The public's right to use of navigable waters could not be interfered with. Would all fills or overwater buildings be brought to a screeching halt?" Joan K. Thomas, Washington Environmental Council, "Shoreline Management – The First Twenty Years," 1991*

That concern continues. Public opinion surveys conducted statewide in 1983 and 1996 showed that about 80% of respondents visited a shoreline at least several times a year, with about 40 percent visiting at least once a month. The most popular activities were observing nature and walking or hiking. The most attractive qualities were the natural setting, scenery and a chance to get away. Highest priorities for shoreline use were wildlife habitat and public parks. Highest priorities for shoreline activities included habitat maintenance, public access, flood hazard reduction, recreation and wetlands protection.

With SMP updates under way, many residents have been involved by serving on advisory committees, attending public meetings and commenting on draft SMPs. Others help with shoreline restoration projects, beach cleanups and water quality education.

***More information:***

- ⇒ [Shoreline Management Act, RCW 90.58.](#)
- ⇒ [Wilbour v. Gallagher, 462 P. 2d 232, Washington Supreme Court, 1969.](#)
- ⇒ [Public Opinion on Shoreline Management in Washington State](#)

**Where the SMA applies BMC 22.10.010 A: 115-117, 121.**

The SMA applies to major water bodies and their adjacent shorelands throughout Washington State. The approximate 28,204 miles of shorelines in the State include:

- Marine waters – 3,447 miles.
- Streams over 20 cubic feet per second mean annual flow – 21,645 miles.
- Water areas and reservoirs 20 acres and greater – 3,112 miles.
- Upland areas called shorelands that are 200 feet landward of the Ordinary High Water Mark.
- All associated wetlands.

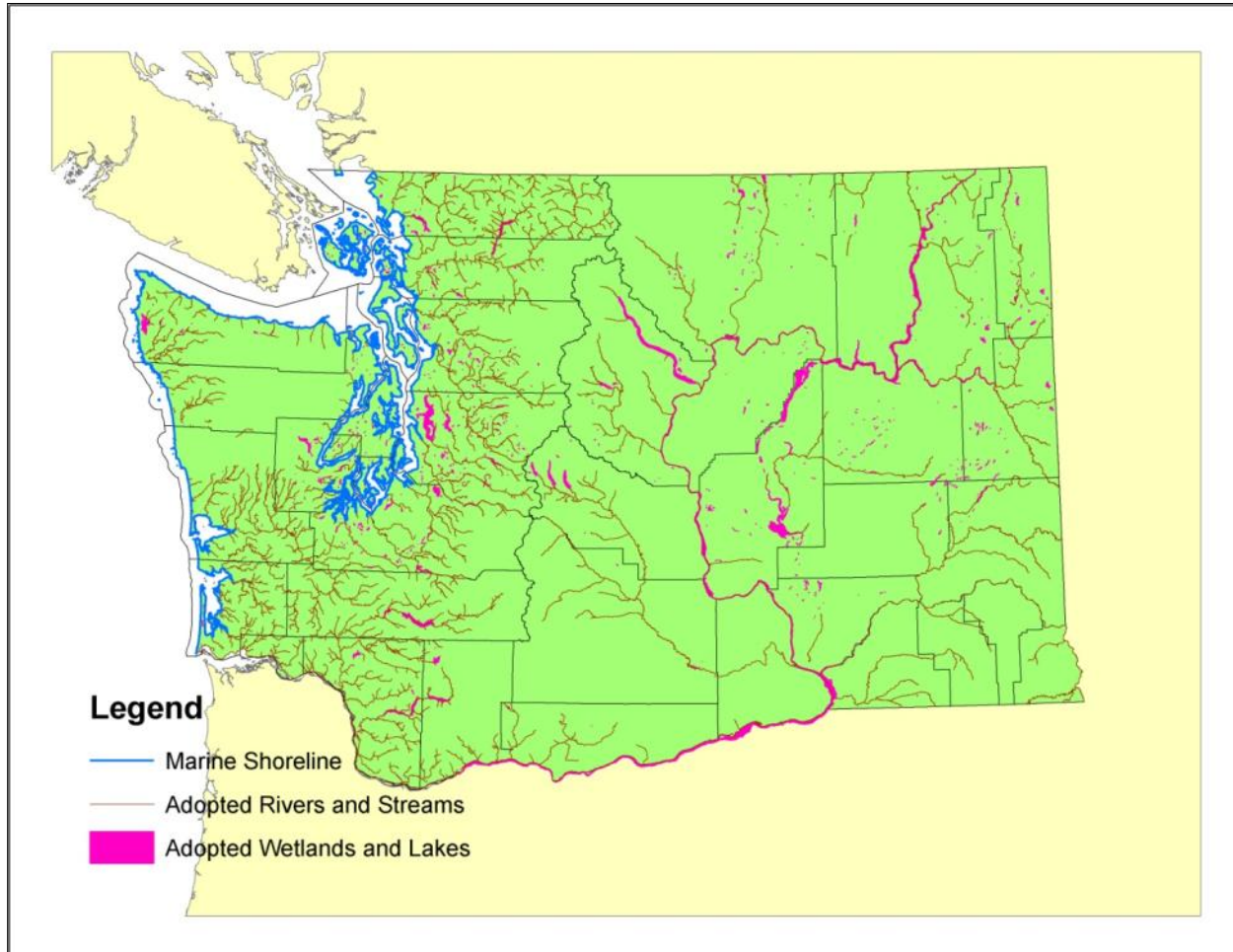


Figure 2-3: Shorelines of the state include all marine waters, water bodies and streams of a certain size, their upland areas called shorelands that are within 200 feet of the Ordinary High Water Mark, and associated wetlands.

Local governments may also include all or part of the 100-year floodplain beyond the 200 feet and “land necessary for buffers for critical areas.”

