



DEPARTMENT OF
ECOLOGY
State of Washington

Preliminary Regulatory Analyses

Including the:

- Preliminary Cost-Benefit Analysis
- Least-Burdensome Alternative Analysis
- Administrative Procedure Act Determinations
- Regulatory Fairness Act Compliance

*Chapters 173-18, 173-20, 173-22, 173-26,
173-27 WAC*

*Shoreline Management Act Implementation
Rules*

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Preliminary Regulatory Analyses

Including the:

- Preliminary Cost-Benefit Analysis
 - Least-Burdensome Alternative Analysis
 - Administrative Procedure Act (RCW 34.05.328) Determinations
 - Regulatory Fairness Act Compliance
-

**Chapters 173-18, 173-20, 173-22, 173-26,
173-27 WAC**

Shoreline Management Act Implementation Rules

by
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for the

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Executive Summary

This report presents the determinations made by the Washington State Department of Ecology (Ecology) as required under chapters 34.05 RCW and 19.85 RCW, for the proposed *Shoreline Master Program* rule amendments (chapters 173-18, 173-20, 173-22, 173-26, 173-27 WAC, “the proposed rule”). This includes the:

- Preliminary Cost-Benefit Analysis (CBA)
- Least-Burdensome Alternative Analysis (LBA)
- Regulatory Fairness Act Compliance
- Administrative Procedure Act Determinations

The baseline for our analyses generally consists of existing rules and laws, and their requirements. This is what allows us to make a consistent comparison between the state of the world with and without the proposed rule amendments.

The authorizing statute (RCW 90.58) specifies requirements related to Shoreline Master Programs (SMPs). The statute authorizes Ecology to adopt such rules as are necessary and appropriate to carry out the provisions of the SMA (RCW 90.58.200). For example, the rule outlines specific requirements for updates, while the authorizing law more broadly describes some of these requirements. We include an analysis of those requirements in this report.

Ecology determined that, compared to the baseline the proposed rules have the following costs and benefits:

- The proposed amendments do not impose discretionary costs.
- The periodic review of SMPs is required by statute. Therefore, the costs of such review are not attributable to the proposed rules.
- The proposed rule creates benefits by adding clarity and direction for covered parties, resulting in potential cost savings. Without the clarity and direction offered by the proposed rules, the costs of periodic review would likely be higher, possibly significantly.
- The proposed rules also decrease the implementation time of needed improvements to SMPs, minimizing potential degradation of the state’s shorelines.

Ecology concludes, based on reasonable understanding of the quantified and qualitative costs and benefits likely to arise from the adopted rule, that the benefits of the rule are greater than the costs. After considering alternatives to the adopted rule’s contents, as well as the goals and objectives of the authorizing statute, Ecology determined that the rule represents the least-burdensome alternative of possible rule contents meeting these goals and objectives.

Ecology has analyzed the costs of this rulemaking in this document. Based on this analysis Ecology has determined the proposed rule does not impose additional costs on businesses because it only applies to local jurisdictions. Therefore, Ecology is not required to prepare a small business economic impact statement (RCW 19.85.030(1)(a)).

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Chapter 1: Background and Introduction

1.1 Introduction

This report presents the determinations made by the Washington State Department of Ecology (Ecology) as required under chapters 34.05 RCW and 19.85 RCW, for the proposed *Shoreline Master Program* rule amendments (chapters 173-18, 173-20, 173-22, 173-26, 173-27 WAC, “the proposed rule”). This includes the:

- Preliminary Cost-Benefit Analysis (CBA)
- Least-Burdensome Alternative Analysis (LBA)
- Regulatory Fairness Act Compliance
- Administrative Procedure Act Determinations

The Washington Administrative Procedure Act (APA; RCW 34.05.328(1)(d)) requires Ecology to evaluate significant legislative rules to “determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the law being implemented.” Chapters 1 – 5 of this document describe that determination.

The APA also requires Ecology to “determine, after considering alternative versions of the rule...that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives” of the governing and authorizing statutes (RCW 34.05.328(1)(d)). Chapter 6 of this document describes that determination.

The APA also requires Ecology to make several other determinations (RCW 34.05.328(1)(a) – (c) and (f) – (h)) about the rule, including authorization, need, context, and coordination. Appendix A provides the documentation for these determinations.

All determinations are based on the best available information at the time of publication. Ecology encourages feedback (including specific data) that may improve the accuracy of this analysis.

The Washington Regulatory Fairness Act (RFA; Chapter 19.85 RCW) requires Ecology to evaluate the relative impact of proposed rules that impose costs on businesses in an industry. It compares the relative costs to small businesses to the largest businesses affected. Chapter 7 documents that analysis, when applicable.

