

## SHORELINE MASTER PROGRAM AMENDMENTS

### SMP amendment procedural review rules

The Shoreline Management Act (SMA) is a cooperative program of shoreline management between local governments and the state.<sup>1</sup> A key element of the shared responsibility is Ecology review and approval of Shoreline Master Programs (SMP) amendments.<sup>2</sup> The procedures for conducting the public comment and Ecology review process for proposed local amendments are outlined in state rules.

Since the 1970s, Ecology's rules had one approach that required both a local and state public comment period for all SMP amendments regardless of the substance. Effective September 7, 2017, Ecology revised those rules to create a new option that allows for a joint local/state review process.<sup>3</sup>

This document begins with a summary of the 2017 rules, followed by an annotated version of relevant procedural rules in their entirety.

#### Standard public review process

The standard public review process is still required for comprehensive SMP updates.<sup>4</sup> This process requires a two-stage public review for all amendments (*see Figure 1*).

Counties and cities hold a **local public comment period** on proposed amendments. Elected officials formally adopt the SMP and submit proposed amendments to Ecology.

Ecology then holds a second **state-level public comment period** on the locally approved SMP 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.

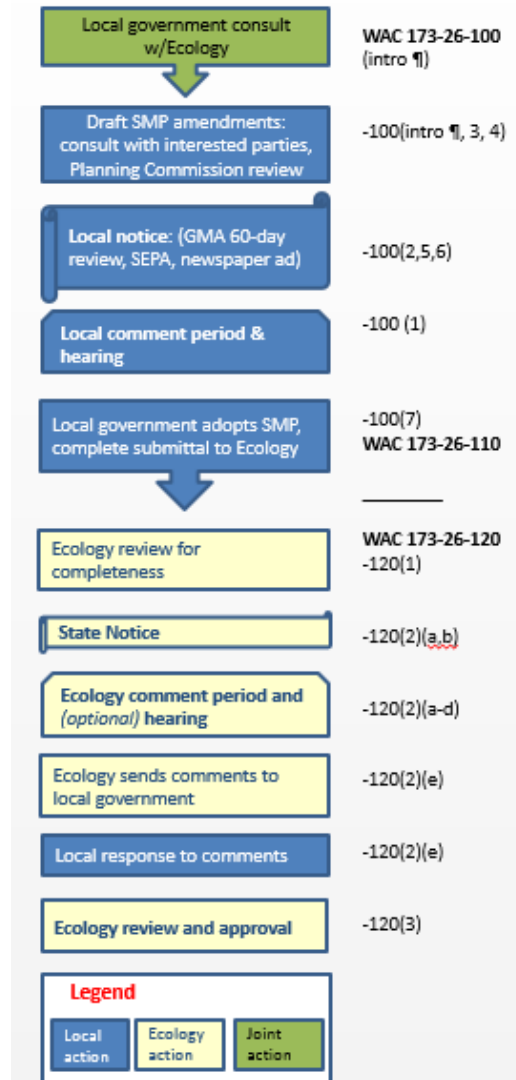


Figure 1. Standard SMP update process

<sup>1</sup> RCW 90.58.050

<sup>2</sup> RCW 90.58.090

<sup>3</sup> WAC 173-26-104

<sup>4</sup> The comprehensive updates are those found in RCW 90.58.080(2). Deadlines were from 2005-2014, with extensions and delays pushing out some approvals beyond the dates set in law. Ecology rules retained this requirement for the two-stage comment period to maintain the same procedural "ground rules" for all jurisdictions that complete the comprehensive update.

## Optional joint local and state comment period

Ecology's 2017 rules create an option that allows for joint (*concurrent*) local and state public comment periods (see *Figure 2*).

Under the optional review process, a county or city considering an amendment would consult with Ecology early in the local adoption process. After this initial consultation, the local government would prepare amendments through the normal local process. Once amendments are drafted, the local government and Ecology would hold concurrent comment periods, using parallel notification and conducting a shared local public hearing.