The SMA [RCW 90.58.020 and .030] sets up use preferences for “shorelines of statewide significance” and identifies these shorelines. For shorelines of statewide significance, SMPs

“shall give preference to uses in the following order of preference which: **BMC 22.04.010 B**

- (1) Recognize and protect the statewide interest over local interest;
- (2) Preserve the natural character of the shoreline;
- (3) Result in long term over short term benefit;
- (4) Protect the resources and ecology of the shoreline;
- (5) Increase public access to publicly owned areas of the shorelines;
- (6) Increase recreational opportunities for the public in the shoreline;
- (7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.”

Shorelines of statewide significance include:

- Pacific Coast, Hood Canal and certain Puget Sound shorelines.
- All waters of Puget Sound and the Strait of Juan de Fuca.
- Lakes or reservoirs with a surface acreage of 1,000 acres or more.
- Large rivers (1,000 cubic feet per second or greater for rivers in Western Washington, 200 cubic feet per second and greater east of the Cascade crest).
- Wetlands associated with all of the above.

**BMC 22.04.020: Aquatic areas of Lake Whatcom and Bellingham Bay.**

***More information:***

- ⇒ *SMP Handbook* Chapter 5, “Shoreline Jurisdiction.”
- ⇒ Shoreline Management Act, [RCW 90.58.020](#) and [RCW 90.58.030](#).

## Goals and policies of the SMA

The overarching goal of the SMA is “to prevent the inherent harm in an uncoordinated and piecemeal development of the state’s shorelines.” The SMA has three broad policies as outlined in RCW 90.58.020:

**Protect the environmental resources of state shorelines.** “This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life...”

**Promote public access and enjoyment opportunities.** “This policy contemplates protecting...public rights of navigation and corollary rights incidental thereto.” “Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public’s use of the water.”

**Give priority to uses that require a shoreline location.** “...uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state’s shoreline.”

All SMP comprehensive updates and other SMP amendments must be consistent with these three basic policies.

***More information:***

- ⇒ Shoreline Management Act, [RCW 90.58.020](#).

## SMA authority for shoreline programs

The SMA is the fundamental authority for developing, updating and amending master programs. “Local governments shall develop or amend a master program for regulation of uses of the shorelines of the state consistent with the required elements of the guidelines...” [RCW 90.58.080]

This section of the SMA also lists the legislative deadlines for cities, counties and towns to complete an SMP update or develop a new SMP consistent with the Guidelines. The deadlines are phased, beginning in 2005 and ending in 2014. This section also allows local governments an additional year beyond the deadlines to complete the master program.

The legislature established a grant program to fund SMP updates, committing about \$34 million over this time period in “reasonable and adequate funding.” Ecology allocates the grant money and Ecology staff members are the project officers, working to ensure that local governments meet the grant requirements.

Eight years after the initial SMP update deadlines, and every eight years thereafter, local governments must review, and if necessary, revise SMPs. The purpose of this review is to assure that the SMP complies with applicable laws and guidelines and is consistent with the comprehensive plan, development regulations and other local regulations. The first round of reviews and necessary revisions is due by June 30, 2019 for three Puget Sound counties and their cities; reviews and necessary revisions for other jurisdictions will be due June 30 the following three years. The schedule is established in the SMA at RCW 90.58.080.

### *More information:*

⇒ Shoreline Management Act, [RCW 90.58.080](#).

## SMA directives for SMPs

The SMA [RCW 90.58.100] provides some direction on how master programs should be prepared and what they shall include.

Section (1)(a)-(f) requires the following when preparing master programs and amendments:

### **BMC 22.01.040** **A 10 a-f**

- Utilize a systematic interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts;
- Consult with and obtain the comments of any federal, state, regional, or local agency having any special expertise with respect to any environmental impact;
- Consider all plans, studies, surveys, inventories, and systems of classification made or being made by federal, state, regional, or local agencies, by private individuals, or by organizations dealing with pertinent shorelines of the state;
- Conduct or support such further research, studies, surveys, and interviews as are deemed necessary;
- Utilize all available information regarding hydrology, geography, topography, ecology, economics, and other pertinent data;

- Employ, when feasible, all appropriate, modern scientific data processing and computer techniques to store, index, analyze, and manage the information gathered.

Subsection 2 requires the following elements in SMPs, when appropriate: economic; public access; recreational; circulation; use; conservation; historic, cultural, scientific and educational; flood damage prevention; and other elements as necessary. SMPs do not need to include these elements as discrete sections. They may be addressed throughout the master program, rather than as a means to organize the SMP.

This section of the SMA also requires SMPS to include:

- Maps, descriptive text, diagrams, charts or other descriptive materials, as necessary. (3)
- Provisions to allow for varying the use regulations of the SMP, including variances and conditional use permits. Permit systems are specifically required in RCW 90.58.140(3).
- Special consideration for state-owned shorelines for wilderness beaches, ecological study areas and other recreational activities for the public.
- Standards for the protection of single family residences occupied prior to January 1, 1992, and appurtenances against damage or loss due to shoreline erosion.

***More information:***

⇒ Shoreline Management Act, [RCW 90.58.100](#).

## State and local partners

The SMA establishes “a cooperative program of shoreline management between local government and the state” [RCW 90.58.050]. Local governments and Ecology work together on the development of SMPs and SMP updates. Ecology also provides technical support for permits and exemptions upon request. The roles of local and state government include:

### Local government role

- Initiating the planning required by the SMA (SMP adoption & update).
- Administering and enforcing the SMP.

### Ecology role

- Acting in supportive and review capacity.
  - Assists with SMPs and permit review.
  - Provides written guidance for SMP updates.
  - Offers quarterly shoreline planners coordination meetings.
  - Provides grant funds for SMP updates.
- Insuring compliance with the SMA.
  - Ecology must approve SMPs before they take become effective.
  - Ecology must review and approve conditional use permits and variances.