1.2 Summary of the proposed rule amendments

The proposed rule amendments make the following changes not required by other laws or rules:

1. Periodic review of Shoreline Master Programs (SMP).
2. Optional joint SMP amendment review process.
3. Housekeeping including legislative updates, clarifications, corrections or other changes without changing the effect of the rule.

1.2.1 Periodic review

The proposed amendments provide the minimum requirements for local jurisdictions who submit a SMP periodic review for Ecology's approval.

1.2.2 Optional joint review process

The proposed amendments allow for optional joint review process.

1.2.3 Housekeeping

Proposed amendments include legislative updates, clarifications, corrections or other changes without changing the effect of the rule.

1.3 Reasons for the proposed rule amendments

Ecology is amending the rules that implement the Shoreline Management Act of 1971 (SMA), chapter 90.58 RCW, which established a cooperative program of shoreline management between local governments and the state. RCW 90.58.060 directs Ecology to periodically review and update chapter 173-26 WAC.

Ecology is amending the following chapters in this rulemaking:

- Chapter 173-18 WAC, Shoreline management act - Streams and Rivers Constituting Shorelines of the State
- Chapter 173-20 WAC, Shoreline management act - Lakes Constituting Shorelines of the State
- Chapter 173-22 WAC, Adoption of Designations of Shorelands and Wetlands Associated With Shorelines of the State
- Chapter 173-26 WAC, State master program approval/amendment procedures and master program guidelines
- Chapter 173-27 WAC, Shoreline Management Permit and Enforcement Procedures

1.4 Document organization

The remainder of this document is organized in the following chapters:

- Baseline and the proposed rule amendments (Chapter 2): Description and comparison of the baseline (what would occur in the absence of the proposed rule amendments) and the proposed changes to rule requirements.
- Likely costs of the proposed rule amendments (Chapter 3): Analysis of the types and sizes of costs we expect impacted entities to incur as a result of the proposed rule amendments.
- Likely benefits of the proposed rule amendments (Chapter 4): Analysis of the types and size of benefits we expect to result from the proposed rule amendments.
- Cost-benefit comparison and conclusions (Chapter 5): Discussion of the complete implications of the CBA, and comments on the results.
- Least-Burdensome Alternative Analysis (Chapter 6): Analysis of considered alternatives to the contents of the proposed rule amendments.
- Regulatory Fairness Act Compliance - Small Business Economic Impact (Chapter 7): Comparison of compliance costs to small and large businesses; mitigation; impact on jobs.
- RCW 34.05.328 determinations not discussed in Chapter 5 or 6 (Appendix A)

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Chapter 2: Baseline and the Proposed Rule Amendments

2.1 Introduction

We analyzed the impacts of the proposed rule relative to the baseline of the existing rule, within the context of all existing requirements (federal and state laws and rules). This context for comparison is called the baseline, and reflects the most likely regulatory circumstances that entities would face if the proposed rule were not adopted. It is discussed in Section 2.2, below.

2.2 Baseline

The baseline for our analyses generally consists of existing rules and laws, and their requirements. This is what allows us to make a consistent comparison between the state of the world with and without the proposed rule amendments.

The authorizing statute (RCW 90.58) specifies requirements related to Shoreline Master Programs (SMPs). The statute authorizes Ecology to adopt such rules as are necessary and appropriate to carry out the provisions of the SMA (RCW 90.58.200). For example, the rule outlines specific requirements for updates, while the authorizing law more broadly describes some of these requirements. We include an analysis of those requirements in this report.

Currently, local jurisdictions are required to complete a periodic review of their SMP at least once every eight years according to a staggered schedule set by statute (RCW 90.58.080(4)(a)). The periodic review review deadlines begin in 2019. None have been completed yet.

2.2.1 Coverage

The proposed rules will cover the actions of 39 county and 219 municipalities.

2.3 Proposed rule amendments

The proposed amendments fall under three broad categories:

1. Periodic review of Shoreline Master Programs (SMP)
2. Optional joint SMP amendment review process
3. Housekeeping including legislative updates, clarifications, corrections or other changes without changing the effect of the rule.

Housekeeping is exempt from analysis under:

- RCW 34.05.328(5)(iv) “Rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.”
- RCW 34.05.328(5) (iii) “Rules adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes...”