Local governments would provide notice of the public comment period to local interested parties and Ecology would provide notice to statewide interested parties.

Just like under the standard process, the local government prepares a response to comments. The local government may or may not make changes in response to public comments, and then submits the amendment to Ecology for an initial determination of consistency with the SMA and state rules. This step is intended to improve the transparency of the overall SMP amendment process, because local elected officials would have an initial determination of consistency before taking final action to adopt the amendments.

The 2017 rules make no substantive changes to the final steps in the approval process. After local adoption, Ecology would conduct a final review to ensure that any changes to the draft SMP following from the joint public comment period are consistent with the SMA and applicable rules.

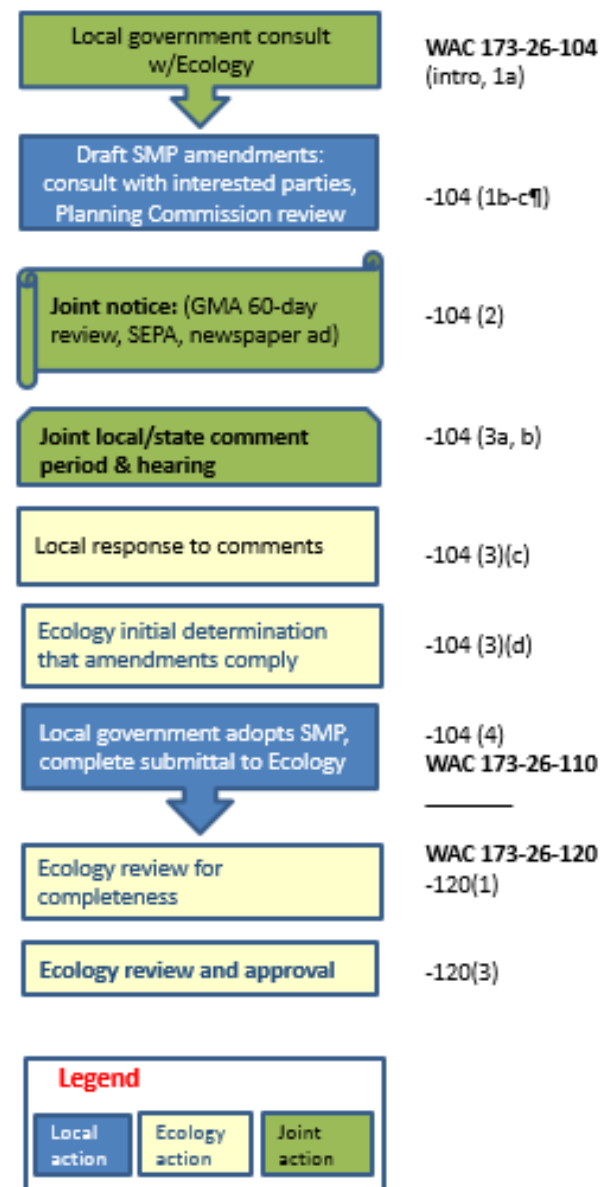


Figure 2. Joint review process

## Shoreline amendment procedural rules (annotated)

Below is the complete text of Ecology’s rules outlining the shoreline amendment process. The annotation in colored boxes provides context and explanation for each section and is not part of the formally adopted rule.

Colored boxes formatted like this are explanatory and are not part of the rules.

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### WAC 173-26-100 Standard local process for approving/amending shoreline master programs.

This section establishes local procedures for approving new master programs and preparing comprehensive master program updates required by RCW [90.58.080](#)(2). A local government that proposes master program amendments may follow these procedures or the optional joint review process outlined in WAC [173-26-104](#).

