



Shoreline Management Act Rulemaking Local Government Sounding Board



DEPARTMENT OF
ECOLOGY
State of Washington

Misty Blair, Shoreline Management Policy Lead
December 16, 2024



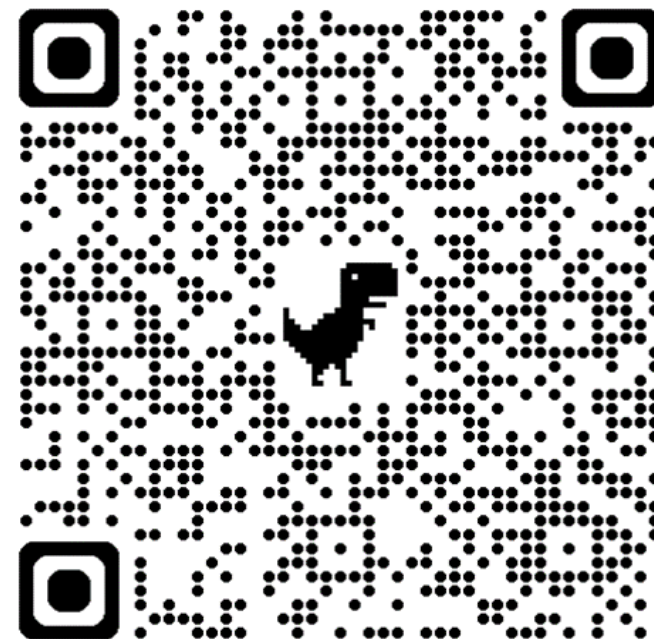
Meeting logistics

- **Sounding board members** can use the chat and raise hand features.
- Please stay muted when not speaking.
- Add questions and comments to the Q&A.
- Introduction to Slido

Non-sounding board attendees

- Please hold comments until the public input portion of the meeting at 2:45.
- You can provide input and feedback for the rule using the online comment form on our web page:

<https://ecykenpub/SMArule-input>



Agenda

Permit & enforcement procedures

- Permit types, criteria, relationship
- Timelines
- Submittals
- Noticing
- Minimum requirements
- SB 5290

Permit Procedures

PERMITS FOR DEVELOPMENT ON SHORELINES OF THE STATE

- 173-27-010 Authority.
- 173-27-020 Purpose.
- 173-27-030 Definitions.
- 173-27-040 Developments exempt from substantial development permit requirement.
- 173-27-044 Developments not required to obtain shoreline permits or local reviews.
- 173-27-045 Developments not subject to the Shoreline Management Act.
- 173-27-050 Letter of exemption.
- 173-27-060 Applicability of chapter 90.58 RCW to federal lands and agencies.
- 173-27-070 Application of the permit system to substantial development undertaken prior to the effective date of the act.
- 173-27-080 Nonconforming use and development standards.
- 173-27-085 Moratoria.
- 173-27-090 Time requirements of permit.
- 173-27-100 Revisions to permits.
- 173-27-110 Notice required.
- 173-27-120 Special procedures for limited utility extensions and bulkheads.
- 173-27-125 Special procedures for WSDOT projects.
- 173-27-130 Filing with department.
- 173-27-140 Review criteria for all development.
- 173-27-150 Review criteria for substantial development permits.
- 173-27-160 Review criteria for conditional use permits.
- 173-27-170 Review criteria for variance permits.
- 173-27-180 Application requirements for substantial development, conditional use, or variance permit.
- 173-27-190 Permits for substantial development, conditional use, or variance.
- 173-27-200 Department review of conditional use and variance permits.
- 173-27-210 Minimum standards for conditional use and variance permits.
- 173-27-215 Shoreline restoration projects—Relief from shoreline master program development standards and use regulations.
- 173-27-220 Requests for review.

Chapter 173-27 WAC

Shoreline Management Permit Procedures

Chapter 173-27 WAC

PART I – Permits for development on shorelines of the state

These provisions implement the SMA requirements related to administration of the permit system established by the Act.

All development proposed must be consistent with:

- The policy of the SMA,
- The applicable guidelines & rules (WAC 173-26 & 27), and
- The applicable shoreline master program



Chapter 173-27-020 WAC

State-local partnership

The local government has the primary responsibility for administering its SMP consistent with the policy and provisions of the SMA.

Ecology assists the local government with support, review, and technical assistance to ensure compliance with the SMA policies and provisions.