In order to approve SMPs, Ecology reviews SMPs to make sure they are consistent with the policies of the SMA and the SMP Guidelines. Ecology also must find that:

- Findings from required analyses (inventory & characterization, cumulative impacts and shoreline use) are translated into specific SMP policies, regulations, environment designations and restoration measures.
- All specific standards are met. (For example, single family residences may be allowed as a conditional use within the natural environment, according to the SMP Guidelines.)
- Local decision-making is well documented, especially where conflicts surface.
- Early and continuous public involvement occurs as the SMP is developed; public involvement requirements are fulfilled.

***More information:***

⇒ Shoreline Management Act, [RCW 90.58.050](#), [RCW 90.58.090\(3\)](#)

## Constitutional authority for shoreline management

The State Constitution and the U.S. Constitution provide both the authority for conducting the activities necessary to carry out the Shoreline Management Act (SMA) and also set significant limitations on that authority.

The basic authority to regulate shorelines comes from the SMA itself and the police power provision in the State Constitution. This allows the state government and, by delegation from the state, local government, to adopt and enforce laws to protect the public health, safety and general welfare. Limitations are set by state and federal constitutional due process and takings provisions.

### Due process requirements

Government activities that constrain private options, including those related to property, must provide affected parties an opportunity to participate in decisions that affect them. The SMA [RCW 90.58.060, 120, and 130] and SMP Guidelines [WAC 173-26-090, 100, 120 and 201(3)] contain requirements for public notice and participation. Ecology and local governments comply with these requirements by providing public notice and public participation opportunities during the creation and amendment of SMPs. Local governments also provide public notice about shoreline permit decisions. Adequate public participation assures that SMPs and permit decisions will likely withstand legal challenges based on these due process requirements.

### Takings

The U.S. Constitution prohibits the government from taking private property without compensation. The issue of takings is perhaps the most debated issue in land use law. In cases of condemnation or other acquisition for public use, it clearly means that government must pay the fair market value. Case law is reasonably clear that most common forms of regulations that impose limitations on the use of property do not require compensation. This holds even where a significant decrease in property value occurs, as long as the regulation is reasonably related to protection of legitimate public interests.



However, the courts have indicated that at some point, use limitations on an individual piece of property may require compensation. For example, the U.S. Supreme Court in *Lucas v. South Carolina Coastal Commission* determined that a regulation that had the effect of “eliminating all economic use” constituted a “taking” of that property (NOTE: Also see *Orion Corporation v. State of Washington*, 109 Wn.2d 621, 747 P.2d 1062).

The SMA addresses the takings issue by:

- Identifying the public interest served by its implementation.
- Requiring appropriate flexibility in its implementation to avoid takings.

Local governments must use a process established by the State Attorney General to assure that the SMP does not unconstitutionally infringe on private property rights. Refer to the Attorney General’s memo listed below. In addition, every permit decision must factor in takings considerations.

**More information:**

- ⇒ [Avoiding Unconstitutional Takings of Private Property](#), Attorney General’s advisory memorandum.

## Coastal Zone Management Program

Washington State participates with the federal government in the Coastal Zone Management Program. The CZM program is a voluntary state-federal partnership that encourages states to adopt their own management programs in order to meet the federal goals of protection, restoration, and appropriate development of coastal zone resources. The national CZM program is based on the federal Coastal Zone Management Act of 1972. The National Oceanic and Atmospheric Administration (NOAA) implements the national program through the Office for Coastal Management.



Figure 2-4: The 15 counties that front on marine waters are under the State’s Coastal Zone Management Program.

The Shoreline Management Act is the basis for the State’s CZM program, which applies to the 15 coastal counties that front on marine waters. NOAA provides federal funds for the state program.

**More information:**

- ⇒ [Washington Coastal Zone Management](#)
- ⇒ [Office for Coastal Management, NOAA.](#)

## Relationship with Growth Management Act

Both the Shoreline Management Act and Growth Management Act are state statutes related to land use planning. They share some commonalities, but are separate statutes with different purposes, jurisdictions and requirements.

The SMA has been in effect since 1971. The SMA applies to all counties, cities and towns that have water bodies that meet the criteria for shorelines of the state. As of this writing, 263 jurisdictions fall under the SMA. All of these jurisdictions must have Shoreline Master Programs.

The GMA, initially adopted by the State Legislature in 1990, now requires all jurisdictions in the state to designate and protect critical areas, designate farm lands, forest lands and other natural resource areas; and determine that there are appropriate public services and facilities for new residential subdivisions. In addition, 29 of the state's 39 counties and the 218 cities within them are planning for growth. These jurisdictions develop comprehensive land use plans.

Final approval authority is an important difference between the two statutes:

- After local adoption, each SMP must be approved by Ecology before it takes effect. If an SMP is appealed, both Ecology and local government must respond to the appeal. For governments fully planning under GMA, SMP appeals are filed with the Growth Management Hearings Board. For governments not fully planning under GMA, SMP appeals are filed with the Shorelines Hearings Board.
- When a local government adopts a comprehensive plan or critical areas ordinance under the GMA, that document is presumed valid and is effective upon local adoption. Any person or entity objecting to all or portions of the document must file an appeal with the Growth Management Hearings Board.

In the years since the GMA was approved in 1990, there has been some confusion about the relationship between the two statutes, the management of critical areas in shoreline jurisdiction, and the need for consistency between the two statutes. The following subsections discuss the current status of these issues but do not provide a detailed history.

### **GMA incorporates shorelines [Comprehensive Plan: Environmental Chapter: Page 6](#)**

In 1995, the Legislature integrated SMPs with comprehensive plans:

- Goals and policies of an SMP are an element of the local comprehensive plan.
- All other portions of an SMP, including use regulations, are a part of the local development regulations.