Section 100 is titled the standard process to distinguish it from the new optional “joint review” process in WAC 173-26-104. The introductory paragraph explains that counties and cities must follow this process in two circumstances: adopting brand new SMPs (*e.g., in case of a new city incorporation*), and preparing comprehensive master program updates. The term “comprehensive master program update” refers to the one-time updates required under RCW 90.58.080(2) with deadlines set in statute from 2005 – 2014.

Counties and cities have a choice of using either the standard process or the optional joint review process for all other master program amendments, including amendments concluding the periodic reviews required by RCW 90.58.080(4).

Prior to submittal of a new or amended master program to the department, local government shall solicit public and agency comment during the drafting of proposed new or amended master programs. The degree of public and agency involvement sought by local government should be gauged according to the level of complexity, anticipated controversy, and range of issues covered in the draft proposal.

Recognizing that the department must approve all master programs before they become effective, early and continuous consultation with the department is encouraged during the drafting of new or amended master programs. For local governments planning under chapter [36.70A](#) RCW, local citizen involvement strategies should be implemented that ensure early and continuous public participation consistent with WAC [365-196-600](#).

At a minimum, local government shall:

- (1) Conduct at least one public hearing to consider the draft proposal;
- (2) Publish notice of the hearing in one or more newspapers of general circulation in the area in which the hearing is to be held. The notice shall include:
  - (a) Reference to the authority(s) under which the action(s) is proposed;
  - (b) A statement or summary of the proposed changes to the master program;
  - (c) The date, time, and location of the hearing, and the manner in which interested persons may present their views; and
  - (d) Reference to the availability of the draft proposal for public review;
- (3) Consult with and solicit the comments of any persons, groups, federal, state, regional, or local agency, and tribes, having interests or responsibilities relating to the subject shorelines or any special expertise with respect to any environmental impact. The consultation process should include adjacent local governments with jurisdiction over common shorelines of the state;
- (4) Where amendments are proposed to a county or regional master program which has been adopted by cities or towns, the county shall coordinate with those jurisdictions and verify concurrence with or denial of the proposal. For concurring jurisdictions, the amendments should be packaged and processed together. The procedural requirements of this section may be consolidated for concurring jurisdictions;
- (5) Solicit comments on the draft proposal from the department prior to local approval. For local governments planning under the Growth Management Act, the local government shall notify both the department and the department of commerce of its intent to adopt shoreline policies or regulations, pursuant to RCW [36.70A.106](#);
- (6) Comply with chapter [43.21C](#) RCW, the State Environmental Policy Act; and
- (7) Approve the proposal and submit for final agency approval as outlined in WAC [173-26-110](#).

## WAC 173-26-104 Optional joint review process for amending shoreline master programs

This section establishes an optional joint review process a local government may elect to use for master program amendments other than comprehensive updates. The process combines the local and state public comment periods required by RCW [90.58.090](#). Recognizing that the optional review process requires close coordination in conducting a joint public review, early and continuous consultation with the department is required during the drafting of amendments. The department and local government

should work collaboratively to address local interests while ensuring proposed amendments are consistent with the policy of RCW [90.58.020](#) and applicable guidelines.

WAC 173-26-104 outlines an optional amendment process that consolidates the local and state public comment periods. The rule calling for “early and continuous consultation with the department” is more emphatic here than in the introduction to WAC 173-26-100 because local governments and Ecology will need to coordinate closely to successfully conduct a joint public review. The opening paragraph also articulates a guiding principle for a collaborative approach to addressing both local and statewide interests in crafting SMP amendments (which should apply even for amendments prepared under the standard review process).

## (1) Local government solicits early public and agency feedback

(a) Prior to commencing the amendment process, local governments shall notify the department of intent to develop an amendment under the optional joint review process.

The department will provide shoreline master program amendment checklists to help local governments identify issues to address. The checklists will not create new or additional requirements beyond the provisions of this chapter. The checklists are intended to aid in the preparation and review of master program amendments.