[RCW 90.58.140\(3\)](#) & [RCW 90.58.050](#)

WAC 173-27-030

Definitions

May amend or add definitions as necessary for consistency with statutory definition changes or to implement other changes proposed by this rulemaking.

Considering adding language about the requirement for these definitions and those set forth in RCW 90.58.030 and chapters 173-20, 173-22, and 173-26 WAC to be used in the implementation of SMP permit reviews.

Proposing new section WAC 173-27-035

Development & uses subject to local review and permits

Outline the permit framework:

- Introduce the permit system and exemptions from the SDP process
- Describe substantial development, conditional use, and variance permits and the relationship among these permit types

WAC 173-27-040

Developments exempt from the substantial development permit requirements

We have already discussed this section as a group and will not be revisiting this today.

WAC 173-27-050

Letter of exemption

Expand this section to:

- Describe the general requirement to conduct a review and provide written documentation of decisions under WAC 173-27-040
- Require that all decisions on exempt actions be provided to Ecology

[RCW 90.58.140\(3\)](#)

WAC 173-27-060 Applicability of chapter 90.58 RCW to federal lands and agencies

This section needs to be updated to reflect the current Washington Coastal Zone Management Program (WCZMP).

- Remove local SMPs from the reference to enforceable policies applicable to federal agency activities.
- Improve consistency of this section with the current WCZMP.
- Address federal and Tribal lands in this section.

RCW 90.58.030(3)(e)

WAC 173-27-090

Time requirements of permit

This section includes:

- Construction or authorized use must commence within two years of the permit effective date
- Development activities must be complete within five years of the effective date

Looking to clarify:

- The time during which the use or activity was not actually pursued due to the need to obtain other government permits or approvals
- Revisions authorizing development after the permit has expired and related section in WAC 173-27-100

WAC 173-27-110

Notice requirements

Requires that local governments adopt a system to provide notification of applications for shoreline substantial development, conditional use, and variance permits.

We are looking to add specifics about:

- Tribal engagement
- Connections between this and SEPA notification requirements
- Ensuring internal consistency with WAC 173-27-180, the permit data sheet, and RCW 36.70B.

[RCW 90.58.140\(4\)](#)

WAC 173-27-130

Filing with permits with Ecology

- Clarify that "return receipt" requirements for submitting permits can include email.
- Add detail in the complete submittal section.
- Check for consistency with complete application requirements in RCW 36.70B

[RCW 90.58.140\(6\)](#)

Chapter 173-27 WAC

Conditional use and variance permits

Each master program must include allowances for CUPs and variances.

We will be evaluating the approval criteria within WAC 173-27-160 and -170 to improve the effectiveness, efficiency, and consistency of each section with the policy of the SMA.

- Clarify that Ecology and local government are both applying the same approval criteria
- Update to reflect "no net loss of shoreline ecological functions" rather than "no significant adverse effects"
- Update as needed to reflect our current guidance [RCW 90.58.100\(5\)](#)



WAC 173-27-180

Application requirements

Ensure internal consistency with WAC 173-27-180, permit data sheet, and chapter 36.70B RCW.

Looking to clarify requirements regarding special reports and critical areas identification, and update to reflect emails as part of contact information.

Considering adding complete application requirements for review of development actions exempt from the SDP process requirements, either here or within WAC 173-27-040.

[RCW 90.58.140](#)

Chapter 173-27-990

WAC data sheet updates

- Update this form to include all necessary information for a complete application.
- Include email addresses
- Place to identify supporting documents
- Add procedural requirement checklist
- Reformat for ease of use

[RCW 90.58.140\(3\)](#) & [WAC 173-27-180](#)

Shoreline Management Act
Permit Data Sheet and Transmittal Letter

From: (local government) To: (appropriate Ecology office)

Date of Transmittal: _____ Date of Receipt: (provided by Ecology)

Type of Permit: (Indicate all that apply)
Substantial Development ; Conditional Use ; Variance ; Revision ; Other .

Local Government Decision: Approval ; Conditional Approval ; Denial :

<u>Applicant Information:</u>	<u>Applicant's Representative:</u> (if primary contact)
Name: _____	Name: _____
Address: _____	Address: _____
Phone(s): _____	Phone(s): _____

Is the applicant the property owner? yes no

Location of the Property: (Section Township and Range to the nearest 1/4, 1/4 Section or latitude and longitude, and a street address where available)

Water Body Name: _____

Shoreline of Statewide Significance: Yes No .