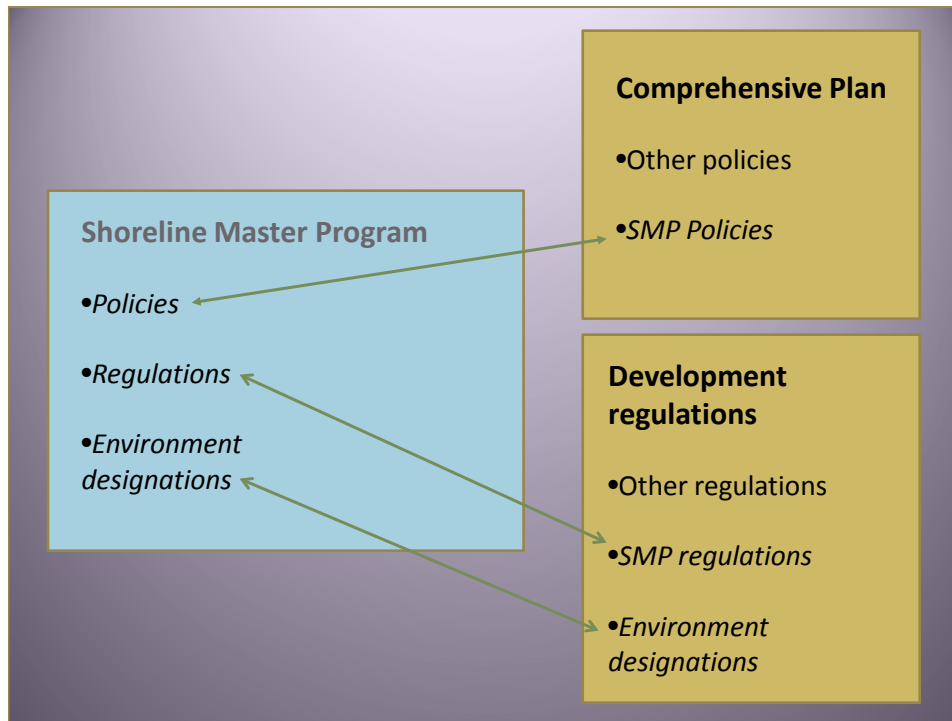


Figure 2-5: Shoreline Master Programs become part of the local comprehensive plan and development regulations. The Legislature adopted this SMA-GMA integration measure as part of regulatory reform in 1995.

The Legislature also amended the GMA goals in 2003 to incorporate shorelines: “For shorelines of the state, the goals and policies of the shoreline management act as set forth in RCW 90.58.020 are added as one of the goals of this chapter as set forth in RCW 36.70A.020 without creating an order of priority among the fourteen goals” [RCW 36.70A.480(1)].

Therefore, SMPs are integrated within local comprehensive plans and development regulations. All SMP goals, policies and regulations, must be internally consistent with the comprehensive plan and development regulations. [RCW 36.70A.070].

**More information:**

⇒ Growth Management Act, [RCW 36.70A.70](#), [RCW 36.70A.480](#)

## Critical areas

Critical areas within shoreline jurisdiction are regulated under the local critical areas ordinance required by the GMA **until** Ecology approves a comprehensive master program update, new master program, or segment of a master program related to critical areas. **After approval, critical areas within shoreline jurisdiction are regulated solely by the SMP. BMC 22.03.010 C**



Figure 2-6: Wetlands such as these in Baker Bay on the Columbia River that are above the ordinary high water mark and within shoreline jurisdiction are regulated under the CAO until the local comprehensive SMP update is approved by Ecology. (Washington Coastal Atlas photo.)

Until Ecology approves an SMP update, a use or structure legally located within shoreline jurisdiction and established or vested before the effective date of the critical areas regulations may continue as a conforming use. These uses or structures may be modified or redeveloped if the redevelopment is consistent with the local SMP and will result in no net loss of shoreline ecological functions. Local governments may waive this requirement if redevelopment is consistent with the SMP and development regulations to protect critical areas [RCW 36.70A.480(3)(c)(i)].

### **More information:**

- ⇒ Growth Management Act, [RCW 36.70A.480\(3\)\(c\)\(i\)](#).
- ⇒ *SMP Handbook*, Chapter 18, “Integration of Critical Areas Ordinances.”

## Consistency between SMA and GMA

Comprehensive plans of jurisdictions that are planning under the GMA must be internally consistent, with all elements consistent with the future land use map [RCW 36.70A.070]. Establishing SMP policies as part of the comprehensive plan also sets up the consistency requirement between the comprehensive plan and SMP. This should not be onerous -- land use

plans for a community should be consistent so the community's vision can be carried out, within the framework of existing law.

The SMA addresses the issue of consistency regarding lands adjacent to shorelines in RCW 90.58.340. This provision of the SMA states that state agencies, counties and public and municipal corporations shall review their plans, policies and regulations for lands adjacent to shorelines so that uses on adjacent lands are consistent with the SMA, the SMP Guidelines and local SMPs.

The SMP Guidelines provide criteria for determining consistency between the SMP environment designations and the comprehensive plan [WAC 173-26-211(3)].

1. The comprehensive plan provisions and SMP environment designation provisions should not preclude one another.
2. Uses should be compatible. Preferred shoreline uses under the SMA should be protected from incompatible uses.
3. Infrastructure and services provided in the comprehensive plan should be sufficient to support shoreline uses. If roads, utilities and other services are not provided in the comprehensive plan, shoreline uses should not be allowed.

Local government is responsible for assuring consistency between the SMP, comprehensive plan, and development regulations [WAC 173-26-191(1)(e)].

***More information:***

- ⇒ Growth Management Act, [RCW 36.70A.70](#), [RCW 36.70A.481](#).
- ⇒ Shoreline Management Act, [RCW 90.58.340](#).
- ⇒ SMP Guidelines, [WAC 173-26-211\(3\)](#), [WAC 173-26-191\(1\)\(e\)](#).