§ 1(a) requires local government to start the process with a formal notice to Ecology. [Ecology’s website](#) includes checklists to help with the amendment process. Ecology has checklists for comprehensive updates and periodic reviews, as well as a submittal checklist that accompanies all amendments. The remainder of this section provides the same direction to involve the public as the standard review process under WAC 173-100.

(b) Prior to submittal of a master program amendment to the department, local government shall solicit public and agency comment during the drafting of proposed amendments.

(i) The degree of public and agency involvement sought by local government should be gauged according to the level of complexity, anticipated controversy, and range of issues covered in the draft proposal.

(ii) Local government shall make all reasonable effort to consult with and solicit comments of any persons, groups, federal, state, regional, or local agency, and tribes, having interests or responsibilities relating to the subject shorelines or any special expertise with respect to any environmental impact. The consultation process should include adjacent local governments with jurisdiction over common shorelines of the state, where applicable.

(iii) For local governments planning under chapter [36.70A](#) RCW, local citizen involvement strategies should be implemented to ensure early and continuous public participation consistent with WAC [365-196-600](#).

(c) Where amendments are proposed to a county or regional master program which has been adopted by cities or towns, the county shall coordinate with those jurisdictions and verify concurrence with or denial of the proposal. For concurring jurisdictions, the amendments should be packaged and processed together. The procedural requirements of this section may be consolidated for concurring jurisdictions.

## (2) Local government and Ecology conduct joint public comment period

At a minimum, local governments and the department shall conduct the following steps:

(a) Local governments planning under the Growth Management Act shall notify the department of commerce of its intent to adopt shoreline policies or regulations, pursuant to RCW [36.70A.106](#).

(b) Local governments shall comply with chapter [43.21C](#) RCW, the State Environmental Policy Act.

(c) Local governments and the department will provide a formal public comment period.

(i) Provide a public comment period of at least thirty days. The local government will provide reasonable notice and opportunity for written comment to all parties of record who expressed interest regarding the proposal. The department will provide notice to the state interested parties list of persons, groups, agencies, and tribes that have requested in writing notice of proposed master programs or amendments generally or for a specific subject matter.

(ii) Conduct at least one joint local/state public hearing to consider the draft proposal. The local government will publish notice of the joint local/state hearing in one or more newspapers of general circulation in the area in which the hearing is to be held. The notice shall include:

(A) Reference to the authority(s) under which the action(s) is proposed;

(B) The date, time, and location of the hearing, and the manner in which interested persons may present their views;

(C) A statement or summary of the proposed changes to the master program; and

(D) Reference to the availability of the draft proposal for public review.

(d) Local governments shall make available to the public and shall accept comment on the following materials:

(i) Amended text clearly identifying the proposed changes;

(ii) Any amended environment designation map(s), showing both existing and proposed designations, with justification for changes;

(iii) A summary of proposed amendments together with explanatory text indicating the scope and intent of the proposal; and

(iv) An initial submittal checklist and other supporting material indicating how the proposed amendment is consistent with the policy of RCW [90.58.020](#) and applicable guidelines.

(e) Local governments shall prepare a response to public comments.

(i) Within thirty days after the close of the joint public comment period, the local government shall document the submitted comments and prepare a written response to the public comments. The response may identify changes to the proposed amendment in response to public comments. Any proposed changes shall be evaluated by the local government for consistency with the policy of RCW [90.58.020](#) and applicable guidelines.

(ii) A local government may request additional time to prepare responses. Such requests will be accompanied by estimates of additional time needed.

The steps in § 2 combine the local and state notice and comment periods.

§ 2(c)(i) clarifies that local governments provide notice to local interested parties, and Ecology provides notice to the state interested parties list. The rule provides a minimum local comment period of 30 days. Ecology recommends local governments let Ecology know when the comment period is anticipated as soon as possible to ensure Ecology meets its obligations to send notice.

§ 2(c)(ii) clarifies public notice requirements for the joint hearing. [Ecology's Shoreline Planners Toolbox](#) includes a sample public notice.