The rule requirements that differ from the baseline include:

Process for periodic review of Shoreline Master Programs

1. Includes public participation program for all jurisdictions.
2. Review and analysis to determine need for revisions.
3. Revisions as needed
4. Taking legislative action
5. Submittal to department
6. Ecology approval of periodic reviews

Optional joint SMP amendment review process

The SMA requires both a local comment period and a state comment period but does not preclude holding the two comment periods at the same time. Ecology’s existing rules appear to require local adoption before submitting changes to Ecology, so that two separate comment periods are held for each SMP amendment. Ecology’s proposed rule amendments, prepared in consultation with local governments, would create a new option allowing for *concurrent* local and state public comment periods. The proposed rules authorize this optional path for all amendments other than comprehensive SMP updates.

2.3.1 Process for periodic review of shoreline master programs

The SMA requires each city and county to review, and, if necessary, revise their SMP at least once every 8 years. The legislature set a staggered schedule for review that alternates with similar reviews under the Growth Management Act (GMA).

RCW 90.58.080(4)(a) defines the purpose of the periodic review as assuring that the master program:

- i. Complies with applicable law and guidelines in effect at the time of the review, and
- ii. Remains consistent with the comprehensive plan and development regulations adopted under GMA, if applicable, and other local requirements.

RCW 90.58.090(7) requires Ecology to approve the adoption of a new SMP or amendments to an SMP .WAC 173-26-110 details the requirements for submitting a revised SMP. If a local jurisdiction determines that no revisions are necessary, the proposed rules allow them to submit a

subset of the required elements of a revised SMP t in lieu of the requirements of WAC 173-26-110. This includes:

- A resolution or ordinance declaring Findings of Adequacy.
- Evidence of compliance with applicable public notice and consultation requirements.
- 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.
- A completed checklist demonstrating review elements have been considered, and are either inapplicable or have already been addressed through previous locally initiated amendments before the scheduled periodic review.

2.3.2 Optional joint SMP amendment review process

The SMA requires both a local public comment period and a state (Ecology) public comment period but does not prohibit holding the two comment periods at the same time (RCW 90.58.090(2)).

Currently, the local public comment period is followed by formal adoption at the local level and submission of the proposed amendments or findings to Ecology. Ecology then holds a state-level public comment period and sends comments to the local government for their response. The local government may or may not identify areas where their locally approved SMP could be improved in response to comments. Ecology then makes a final determination on whether the SMP is consistent with the SMA and applicable rules.

The proposed amendments allow for concurrent local and state public comment periods.

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Chapter 3: Likely Costs of the Proposed Rule Amendments

3.1 Introduction

We estimated the likely costs associated with the proposed rule amendments, as compared to the baseline. Amendments and the baseline are discussed in detail in Chapter 2 of this document.

3.2 Cost analysis

3.2.1 Periodic Review

Counties, cities, and towns are required to conduct periodic reviews of their SMPs. RCW 90.58.080(4)(a) defines the purpose of the periodic review as assuring that the master program:

- i. Complies with applicable law and guidelines in effect at the time of the review, and
- ii. Remains consistent with the comprehensive plan and development regulations adopted under GMA, if applicable, and other local requirements.

RCW 90.58.090(7) requires that an SMP or amendments to an SMP be approved by Ecology.

The proposed amendments clarify the expectations for jurisdictions to conduct the periodic review process.

Because the law requires the periodic review, the proposed rules do not impose additional costs.

3.2.2 Optional joint SMP amendment review process

Inclusion of this optional process does not impose additional costs, as it is optional and would only be undertaken if it streamlined the process and decreased the burden on local jurisdictions.

3.3 Cost Summary

The proposed rule amendments do not impose discretionary costs.

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Chapter 4: Likely Benefits of the Proposed Rule Amendments

4.1 Introduction

We estimated the likely benefits associated with the proposed rule amendments, as compared to the baseline (both described in Chapter 2 of this document).

4.2 Benefit analysis

Likely benefits of the proposed rules arise from:

- Clarity of expectations for local jurisdictions for the periodic review.
- Additional option of a joint SMA amendment review process.
- Time savings.

4.2.1 Clarity of expectations

Without clear expectations, local jurisdictions run the risk of unintentionally increasing their burden in two ways:

1. Providing too little information and needing to resubmit; or
2. Providing too much information and absorbing the unnecessary costs associated with such effort.

If a local jurisdiction were to submit a periodic review that did not meet Ecology expectations, it would not be approved, forcing the local jurisdiction to make necessary changes and resubmit. This could double the time, effort, and cost of the periodic review process.

If a local jurisdiction were to submit a periodic review that exceeded Ecology expectations, the time, effort, and cost of providing the excess information would increase the burden placed on the local jurisdiction.

The actual cost-savings in either case due to the proposed rule amendments would depend on the specific circumstances of the jurisdictional review, however, they could be substantial.