## Shoreline Master Programs

Shoreline Master Programs are both planning and regulatory documents. SMPs carry out the policies of the Shoreline Management Act on local shorelines. An SMP consists of a comprehensive use plan, use regulations, maps, diagrams or other descriptive material, statement of desired goals and standards for shorelines of the state [RCW 90.58.030(3)(b)]. SMPs are based on state laws and rules and tailored to local geographic and environmental conditions and existing development patterns.

The SMP Guidelines outline the following planning functions for master programs [WAC 173-26-191(1)(a)]:

- Balance and integrate objectives and interests of local citizens.
- Address full variety of shoreline conditions.
- Consider and influence planning and regulatory measures for adjacent land.
- Address conditions and opportunities of shoreline segments by classifying them into environment designations.

**Policies** establish broad shoreline management directives and are the basis for regulations.

**Regulations** govern use and establish standards for development on shorelines. Regulations also establish where and when permits are required. Regulations apply to all uses and development, even if a shoreline permit is not required.

The **administrative process** enacts a shoreline permit systems and enforces the SMA and local SMP.

***More information:***

- ⇒ Shoreline Management Act, [RCW 90.58.030\(3\)\(b\)](#).
- ⇒ SMP Guidelines, [WAC 173-26-191\(1\)\(a\)](#).

### Shoreline planning renewed

SMPs are not newly required documents. The Shoreline Management Act established the requirement for SMPs when it was enacted in 1971, and most jurisdictions had SMPs in place by the late 1970s. Newly incorporated cities used the local county's SMP until they developed their own local program.

Shoreline planning had been largely dormant once initial SMPs developed in 1970s were implemented. However, a few jurisdictions took on major revisions of their SMPs, while others made single topic amendments. Much of shoreline management focused on permitting. Some SMPs were untouched since their initial adoption until the comprehensive updates.

Adoption of the revised SMP Guidelines in late 2003, the State's Legislature's mandate for SMP comprehensive updates, and the promise of funding from the Legislature initiated a renewal of shoreline planning.

Information about the required components of SMPs and Ecology's SMP planning process is found in *SMP Handbook* Chapter 3, "Shoreline Master Program Updates."

## SMP rules

The State Shoreline Master Program rules are in WAC 173-26. The first section authorizes Ecology to adopt rules to carry out the provisions of the SMA and notes the SMA "is intended to be a cooperative program between local government and the state" [WAC 173-26-010]. The second section includes definitions. The remainder of this WAC section is divided into four parts. Parts I and II are discussed in this section, below. Part III, the SMP Guidelines, is addressed in the following section. Part IV, Ocean Management, will be covered in a future chapter of the *SMP Handbook*.

### Part 1

Part I defines the contents of the state master program and establishes the record-keeping system for Ecology.

- The state master program is the cumulative total of all shoreline master programs and amendments approved by Ecology or adopted by rule [WAC 173-26-030].
- Ecology is instructed to periodically update the list of local governments that are required to develop and administer SMPs. Cities and towns that have shorelines of the state as result of annexation, incorporation or change in shoreline jurisdiction and are not listed are required to prepare master programs [WAC 173-26-040].
- Ecology must prepare and maintain an official state master program register [WAC 173-26-050].
- Ecology must maintain records for all SMPs in effect and subsequent amendments [WAC 173-26-060].
- Ecology may adopt an SMP by rule (instead of through the adoption process in WAC 173-26-120) if a local government fails to approve an SMP within statutory deadlines or if parts of the SMP relating to shorelines of statewide significance do not provide for optimum implementation of the SMA [WAC 173-26-070].
- Local governments required to develop and administer SMPs are listed alphabetically [WAC 173-26-080].

### Part II

Basic requirements for preparing or updating SMPs and submitting them to Ecology for review and approval are established in WAC 173-26, Part II. For SMP development and amendments, these procedural rules require:

- Periodic review of SMPs with amendments as necessary. Public participation is mandated [WAC 173-26-090].
- A local process that includes at least one public hearing and a published notice about the hearing; consultation with persons, groups, tribes or agencies having interests or responsibilities relating to shorelines; coordination with all cities and towns within a county with a countywide or regional master program; solicitation of comments from Ecology prior to local approval; and local approval [WAC 173-26-100].
- Specific SMP documents to be submitted to Ecology, including a signed resolution or ordinance approving the SMP amendment; clearly identifiable changes to the existing SMP; amended environment designation maps, summary of proposed amendments; evidence of compliance with SEPA and the public notice and consultation requirements; copies of all comments received including names and addresses; SMP submittal checklist; and copies of the inventory and characterization; use analysis, restoration plan and cumulative impacts analysis for comprehensive SMP updates [WAC 173-26-110].

Other sections address the state process for formal review and approval of SMPs [WAC 173-26-120]; appeal procedures for SMPs [WAC 173-26-130]; and the requirement for local government to adopt procedures for administrative interpretation of development regulations, including SMPs [WAC 173-26-140].

The last two sections address annexation.

- Cities and towns planning under the GMA may predesignate shoreline environments within their urban growth areas. Cities and towns not planning under the GMA may predesignate environments on shorelines outside their incorporated boundaries. These must be approved by Ecology as part of an SMP amendment [WAC 173-26-150].
- In the event of an annexation of a shoreline, local governments must notify Ecology and amend the SMP to include the annexed area within one year of the effective date of the annexation. Until the SMP is amended, the SMP in effect for the area prior to annexation remains in effect [WAC 173-26-160].

***More information:***

- ⇒ Part I, [WAC 173-26-030](#), [040](#), [050](#), [060](#), [070](#) and [080](#).
- ⇒ Part II, [WAC 173-26-090](#), [100](#), [110](#), [120](#), [130](#), [140](#), [150](#) and [160](#).



## SMP Guidelines **These were utilized to perform our comprehensive update 2007-2009.**

The Shoreline Master Program Guidelines, Part III of WAC 173-26, are the basic minimum standards for SMPs. They became effective in January 2004. Since then, all SMPs that are new, comprehensively updated or amended by limited amendments must be consistent with the Guidelines. The Guidelines translate the broad policies of the SMA into standards for SMPs.

