September 9, 2026

Washington State Department of Ecology
ATTN: Rebecca Rothwell
Rulemaking Lead
PO Box 47600
Olympia, WA 98504

Dear Ms. Rothwell:

Thank you for this opportunity to comment on the 2026 Department of Ecology's amendments and rule making updates submission for the Shoreline Management Act.

All of these changes are well thought out and necessary. I think local governments who strive to be compliant with environmental State laws will continue that stance with these changes as well. However, I still see loopholes that were not addressed.

I plan on separately sending some suggestions that could close some of the loopholes which where not addressed as necessary in the Department's changes.

In this letter I am including an example of how Guidelines can fail when there are no consequences when SMA rules are ignored by either or both the local government and the Department of Ecology.

Ecology Guidelines can be challenged by a local government and when the Department of Ecology takes no action based on existing guidelines and has no public response or public notification when this is happening it can delay effective environmental law for years. The following is an example from 2016.

In 2016 Whatcom County submitted a Limited Amendment to the Department of Ecology that became idle for many years without public explanation or notification of status. Ecology did attempt an explanation when contacted but explained there was no penalty for not completing an amendment process or transferring it to another amendment process under their pending Periodic Review.

The County decided to abandon but not close their 2016 Limited Amendment without public notification on Ecology's website dedicated to pending amendments. They, instead, added some of the definition changes and the removal of some sections of their SMP previously proposed in 2016 to their

Periodic Review as already approved by Ecology. This change was presented with only public notification during the Periodic Review Council Meetings in a Staff Report.

All SEPA endorsed environmental performance standards except one for the proposed new shoreline uses were then removed from consideration before moving the amendments to the Periodic Review sometime around 2021. Whatcom County then passed local zoning code changes in 2023 to be consistent with their Periodic Review changes. That became Ordinance 2023-041.

The 2014 SEPA for the county's new proposed shoreline uses stated their environmental performance standards would mitigate environmental concerns but Ordinance 2023-041 did not include any of the original proposed environmental standards for their propose transient housing options. However, Ordinance 2023-041 did not update their SEPA application to indicate they ditched the performance standards and instead included a Findings of Fact stating:

A determination of non -significance (DNS) was issued under the State Environmental Policy Act (SEPA) on December 8, 2014.

The Periodic Review Staff Report used to notify the public that the old 2016 amendment was being included, as detailed above, was also used to notify the public that the 2016 amendments were already approved by Ecology. However they provided no letter of approval from Ecology or documentation to support that conclusion. WAC 173-23-120(3)(c) and (d) - Department Notice of Final Action and Effective Date - were never competed by Ecology for this amendment yet Ecology never confronted the County's Staff Report declaration of assumed approval. This stance by Ecology allowed a lot of information in the County's Shoreline Master Program to avoid the final process necessary to receive their approval and then amendments were basically added to their SMP by a Staff Report declaration. Somehow, because of the removed environmental performance standards, a lot of amendments happened as part of the Periodic Review without a correct SEPA report and also with dismissed requirements of RCW 90.58.

Ecology ignored the previous 2014 SEPA Declaration of Non-significance based on environmental performance standards and and also ignored discussions of meeting the expectations of RCW 90.58. By allowing amendments be transferred as already approved, Ecology missed opportunities to correct the record and expectations of the SMA guidelines. Instead, Ecology either

assumed the SMA guidelines for final approval of a limited were optional, didn't read most of the reports Whatcom County sent them, or assumed they had complete authority to override incorrect information being used for SEPA approvals and Final Approval of Amendments. None of these three assumptions are good reasons to drop the ball.

Ecology allowed these actions without requiring any further public disclosures except the above mentioned County Staff Report and used their Findings and Conclusions Report to restate facts from 2016 that no longer existed after the transfer.

The Ecology Attachment A: Findings and Conclusions report dated May 29, 2024 was presented with some of the old 2016 findings and conclusions report details but never confronted the transfer from a limited amendment to a periodic review as inappropriate. This has the appearance of an innovating deal but not supported by any of the SMA Guidelines that I could find. It is my understanding that the SMA Guidelines are laws and not suggestions. However, this transaction ignored process requirements. Further, Ecology, in their Findings and Conclusions report, incorrectly declared "the County has placed performance standards, intended to address potential issues resulting from short-term vacation rentals through recently adopted zoning amendments." This was not true but Ecology refused to correct their report when I notified them of their mistake.

There is really nothing in the Rulemaking amendments to prevent what happened with this Whatcom County's example above from happening again. I am attempting to find some suggestions that might close this kind of loophole from happening again. Giving full amendment authority to Ecology, when they won't correct their mistakes, may not fix this problem unless Ecology starts requiring complete resolution for their mistakes.

Thanks again for moving these rulemaking changes forward for public input. It probably will work fine for at least some local governments.

Tani Sutley
Bellingham, WA