§ 2(d) outlines what items must be made available to the public. Ecology's website will direct the public to the local government website and local contacts.

§ 2(e) provides a default timeframe of 30 days, with an option for additional time when needed. Where there are no comments or minor comments, this step can be concluded more quickly.

### (3) Local government obtains initial determination from the department

(a) After conducting the joint public comment period, and prior to local government adoption, the local government shall submit the proposed amendment to the department for initial review. In addition to providing the public comment record of materials, initial submittal shall include:

(i) Documentation of all public comments received during the comment period;

(ii) Local jurisdiction responses to public comments;

(iii) Description of any proposed amendments as a result of the public testimony, with findings supporting the consistency of the proposed amendments with the policy of RCW [90.58.020](#) and applicable guidelines;

(iv) Updated text and map amendments.

(b) The department shall provide the local government an initial determination of whether or not the proposal is consistent with the policy of RCW [90.58.020](#) and applicable guidelines.

(i) The department will provide the initial determination within thirty days of submittal. For complex proposals, the department may indicate to the local government that a longer review period of up to forty-five days is needed.

(ii) If the department's initial determination is that the proposal is consistent with applicable laws and rules, the department will provide a written statement of initial concurrence.

(iii) If the department concludes that the proposal is not consistent with applicable laws and rules, the department will provide a written statement describing the specific areas of concern.

§ (3) requires local governments to send the draft SMP amendments that incorporate any changes resulting from the comment period to Ecology after the joint public comment period. Ecology is required to reply with an initial determination before local adoption. The intent of this step is to provide local elected officials an opportunity to consider Ecology's analysis before local adoption. Ecology may provide this initial determination in the form of draft "Findings and Conclusions."

#### (4) Approve the proposal.

After receiving the initial determination from the department, the local government adopts the amendment through resolution or ordinance and submits it for final agency approval as outlined in WAC [173-26-110](#).

§ 4 simply summarizes the final step of formal adoption and submittal to Ecology.

### WAC 173-26-110 Submittal to department of proposed master programs/amendments

A master program or amendment proposed by local government shall be submitted to the department for its review and formal action. Submittals may be in digital format.

This section applies to all formal SMP submittals, whether for a brand new SMP (e.g., for a newly incorporated city), or any kind of amendment (comprehensive update, periodic review, or locally-initiated amendment).

The section applies whether the amendment was prepared under WAC 173-26-100 or the optional joint process under WAC 173-26-104. The 2017 amendments clarify that digital submittals are acceptable, rather than requiring paper copies.

A complete submittal shall include the following, where applicable:

(1) Documentation (i.e., signed resolution or ordinance) that the proposal has been approved by the local government;

(2) If the proposal includes text amending a master program document of record, it shall be submitted in a form that can replace or be easily incorporated within the existing document. Amended text shall show strikeouts for deleted text and underlining for new text, clearly identifying the proposed changes. At the discretion of the department, strikeouts and underlined text may not be required provided the new or deleted portions of the master program are clearly identifiable;

(3) Amended environment designation map(s), showing both existing and proposed designations, together with corresponding boundaries described in text for each change of environment. All proposals for changes in environment designation and redesignation shall provide written justification for such based on existing development patterns, the biophysical capabilities and limitations of the shoreline being considered, and the goals and aspirations of the local citizenry as reflected in the locally adopted comprehensive land use plan;

(4) A summary of proposed amendments together with explanatory text indicating the scope and intent of the proposal, staff reports, records of the hearing, and/or other materials which document the necessity for the proposed changes to the master program;

(5) Evidence of compliance with chapter [43.21C](#) RCW, the State Environmental Policy Act, specific to the proposal;

(6) Evidence of compliance with the public notice and consultation requirements of either WAC [173-26-100](#) or [173-26-104](#);

(7) Copies of all public, agency and tribal comments received, including a record of names and addresses of interested parties involved in the local government review process or, where no comments have been received, a comment to that effect.