This section reviews the purpose and intent of the Guidelines and the authority of the Guidelines, briefly discusses the history of the current Guidelines, and reviews the governing principles and basic concepts of the Guidelines. Specific requirements for SMPs are provided in *SMP Handbook* Chapter 3, “Shoreline Master Program Updates” and other chapters that provide more direction for specific tasks of SMP updates.

### Purpose of Guidelines

The general purpose of the Guidelines is “*to implement the ‘cooperative program of shoreline management between local government and the state.’*” [WAC 173-26-171(2)]. Three specific purposes are:

- To assist local governments in developing master programs.
- To serve as the standards for regulation of shoreline development in the absence of a master program, along with the policy and provisions of the act.
- To be used as criteria for state review of local master programs under RCW 90.58.090, along with the policy of RCW 90.58.020.

WAC 173-26-191(1)(e): “(T)he intent of these Guidelines is to assist local governments in preparing and amending master programs that fit within the framework of applicable comprehensive plans, facilitate consistent, efficient review of projects and permits, and effectively implement the Shoreline Management Act.”

#### **More information:**

⇒ SMP Guidelines, WAC 173-26-171(2), WAC 173-26-191(1)(e)

### Effect of Guidelines

The Guidelines are minimum standards for SMPs, not just suggestions. “The guidelines are guiding parameters, standards, and review criteria for local master programs.” [WAC 173-26-171(3)(a)]. The Guidelines and the policy of the SMA, RCW 90.58.020, are the standards and criteria that Ecology must use in reviewing and approving SMPs.

Ecology approval must be based on consistency with the SMA and the Guidelines. The Guidelines are also the standards and criteria used by the Growth Management Hearings Board and the Shorelines Hearings Board in adjudicating appeals of SMPs.

#### **More information:**

- ⇒ Shoreline Management Act, RCW 90.58.090(3).
- ⇒ SMP Guidelines, WAC 173-26-171(3)(a).

## History of Guidelines

The SMA directs Ecology to prepare Guidelines for development of master programs to regulate the uses of shorelines of the state [RCW 90.58.060]. The first Guidelines, written in 1972, were the standards for SMP development for more than 30 years. They required a land use inventory of shorelines and set four shoreline environments – Natural, Conservancy, Urban and Rural.

The State Legislature directed Ecology to update the Guidelines in 1995. A lengthy update process included two formal advisory groups, 17 public hearings, many public workshops and approximately 3,000 public comments. Ecology withdrew the draft rule in 1999 and revised it to address salmon listings under the Endangered Species Act and incorporate the concepts of no net loss and ecological functions. Business groups and local governments appealed, and the Shoreline Hearings Board invalidated these guidelines in 2001.

A year-long mediation effort initiated by the former Governor Gary Locke and former Attorney General and later Governor Christine Gregoire resulted in a third set of Guidelines released for public comment. Parties to the appeal, including the Association of Washington Business, the Washington Aggregates and Concrete Association, Washington Environmental Council, local governments, civic groups and other organizations (58 in all) endorsed the new guidelines. They also agreed to new timelines for comprehensive SMP updates in RCW 90.58.080, supported funding from the legislature for the SMP updates, and agreed to not appeal the guidelines.

After 21 public hearings, Ecology adopted the new SMP Guidelines in December 2003 and they became effective the next month.

This time around, there's an emphasis on environmental conditions – ecosystem processes and shoreline ecological functions – that must be taken into account when developing or revising SMPs. A comprehensive baseline shoreline inventory and characterization that discusses shoreline ecological functions as well as existing and projected land use is required before policies and regulations are developed. The Guidelines set a first-ever, new standard for no net loss of shoreline ecological functions.

With the new Legislative deadlines for SMP comprehensive updates and a commitment for funding, SMP planning again became a major component of shoreline management.

