

Shoreline Management Act (SMA)

Introduction to the Shoreline Management Act

Washington's Shoreline Management Act (SMA) was passed by the Legislature in 1971 and enacted by the voters in a 1972 referendum. It is codified in RCW 90.58, and incorporated into the Growth Management Act as a 14th goal. Its regulations are in WAC 173-26. The act is to provide for management of the shorelines of the state by planning for and fostering planned development and promoting navigational rights while protecting against adverse effects to (a) the public health, (b) the land and its vegetation and wildlife, and (c) the waters of the state and aquatic life while respecting private property rights.

Where does the SMA apply?

The SMA applies to all counties and more than 200 cities that have specifically defined shorelines,¹ which include:

- All marine waters
- Streams with greater than 20 cubic feet per second mean annual flow
- Lakes 20 acres or larger
- Upland areas called shorelands that extend 200 feet landward from water's edge
- Areas when they are associated with one of the biological wetlands and river deltas and some or all of the 100-year floodplain including all wetlands within the 100-year floodplain, and
- Shorelines of statewide significance

The SMA also states that "the interests of all the people shall be paramount in the management of shorelines of statewide significance." These shorelines are defined in the SMA as:

- 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 area of 1,000 acres or more
- Larger 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), and
- Wetlands associated with all of the above.

Policies of the SMA

There are three basic policy concepts to the Shoreline Management Act: shoreline development, environmental protection, and public interests. The SMA emphasizes accommodation of reasonable and appropriate uses, protection of shoreline environmental resources, and protection of the public's right to access and use of the *public* shorelines.

Shoreline use: The SMA establishes the concept of preferred uses of shoreline areas. The act requires that "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 states' shorelines..."² Preferred uses include *single family residences*, ports, shoreline recreational uses, water dependent industrial and commercial developments and other developments that provide public access opportunities. To the maximum extent possible, the shorelines should be reserved for water-oriented uses.

¹ See RCW 90.58.030(2)

² RCW 90.58.020

The act affords special consideration to shorelines of statewide significance that have greater than regional importance. Preferred uses for shorelines of statewide significance, in order of priority, are to "recognize and protect the state-wide interest over local interest; preserve the natural character of the shoreline; result in long-term over short-term benefit; protect the resources and ecology of the shoreline; increase public access to publicly-owned shoreline areas; and increase recreational opportunities for the public in the shoreline area."³

Environmental protection: The SMA is intended to protect shoreline natural resources, including the land, its vegetation, wildlife, water, and aquatic life from adverse effects. All allowed uses are required to mitigate adverse environmental impacts to the maximum extent feasible and preserve the natural character and aesthetics of the shoreline.

Public access: Master programs must include a public access element making provisions for access to publicly owned areas and a recreational element for the preservation and enlargement of recreational opportunities on the shorelines. The stated policy is that,

“[t]h public’s opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally.... Alterations of the natural conditions of the shorelines of the state, in those limited instances when authorized, shall be given priority for...development that will provide an opportunity for substantial numbers of people to enjoy the shorelines of the state.”⁴

Providing public access can become a takings concern if forced on private citizens. The United States Supreme Court established that if a government wants to extract public access across private lands they cannot “extort” it but must provide just compensation.⁵ Only if there is a nexus and proportionality between the public benefit being lost due to development and state requirements connected to the development can a local government require public access across private lands without compensation.

The SMA is subject to the common law *public trust doctrine*.⁶ The essence of this court doctrine is that the waters of the state are a public resource for the purposes of navigation, conducting commerce, fishing, recreation, and similar uses and that these rights are not given away despite the sale of the underlying land into private ownership. The state cannot divest its interest in the shorelands in a manner that impairs the public interest.

Shoreline Master Programs (SMPs)

Under the SMA each city and county with shorelines of the state must adopts a Shoreline Master Program (SMP) that is based on state laws and rules but tailored to the specific geographic, economic, and environmental needs of the community. The SMP is essentially a shoreline comprehensive plan and zoning ordinance with an environmental orientation applicable to shoreline areas and customized to local circumstances.

³ RCW 90.58.020

⁴ RCW 90.58.020

⁵ *Nollan v. California Coastal Comm’n*, 483 U.S. 825, 837, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987)

⁶ See *Esplanade Props., LLC v. City of Seattle*, 307 F.3d 978, 985 (2002) *cert denied* 539 U.S. 926, 123 S.Ct. 2574, 156 L.Ed. 2d 603 (2003)

The SMA establishes a division of authority between local and state government. Cities and counties are the primary administrators and implementers of the programs. The state Department of Ecology (DOE) provides support and review for local programs, approves conditional-use and variance permits, and must approve new or amended local shoreline master programs. Their authority does not extend beyond those granted by state statute. In the 2008 case of *Twin Bridge Marine Park, LLC v. Dep't of Ecology*, the Washington Supreme Court ruled that DOE has no authority to review substantial-development permits issued by local governments or assess fines for perceived violations if the property owner is operating under a valid shoreline permit issued by the local government.

SMP Updates By Local Governments

In the 2003 session, the Legislature mandated a schedule for local governments to update their SMPs starting December 1, 2005 and going through 2014. The first adopters are the City of Port Townsend, the City of Bellingham, the City of Everett, Snohomish County, and Whatcom County. Other local governments may look to these examples as they do their updates. King County and its cities with populations greater than 10,000 will be due in 2009. In 2007, the Legislature passed a one-year extension option that can be used by jurisdictions if they cannot make their given deadlines.⁷

After the initial update, local governments are required to review their SMPs at least once every seven years. Master program amendments are effective only after DOE approval. In reviewing master programs, the department is limited to a decision on whether the proposed changes are consistent with the policy and provisions of the SMA and the state master program guidelines.

DOE provides technical assistance to all local governments undertaking master program amendments and offers shoreline program grants mainly to those jurisdictions that will be updating in the next biennium or that choose to voluntarily update early. In 2007-2009, \$4.5 million was allocated for these grants. DOE expects to take applications in March 2009 for the next round of awards. Local governments that are interested should contact their DOE regional planner which can be found at:
<http://www.ecy.wa.gov/programs/sea/sma/contacts/>.

Supreme Court Case

In 2007 the Washington Supreme Court, in *Biggers v. City of Bainbridge Island*,⁸ ruled that local jurisdictions do not have the authority to place moratoriums on development in the shorelines while they update their shoreline master programs.

⁷ HB 1412 added a new section found at RCW 90.58.080 (8)

⁸ 162 Wn.2d 683, 169 P.3d 14 (2007)