Environment Designation: _____

Description of the Project: (Summary of the intended use or project purpose)

Notice of Application Date: _____ Final Decision Date: _____

By: (Local Government Primary Contact on this Application) _____ 19

Phone No: _____



WAC 173-27-215

Relief from SMP related to shoreline restoration

In adopting RCW 90.58.580, the legislature found that restoration of degraded shoreline conditions is important to the ecological function of our waters. However, restoration projects that shift the location of the shoreline can inadvertently create hardships for adjacent property owners in urban areas.

- Looking to simplify this rule language for easier implementation.
- Changes will remain consistent with RCW 90.58.580.

[RCW 90.58.580](#)

SB 5290 and shoreline permits

SB 5290 is codified in RCW 36.70B.080 (Local Project Review Act)

- Effective Jan. 1, 2025
- Applies to local decision-making process timelines, not Ecology's review and decisions on CUPs or variances

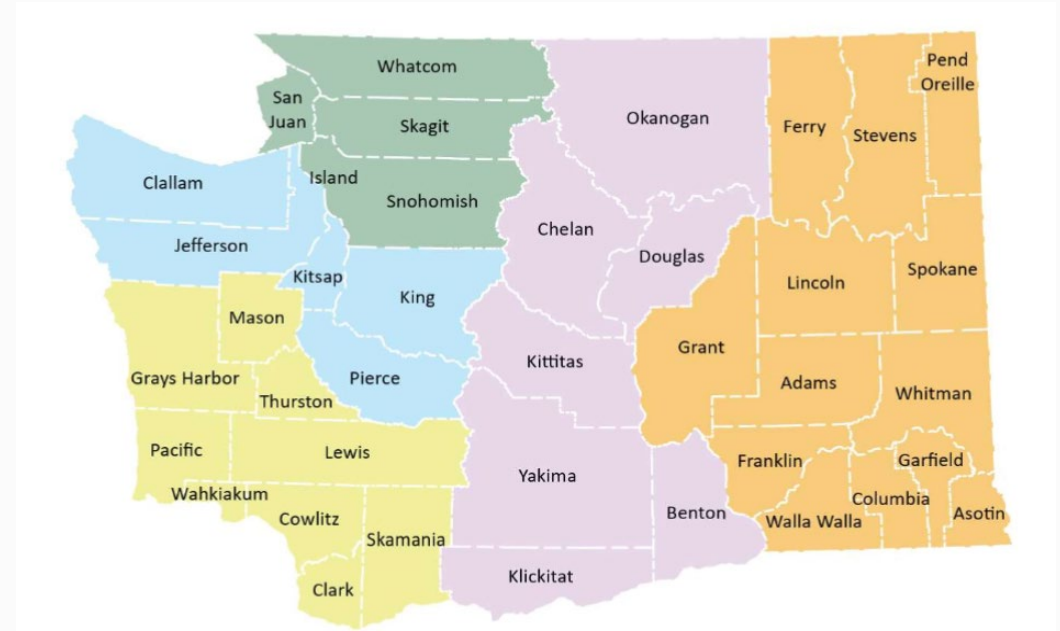
Permit system requirements and timelines under the SMA still apply. We will look for ways to clarify the relationship between the SMA permit system requirements and the Local Project Review Act as part of this rulemaking.

RCW 90.58.140(3)

Enforcement

New shoreline compliance and enforcement program

- Funded July 2022
- Formed January 2023
- Five regional positions across the state
- Key driver is riparian protections
- Staff divides time between:
 - Enforcement (~ 40%)
 - Improving SMA implementation (~ 50%)
- Two new coastal engineers lend technical support on review of stabilization (ORCA funding)



Enforcement authority under the SMA

Both Ecology and local governments have enforcement authority.

- Action can be taken against any person found responsible.
- Local govs have the primary responsibility for administering shoreline regulations.
- Local govs can adopt separate rules to implement the SMA's enforcement provisions.



What constitutes an SMA violation?