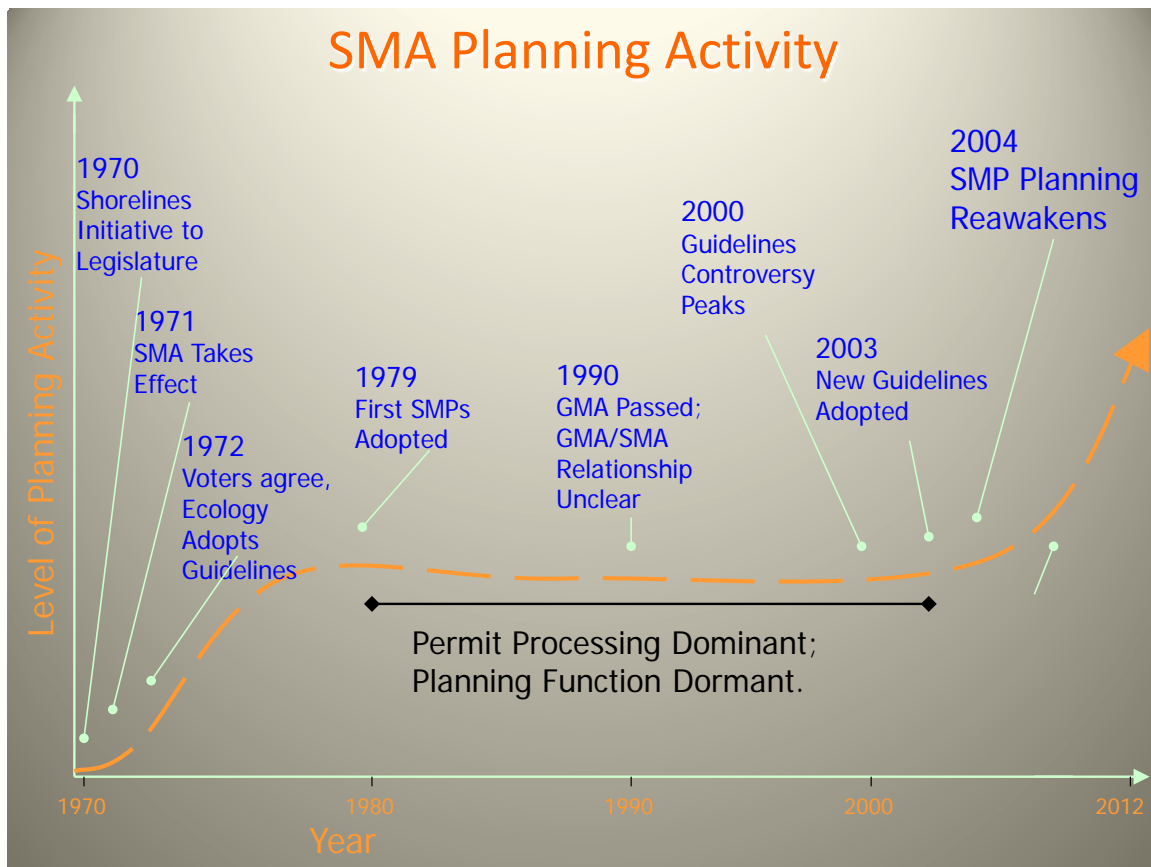


Figure 2-7: SMA planning activity was quite vigorous in the 1970s after adoption of the SMA, slowed considerably for the next two decades, and picked up with the new Guidelines and funding for SMP updates.

## Governing principles **BMC 22.01.040**

The Governing Principles were incorporated into the Guidelines during the negotiated settlement process leading to Guidelines adoption in 2003 [WAC 173-26-186]. These Principles were fundamental to the negotiation process and helped the parties resolve issues. These “foundational concepts” are intended to assist Ecology, local governments and others in understanding and interpreting the Guidelines over time. They provide a sort of “summary statement” that identifies the major underlying concepts upon which the Guidelines are structured. The Governing Principles guide the development of SMP policies and regulations, provide direction to Ecology in reviewing and approving SMPs, and should be used to help interpret ambiguous provisions or conflicting provisions of the Guidelines.

The Governing Principles are summarized below.

1. The Guidelines are subordinate to the SMA.
2. The Guidelines reflect the policy goals of the SMA as described in WAC 173-26-176 and WAC 173-26-181.

3. All relevant SMA policy goals must be addressed in SMP planning policies.
4. SMP policies may be achieved by means other than regulations (acquisition of land and easements, incentive programs, voluntary salmon recovery projects, etc.).
5. SMPs regulations should not infringe on private property rights.
6. The regulatory function of the SMP is limited to the jurisdiction's territorial limits; the planning function may look beyond the territorial limits of shorelines of the state to adjacent lands.
7. Planning and regulatory provisions in SMPs are to be integrated and coordinated with the GMA comprehensive plans and development codes.
8. Protection of shoreline ecological systems requires:
  - a. Inventories and characterizations that assure understanding of current and potential ecological functions.
  - b. Policies and regulations designed to achieve no net loss of ecological functions.
  - c. Goals, policies and coordinated programs that provide for restoration of impaired ecological functions.
  - d. Analysis addressing potential cumulative impacts.
  - e. Non-regulatory incentives, voluntary modification of development proposals and other voluntary measures.
9. Local governments may balance Guidelines policy goals consistent with RCW 90.58.020 and may modify SMPs to reflect changing circumstances.
10. In preparing SMPs, local governments shall:
  - a. Use a systematic interdisciplinary approach.
  - b. Consult with local, state and federal agencies, individuals and organizations.
  - c. Conduct or support research, studies, surveys and interviews as appropriate.
  - d. Use all available and pertinent scientific and technical information.
  - e. Employ appropriate scientific data processing and computer techniques to store, index, analyze and manage information gathered.
11. In reviewing and approving SMPs, Ecology shall assure that the state's interest in shorelines is protected.

***More information:***

⇒ SMP Guidelines, [WAC 173-26-186](#).

## Basic Concepts

The SMP Guidelines establish “basic concepts” for local governments to observe in updating their SMPs [WAC 173-26-201(2)(a-f)]. For the most part, the concepts elaborate on the Governing Principles as indicated below:

### Use of scientific and technical information

At a minimum, local governments must:

- Make use of all available scientific information, aerial photography, inventory data, technical assistance materials, manuals and services from reliable sources of science.
- Contact relevant state agencies, universities, affected Indian tribes, port districts and private parties for available information.
- Follow accepted scientific protocol when initiating scientific research. Work interactively with neighboring jurisdictions, other agencies, tribes, etc.
- Consult Ecology’s technical assistance materials.
- Base SMP provisions on a science-based analysis that identifies:
  - Information and management recommendations forming the SMP’s base.
  - Assumptions made about data used in the analysis.
  - Risks that SMP provisions pose to ecological functions.
- Solicit information, experience and anecdotal evidence provided by interested parties.

### Adaptation of policies and regulations

Evaluating changing conditions and modifying policies and regulations to address new information is part of effective shoreline management.

- Local governments should monitor actions taken to implement the SMP and shoreline conditions to ascertain when further SMP updates are needed to improve shoreline management.
- Ecology must periodically update the Guidelines to respond to changing shoreline conditions.

**Protection of ecological functions of the shoreline BMC 22.08.010 A 1.**

The Guidelines are based on the concept of “no net loss of ecological functions” necessary to sustain shoreline natural resources. Since even degraded shorelines retain ecological functions, the requirements to protect and restore ecological functions apply to all shoreline areas, not only those that are still ecologically intact. To achieve the no net loss standard, SMPs should establish and apply:

- Environment designations with appropriate regulations.
- Provisions to address impacts of specific shoreline uses and modification activities.
- Provisions that protect critical areas.
- Methods to address unanticipated impacts.
- Mitigation measures in accordance with the mitigation sequence to address all anticipated development-related shoreline impacts, including development exempt from substantial development permits.