By allowing local jurisdictions that have no amendments to their SMP to submit a subset of the submission requirements, as discussed in 2.3.1 above, Ecology is providing a benefit to those local jurisdictions in the form of decreased costs due to less staff time.

4.2.2 Joint SMA amendment review process

The joint SMA amendment review process is optional for local jurisdictions. Potential benefits accrue to local jurisdictions that choose this option.

The state-level public review for an amended SMP typically does not generate new public comments, but adds two to six months to the overall process, requires state and local staff time to manage and review comments, and delays improvements to the SMP.

Allowing joint review potentially eliminates lost staff time and speeds implementation of necessary amendments.

4.2.3 Time savings

RCW 90.58.020 discusses the intent of the SMA, which states, among other content:

. . . the shorelines of the state are among the most valuable and fragile of its natural resources . . . coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefore, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

Timely improvements to SMPs, where needed, minimizes the possible degradation of the state's shorelines. Foregoing delays in implementation carries the additional benefit of decreasing this potential degradation.

4.3 Benefit Summary

The proposed rules provide the following likely benefits, as compared to the baseline.

- Decrease costs related to staff time and effort through clarifying the expectations for local jurisdictions who prepare and submit their SMP amendment periodic reviews to Ecology for approval.
- Decreased costs related to staff time who work on implementing the SMP amendments through allowing an optional joint review process.
- Decreased potential degradation of the state's shorelines through decreasing the wait time for implementing improved SMPs.

Chapter 5: Cost-Benefit Comparison and Conclusions

5.1 Summary of the costs and benefits of the proposed rule amendments

Ecology determined that, compared to the baseline discussed in Chapter 2 of this document, the proposed rules have the following costs and benefits:

The proposed amendments do not impose discretionary costs.

The periodic review of SMPs is required by statute. Therefore, the costs of such review are not attributable to the proposed rules.

The proposed rule creates benefits by adding clarity and direction for covered parties, resulting in potential cost savings. Without the clarity and direction offered by the proposed rules, the costs of periodic review would likely be higher, possibly significantly. The proposed rules also decrease the implementation time of needed improvements to SMPs, minimizing potential degradation of the state's shorelines.

5.2 Conclusion

Ecology concludes, based on reasonable understanding of the quantified and qualitative costs and benefits likely to arise from the proposed rule, that the benefits of the proposed rule amendments are greater than the costs.

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Chapter 6: Least-Burdensome Alternative Analysis

6.1 Introduction

RCW 34.05.328(1)(e) requires Ecology to “[d]etermine, after considering alternative versions of the rule and the analysis required under (b), (c), and (d) of this subsection, that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives stated under (a) of this subsection.” The referenced subsections are:

- (a) Clearly state in detail the general goals and specific objectives of the statute that the rule implements;
- (b) Determine that the rule is needed to achieve the general goals and specific objectives stated under (a) of this subsection, and analyze alternatives to rule making and the consequences of not adopting the rule;
- (c) Provide notification in the notice of proposed rulemaking under RCW 34.05.320 that a preliminary cost-benefit analysis is available. The preliminary cost-benefit analysis must fulfill the requirements of the cost-benefit analysis under (d) of this subsection. If the agency files a supplemental notice under RCW 34.05.340, the supplemental notice must include notification that a revised preliminary cost-benefit analysis is available. A final cost-benefit analysis must be available when the rule is adopted under RCW 34.05.360;
- (d) Determine that the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented;

In other words, to be able to propose and adopt the rule, Ecology is required to determine that the contents of the rule are the least burdensome set of requirements that still achieve the goals and objectives of the authorizing statute(s).

Ecology assessed alternatives to elements of the proposed rule, and determined whether they met the goals and objectives of the authorizing statutes. Of those that would meet these goals and objectives, Ecology determined whether those chosen for the proposed rule were the least burdensome.

6.2 Goals and objectives of the authorizing statute: Chapter 90.58.080 RCW

The authorizing statute is direct in its objectives. It states, among other content:

RCW 90.58.080

(4)(a) . . . local governments shall conduct a review of their master programs at least once every eight years as required by (b) of this subsection. Following the review required by this subsection (4), local governments shall, if necessary, revise their master programs.

The purpose of the review is:

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

6.3 Alternatives considered and why they were not included

As part of this rulemaking, Ecology considered alternatives to the proposed rules. These include:

- Not proposing the rule (status quo).
 - The authorizing statute requires periodic review. Local jurisdictions have requested guidance on the specific requirements of the review. Failing to provide this guidance would increase the burden on local jurisdictions.

Allowing the option for a joint SMP amendment review allows for potential streamlining and decreases duplication of effort. Failing to offer this option could increase the burden on some local jurisdictions.