Elements of a violation:

- ✓ Within shoreline jurisdiction
- ✓ New development, new use, or activity inconsistent with SMA (e.g., vegetation clearing)
- ✓ Development not authorized by local government
- ✓ Non-compliant with permit

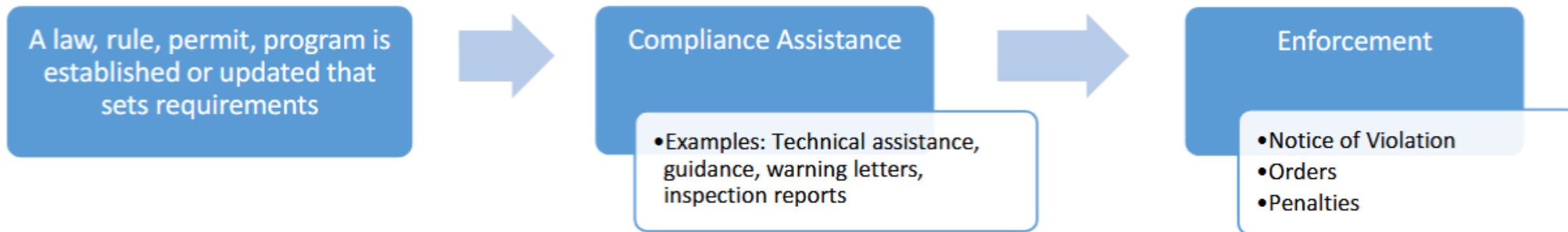
Not a violation:

- ⊘ Outside of shoreline jurisdiction
- ⊘ Poorly maintained and derelict structures
- ⊘ Authorization for development or activity granted by local government

Enforcement by Ecology

- Ecology uses **civil** enforcement authority
 - Civil penalties, orders to take corrective action and to cease and desist, and permit rescission
- Ecology does not have abatement authority
- Ecology refers possible criminal cases to the EPA and AGO's Environmental Protection Division

Compliance Assistance and Enforcement at the Department of Ecology



Chapter 173-27 WAC

Shoreline management enforcement procedures

PART II

SHORELINE MANAGEMENT ACT ENFORCEMENT

173-27-240 Authority and purpose.

173-27-250 Definitions.

173-27-260 Policy.

173-27-270 Order to cease and desist.

173-27-280 Civil penalty.

173-27-290 Appeal of civil penalty.

173-27-300 Criminal penalty.

173-27-310 Oil or natural gas exploration—Penalty.

Chapter 173-27 WAC

PART II – Shoreline management act enforcement

Under RCW 90.58.200 and 90.58.210 to implement the enforcement responsibilities of the department and local government under the Shoreline Management Act. The Act calls for a cooperative program between local government and the state. The following should be used in addition to other mechanisms already in place at the local level and does not preclude other means of enforcement.

It provides for a variety of means of enforcement, including civil and criminal penalties, orders to cease and desist, orders to take corrective action, and permit rescission.

Enforcement

In the context of enforcement, "**Permit**" means any form of permission required under the SMA prior to undertaking an activity on shorelines of the state.

Enforcement action by Ecology or a local government may be taken whenever a person has violated any provision of the SMA or SMP or other regulation promulgated under the act. The choice of enforcement action and the severity of any penalty should be based on:

- the nature of the violation,
- the damage or risk to the public or to public resources, and/or
- the existence or degree of bad faith of the persons subject to the enforcement action.

WAC 173-27-270, -280, & -290

Order to cease and desist, civil penalty, and appeal of civil penalty

- We will be reviewing these provisions to ensure that they are consistent with RCW 90.58.200 and .210.
- Looking to align with our new enforcement program
- Update terminology

Update on other engagement

- **Tribal engagement** is separate from the public engagement.
- **State agency coordination** is ongoing.
- **Public input** from listening sessions, comments submitted, and feedback provided during presentations and meetings.

More to come once we have draft language to share.

Sea level rise outreach

Webinars

- Planning a public webinar series focused on sea level rise
- Opportunity to hear from experts
- Not scheduled, likely early 2025

Survey

- Open until Jan. 10

Upcoming Meetings

1/22/24	Possible focus on climate resilience and related topics: <ul style="list-style-type: none"> • High-level direction on channel migration zone • Overview of early directions for sea level rise rules • Discuss critical areas protections, focusing on frequently flooded areas
2/19/24	Possible focus on riparian management and related topics: <ul style="list-style-type: none"> • Riparian Management • Opportunities for alignment of SMP guidelines with riparian management guidance <ul style="list-style-type: none"> ○ Leveraging SMPs to advance restoration and provide ecological lift ○ Incentive programs • Connections with no net loss, compliance and enforcement, and stream functional assessment methodology (SFAM)
3/17/24	Topics TBD
4/21/24	Topics TBD
5/19/24	Present the informal draft and get feedback
6/16/24	Present the informal draft and get feedback

Public input

Public attendees may now raise your Zoom hand if you wish to speak. Please wait for us to call on you.

You can always provide input on the rulemaking using our [online comment form](#). Use the link or the QR code.