(8) A summary of amendments made in response to comments received.

(9) A copy of the applicable master program submittal checklist:

(a) For comprehensive master program updates, a checklist completed in accordance with WAC [173-26-201](#) (3)(a) and (h).

(b) For periodic reviews prepared under RCW [90.58.080](#)(4), a checklist completed in accordance with WAC [173-26-090](#).

(c) For locally initiated amendments, a checklist and any supporting material demonstrating consistency with RCW [90.58.020](#) and applicable guidelines.

(10) For comprehensive master program updates, copies of the inventory and characterization, use analysis, restoration plan and cumulative impacts analysis.

The submittal requirements were amended in 2017 to make a few minor clarifications, including:

§ 6 acknowledged that public notice may have occurred per the optional process under WAC 173-26-104.

§ 8 clarified that the submittal includes local responses to public comments.

§ 9(b) added a requirement for a checklist to accompany submittals that address the “periodic review” required under RCW 90.58.040. (Ecology [Shoreline Planners Toolbox](#) includes a review checklist.)

§ 9(c) mentions that “locally initiated” amendments must include a checklist to indicate how the proposed amendment meets applicable laws and guidelines. This refers to the Submittal Checklist that simply summarizes the requirements of WAC 173-26-110. The submittal checklist is posted on Ecology’s [Shoreline Planner Toolbox](#).

## WAC 173-26-120 State process for approving/amending shoreline master programs

Review and approval of master programs and amendments by the department shall follow the procedures set forth below. The state public comment period under subsection (2) of this section does not apply to master programs adopted under the optional joint review process of WAC [173-26-104](#).

The state rule was amended in 2017 primarily to create three distinct sections: (1) Formal Review for Completeness; (2) State Public Comment Period; and (3) Approval. The introductory paragraph and § 1(a) acknowledge that § 2 is only for local governments that follow the “standard” amendment process under WAC 173-26-100. The section also include numerous edits to acknowledge the optional “joint review” amendment process proposed under WAC 173-26-104.

### (1) Formal review for completeness

(a) The department shall review the submitted master program or amendment for compliance with either WAC [173-26-100](#) or [173-26-104](#), and [173-26-110](#). The department shall notify the local government in writing when it determines that a complete submittal has been received.

(b) If the submittal is determined to be incomplete, the department will identify the deficiencies and so notify the local government in writing. The review process will not begin until the department determines the submittal is complete.

## (2) State public comment period

For local governments that have followed WAC [173-26-100](#), the department shall follow the procedures below:

(a) The department shall provide reasonable notice and opportunity for written comment to all parties of record who expressed interest regarding the local government proposal and to all persons, groups, agencies, and tribes that have requested in writing notice of proposed master programs or amendments generally or for a specific subject matter. The comment period shall be at least thirty days, unless the department determines that a lack of complexity or controversy surrounding the proposal supports a shorter period.

(b) For master program or amendment proposals involving local governments planning under chapter [36.70A](#) RCW, the department shall provide notice to the department of commerce of its intent to begin formal review of the local government proposal.

(c) At the department's discretion, it may conduct a public hearing during the comment period in the jurisdiction proposing the master program or amendment.

(d) If the department conducts a hearing pursuant to subsection (c) of this section, it shall publish notice of the hearing in at least one newspaper of general circulation in the area affected by the master program. The public notice shall include:

- (i) A description of the proposed master program or amendment;
- (ii) Reference to the authority under which the action is proposed;
- (iii) The dates, times, and locations of the public hearing, and the manner in which interested persons may obtain copies of the proposal and present their views.

For master program or amendment proposals involving adoption by rule, the notice of the hearing shall be published at least once in each of the three weeks immediately preceding the hearing in one or more newspapers of general circulation in the county in which the hearing is to be held.