SMPs must contain policies to promote restoration of ecological functions along with other regulatory and non-regulatory programs. The goal in protecting ecological functions is “to improve the overall condition of habitat and resources within the shoreline area of each city and county”.

**Preferred uses Use Tables in BMC 22.03.030 A-E and 22.11.030 F (Waterfront District)**

When determining allowable uses and resolving use conflicts, the following order of preference must be observed:

- First priority -- protect the environment. Areas appropriate “for protecting and restoring ecological functions to control pollution and prevent damage to the natural environment and public health.”
- Water-dependent and associated water-related uses.
- Mixed-use developments “that include and support water-dependent uses...”
- Water-related and water-enjoyment uses.
- Single-family residential uses, where appropriate.

Non-water-oriented uses should be limited to “those locations where the above described uses are inappropriate or where non-water-oriented uses demonstrably contribute to the objectives of the Shoreline Management Act.”

**Environmental impact mitigation BMC 22.08.020**

SMPs must contain provisions requiring analysis of potential adverse environmental impacts of development proposals and mitigation of impacts that won’t be mitigated by application of the SMP or other regulations.

- The analysis of potential impacts should be integrated with the SEPA review process.

- Mitigation should be applied in accordance with mitigation sequencing as described in the SEPA rules. “Application of the mitigation sequence achieves no net loss of ecological functions for each new development ...” [WAC 173-26-201(2)(e)(ii)(A)]. The mitigation sequence includes: avoid the impact; minimize impacts; rectify the impact; reduce or eliminate the impact over time; compensate for the impact; monitor the impact.
- When compensatory mitigation is applied, the mitigation measures should “replace the impacted functions directly and in the immediate vicinity of the impact” where feasible.

### Shoreline restoration planning **BMC 22.02.020 B**

To achieve overall improvements in shoreline ecological functions over time, SMPs should:

- Identify degraded areas, impaired functions and sites appropriate for restoration.
- Establish goals and restoration priorities.
- Identify existing, on-going or planned restoration projects.
- Identify additional projects and programs to achieve restoration goals.
- Identify timeframes and benchmarks for implementing such projects/programs.
- Prepare strategies for assuring identified project/programs will be implemented and for reviewing their effectiveness in meeting restoration goals.

#### *More information:*

⇒ SMP Guidelines, [WAC 173-26-201](#).

### Flexibility in the Guidelines

The Guidelines’ purpose is to “carry out the provisions” of the SMA (RCW 90.58.200). In many cases, there is no question as to what the Guidelines require in an SMP. For example, the requirement for local governments to address cumulative impacts along shorelines (Chapter 17 of this *Handbook*) provides no flexibility. SMPs must comply with this requirement and Ecology cannot approve an SMP that does not consider cumulative impacts.

*WAC 173-26-171(3)(a): “The guidelines are guiding parameters, standards, and review criteria for local master programs. The guidelines allow local governments substantial discretion to adopt master programs reflecting local circumstances and other local regulatory and nonregulatory programs related to the policy goals of shoreline management as provided in the policy statements of RCW 90.58.020, WAC 173-26-176 and 173-26-181.”*

In other cases, however, local governments have more discretion and flexibility to develop individual policy approaches to meet Guidelines requirements. This is demonstrated in the general purpose description, WAC 173-26-171(3)(a) – Effect [of the Guidelines]: See box.

In WAC 173-26-186(9), the Guidelines’ governing principles elaborate:

To the extent consistent with the policy and use preference of RCW 90.58.020, this chapter (chapter 173-26 WAC), and these principles, local governments have reasonable discretion to balance the various policy goals of this chapter, in light of other relevant local, state, and federal regulatory and nonregulatory programs, and to modify master programs to reflect changing circumstances.

In summary, a basic intent of the Guidelines is to provide local governments with the opportunity to develop unique shoreline policies and regulations that address specific local needs, as long as they comply with the policies and objectives of the SMA and the Guidelines. The Guidelines were intentionally structured this way because they apply statewide and therefore must recognize a wide range of local development patterns and environmental conditions.

***More information:***

- ⇒ [WAC 173-26-171\(3\)\(a\)](#)
- ⇒ [WAC 173-26-186\(9\)](#)

### Distinguishing mandatory from flexible requirements

The WAC uses a simple, specific mechanism for distinguishing between absolute and flexible requirements, and it lies in the definition of the terms “should” and “shall.”

‘Shall’ means a mandate; the action must be done [WAC 173-26-020(28)].

‘Should’ means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this chapter, against taking the action [WAC 173-26-020(32)].

The term “shall” indicates actions you **must** take in preparing your SMP and in components or products that **must** be included in the SMP. Ecology cannot approve an SMP that does not demonstrate the local government’s compliance with these actions and requirements. For example, “shoreline policies **shall** be developed through an open comprehensive shoreline planning process...” [WAC 173-26-191(2)(a)(i)]; “all master programs **shall** include standards for reviewing conditional use permits and variances...” [WAC 173-26-191(2)(a)(iii)(B)] and “Local master programs **shall** include policies and regulations designed to achieve no net loss of those ecological functions” [WAC 173-26-186(8)(b)].

Although the term “should” offers some flexibility in meeting Guidelines’ requirements, it has the same meaning as “shall” unless the local government provides a demonstrated, compelling reason for carrying out a Guidelines directive in a different way. This allows you to respond to unique shoreline conditions or opportunities in a different manner than prescribed by the Guidelines if you show that your approach will satisfy SMA policy and Guidelines requirements. You must also demonstrate that the alternate approach will address cumulative impacts and no net loss of shoreline ecological functions and include:

- Mitigation for any associated adverse impacts.
- Significant public benefits, such as shoreline ecological restoration.
- Significant public access to enhance opportunities for the public to enjoy the shoreline.

***More information:***

- ⇒ [WAC 173-26-020\(28\)](#) and (32).