Housekeeping amendments reflect legislative updates, increase clarity, make corrections.

- Not allowing joint review.
 - Allowing the option for a joint SMP amendment review allows for potential streamlining and decreases duplication of effort. Failing to offer this option could increase the burden on some local jurisdictions.
- Not including housekeeping.
 - Housekeeping amendments reflect legislative updates, increase clarity, or make corrections.

- Clarifying the planning process for water-dependent uses, including salmon net pens, by providing principles to guide Ecology’s review of prohibitions for water-dependent uses; and, adding criteria for addressing floating aquaculture.
 - Ecology provided early drafts of possible proposed rule language that included this topic. Comments from local jurisdictions, fish growers, shellfish growers and environmental interests indicated that these proposed amendments were unnecessary at this time. Ecology decided to not include this topic in this rulemaking.

6.4 Conclusion

After considering alternatives to the proposed rules’ contents, as well as the goals and objectives of the authorizing statute, Ecology determined that the proposed rules represent the least-burdensome alternative of possible rule requirements meeting these goals and objectives.

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Chapter 7: Regulatory Fairness Act Compliance (RCW 19.85)

7.1 Introduction

Ecology has analyzed the costs of this rulemaking in previous chapters of this document. Based on this analysis Ecology has determined the proposed rule does not impose additional costs on businesses because it only applies to local jurisdictions. Therefore, Ecology is not required to prepare a small business economic impact statement (RCW 19.85.030(1)(a)).

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Appendix A

Administrative Procedure Act Determinations

Describe the general goals and specific objectives of the statute that this rule implements. RCW 34.05.328(1)(a)
<p>See Chapter 6.</p>
Explain why this rulemaking is needed to achieve the goals and objectives of the statute. RCW 34.05.328(1)(b)
<p>Before starting rulemaking, we considered the alternative of not adopting the rule. This alternative would be for Ecology to provide no guidance or to provide guidance without adopting rules. This would not provide the certainty that local governments have requested about how to meet the legislative requirement to review and revise SMPs when necessary. See Chapters 1 and 2.</p>
Describe alternatives to rulemaking and the consequences of not adopting this rule. RCW 34.05.328(1)(b)
<p>Before starting rulemaking, we considered the alternative of not adopting the rule. This alternative would be for Ecology to provide no guidance or to provide guidance without adopting rules. This would not provide the certainty that local governments have requested about how to meet the legislative requirement to review and revise SMPs when necessary.</p> <p>Please see the Least Burdensome Alternative Analysis, Chapter 6 of this document, for discussion of alternative rule content considered.</p>
A preliminary cost-benefit analysis was made available. RCW 34.05.328(1)(c)
<p>Notice is provided in the proposed rulemaking notice (CR-102 form) filed under RCW 34.05.320.</p>
Do the probable benefits of this rulemaking outweigh the probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented? RCW 34.05.328(1)(d)
<p>See Chapters 1 – 5.</p>
Is this rule the least burdensome alternative for those required to comply? RCW 34.05.328 (1)(e)
<p>Yes. Please see Chapter 6.</p>
Does this rule require those to whom it applies to take an action that violates requirements of another federal or state law? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Explain how that determination was made. RCW 34.05.328(1)(f)
There are no other federal or state agencies that administer the Shoreline Management Act.
Does this rule impose more stringent performance requirements on private entities than on public entities? RCW 34.05.328 (1)(g) <input type="checkbox"/> Yes. Provide a citation. Explain. <input checked="" type="checkbox"/> No
The Shoreline Management act is applicable to local government decisions related to shorelines of the state.
Do other federal, state, or local agencies have the authority to regulate this subject? <input type="checkbox"/> Yes. List below. <input checked="" type="checkbox"/> No
Is this rule different from any federal regulation or statute on the same activity or subject? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If yes, check all that apply. The difference is justified because: <input type="checkbox"/> A state statute explicitly allows Ecology to differ from federal standards. (If checked, provide the citation.) <input type="checkbox"/> There is substantial evidence that the difference is necessary to achieve the general goals and objectives of the statute that this rule implements. (If checked, explain.)
RCW 34.05.328 (1)(h)
There are no other federal or state agencies that administer the Shoreline Management Act.
Explain how Ecology ensures that the rule is coordinated with other federal, state, and local agencies, laws, and rules. RCW 34.05.328 (1)(i)
There are no related federal laws. Ecology's proposed rule is coordinated with obligations to comply with the Growth Management Act. The scope of the rule includes ensuring the local Shoreline Master Program is coordinated with local growth management plans and regulations.