(e) Within fifteen days after the close of the department's public comment period, the department shall request of the local government submitting the proposal a review of the issues if any, identified by the public, interested parties, groups, agencies, and tribes, and a written response as to how the proposal addresses the identified issues consistent with the policy of RCW [90.58.020](#) and the applicable guidelines. Local government shall submit its response to the department within forty-five days of the date of the department's letter requesting a response. If no response is received by the department within the forty-five-day period, the department may proceed with action on the proposal according to subsection (3) of this section. Within the forty-five-day period, the local government may request in writing additional time to prepare a response.

### (3) Approval

**(a)** Within thirty days after receipt of the local government written response pursuant to subsection (2)(e) of this section, or for jurisdictions that followed WAC [173-26-104](#), after determination of completeness pursuant to subsection (1)(a) of this section, the department shall:

(i) Make written findings and conclusions regarding the consistency of the proposal with the policy of RCW [90.58.020](#) and the applicable guidelines;

(ii) For amendments adopted under WAC [173-26-100](#), provide a response to the issues identified in subsection (2)(e) of this section; and

(iii) Either approve the proposal as submitted, recommend specific changes necessary to make the proposal consistent with chapter [90.58](#) RCW policy and its applicable guidelines, or deny the proposal in those instances where no alteration of the proposal appears likely to be consistent with the policy of RCW [90.58.020](#) and the applicable guidelines. The written findings and conclusions shall be provided to the local government and made available to all interested persons, parties, tribes, groups, and agencies of record on the proposal.

(A) In reaching its determination of consistency with the policy of RCW [90.58.020](#) and the applicable guidelines, the department shall approve those parts of a master program relating to shorelines unless it determines that the submitted parts are not consistent with the policy of RCW [90.58.020](#) and the applicable guidelines.

(B) The department shall approve those parts of a master program relating to shorelines of statewide significance only after determining the program provides for optimum implementation of the statewide interest as set forth in the policy of RCW [90.58.020](#) and the applicable guidelines.

**(b)** If the department recommends changes to the proposal, within thirty days after the department provides the written findings and conclusions to the local government pursuant to this subsection (3), the local government may:

(i) Agree to the proposed changes by written notice to the department. The department shall provide written notice of the local government acceptance to all parties of record; or

(ii) Submit an alternative proposal. If, in the opinion of the department, the alternative is consistent with the purpose and intent of the changes originally proposed by the department in this subsection (3) and with the policy of RCW [90.58.020](#) and the applicable guidelines, it shall approve the alternative changes and provide written notice to all parties of record.

If the department determines the alternative proposal is not consistent with the purpose and intent of the changes proposed by the department, the department may either deny the alternative proposal or at the request of local government start anew with the review and approval process beginning in WAC 173-26-120.

**(c) Department notice of final action.**

(i) Promptly after approval or disapproval of a local government's shoreline master program or amendment, the department shall publish a notice consistent with RCW [36.70A.290](#) that the shoreline master program or amendment has been approved or disapproved. This notice must be filed for all shoreline master programs or amendments.

(ii) If the notice is for a local government that does not fully plan under RCW [36.70A.040](#), the department must, on the day the notice is published, notify the legislative authority of the applicable local government by telephone or electronic means, followed by written communication as necessary, to ensure that the local government has received the full written decision of the approval or disapproval.

**(d) Effective date.**

(i) A master program or amendment thereto takes effect in such form as it is approved or adopted by rule by the department. The effective date is fourteen days from the date of the department's written notice of final action to the local government stating the department has approved or rejected the proposal.

(ii) For master programs adopted by rule, the effective date is governed by RCW [34.05.380](#).

(iii) The department's written notice to the local government must conspicuously and plainly state that it is the department's final decision and that there will be no further modifications to the proposal.

§ 3(d) was amended in 2017 to incorporate a 2011 change to the SMA that establishes the effective date of SMPs as fourteen days after Ecology's approval [[RCW 90.58.090\(7\)](#)]. This amendment was adopted to provide local governments two weeks to codify their SMP locally.