

LESSONS LEARNED



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General Categories

1. SMP updates - behind schedule
2. Determining SMP jurisdiction
3. SMP provisions not based on inventory
4. CAO incorporated wholesale into SMP
5. No environment-specific regulations, particularly lot density and coverage
6. Reliance on other existing regulations to meet guidelines
7. No use analysis
8. No relationship between SMP provisions, restoration plan, and cumulative impacts analysis

1. Many SMP Updates Are Behind Schedule

- In 2003, the SMA was amended to set deadlines, through 2014 for required local SMP updates (RCW 90.58.080)
- Current status: of the 250+ jurisdictions statewide who must update consistent with the new guidelines:
 - 73 have received grants from Ecology to conduct comprehensive SMP updates
 - only 3 local gov'ts (Port Townsend, Marysville and Darrington) have yet to receive Ecology approval
 - 3 more have been submitted, but not yet approved
 - 11 are currently beyond established deadlines
- Ecology is obligated to adopt SMPs for those that don't meet their deadlines

2. SMP Jurisdiction – Now Established Locally

- Ecology no longer maintains the list of (marine, river, lake) “shorelines”. New stream 20 cfs points are now available (including Nat’l Forest).
- Local gov’ts now required to define jurisdiction as part of their SMP update
- Lots of (new) options for “shorelands” exist:
 - Max. jurisdiction = entire 100 yr. floodplain
 - Min. jurisdiction = floodway, plus 200’ and associated wetlands
 - Or any combination above (above the minimum)
 - Jurisdiction may be expanded to include buffers necessary to protect critical areas
- Note: required shoreline “planning” is extra-territorial, while shoreline “regulation” is limited to areas within local jurisdiction

3. SMP Not Based On Inventory

- 173-26-201(3)(d)(i)(E) – “use the characterization and analysis called for in this section to prepare master program policies and regulations designed to achieve no net loss”

see also 173-26-201(3)(f), 201 (3)(g).

3. SMP Not Based On Inventory

- In many cases local jurisdictions are using pre-existing environment designations, local zoning codes, comprehensive plan policies, critical areas ordinances, etc. as SMP policies and regulations
- Not necessarily wrong, but must include demonstration of how existing regulations satisfy new guidelines requirements and no net loss

3. SMP Not Based On Inventory

Example: 50 foot buffer on all shorelines

“No structure shall be erected within 50 feet of the OHWM, except for bridge approaches and bridges, marinas, docks, boat launches, or buildings related to water dependent recreation developments or other uses proven to be otherwise necessary in the public interest and specifically authorized”

3. SMP Not Based On Inventory

- Problem is that 50 feet is not “customized” to local conditions, resulting in too much buffer in some places (small lots), not enough in others (large undisturbed lots) to protect ecological functions
- In the future, Ecology will be requiring as a “deliverable” that inventory and characterization findings be translated into recommended shoreline environment designations, policies and regulations

4. CAO Incorporated Wholesale Into SMP

- Note: Updated SMP critical area provisions will replace the existing CAO in shoreline jurisdiction
- Also note: updated SMPs must provide a level of protection of critical areas at least equal to that provided by the local governments existing critical areas ordinance RCW 90.58.090(4)
- 173-26-221(2) requires protection of critical areas. Many jurisdictions are therefore relying on existing CAOs to meet this requirement

4. CAO Incorporated Wholesale Into SMP

Generally, nothing is wrong with this approach, but specific problems can surface, including:

1. CAO is not properly incorporated by reference to “specific dated edition”
2. CAO includes provisions inconsistent with SMA or SMP
3. CAO is outdated or inconsistent with current science

Relevant science suggests that sole reliance on individual site-by-site evaluation of projects is not adequate to protect shoreline functions.

More effective shoreline management “planning” is needed to mitigate for impacts that should be anticipated from new development.

Examples of CAO Provisions that are Inconsistent with SMA or Guidelines

- Reasonable use exception in CAO
- Buffers in CAO exceed setback in SMP
- Buffer averaging provisions in CAO not justified as satisfying no net loss
- Permit procedures in CAO
 - Director's exemptions, waivers, exceptions
Are they variances?

4. CAO Incorporated Wholesale Into SMP

- Best way to incorporate CAO is to incorporate a specific dated edition and then exclude all inconsistent portions
- Use magic words: “hereby incorporated”

Example

The Marysville Critical Areas Regulations, as codified in Chapter 19.24 MMC (dated May 2nd, 2005 _____, Ordinance #_2571 ___), are herein incorporated into this master program except as noted below.

Exceptions to the applicability of Marysville Critical Areas Regulations in Shoreline Jurisdiction in the instances specified below.

1. If provisions of the Critical Areas Regulations and other parts of the master program conflict, the provisions most protective of the ecological resource shall apply, as determined by the City.

Example

2. Provisions of the Critical Areas Regulations that are not consistent with the SMA, Chapter 90.58 RCW, and supporting WACs shall not apply in Shoreline jurisdiction.
3. The provisions of Marysville Critical Areas Regulations do not extend Shoreline Jurisdiction beyond the limits specified in this SMP. For regulations addressing critical area buffer areas that are outside shoreline jurisdiction, see Marysville Critical Areas Regulations.
4. Provisions of Marysville Critical Area Regulations that include a "reasonable use determination" shall not apply within Shoreline Jurisdiction. Specifically,
 - The sentence in MMC 19.24.020 referring to reasonable use determination does not apply.
 - MMC Section 19.24.420 does not apply.

5. No Environment-Specific Regulations

173-26-211(4)(a)(iv) – requires environment-specific regulations that address types of shoreline uses, building or structure height and bulk limits, setbacks, maximum density, and site development standards

- Some SMPs have not included regulations tied to the different environment designations and their purposes
- Some include policies, but no specific regulations to implement them
- One way to address this requirement is with two tables (matrices): a uses/modifications allowed table and a standards table

Example of Allowed Uses/Mods Table (simplified)

	Aquatic	Natural	RC	UC	SR	HI
Boating facilities & marinas	C	C	P	P	P	P
Commercial – water dependent	P	X	C	C	C	P
Commercial – water-related	X	X	C	C	C	P
Commercial – water enjoyment	X	X	C	C	P	P
Commercial – non-water-oriented	X	X	C	C	X	C
Shoreline mod - bulkhead	X	X	P	P	P	P

Example of Standards Table

	Aquatic	Natural	RC	UC	SR	HI
Height	25	25	25	25	35	35
Setback ^{1,2}	N/A	200	150	100	75	25
Lot Coverage	N/A	N/A	25%	35%	35%	50%
Density	N/A	N/A	1 per 10 acres	1 per 5 acres	1 per 1 acre	4 per acre
Buffer ^{1,2}	N/A	200	150	100	75	50

1. Measured from landward edge of buffer.
2. Does not apply to water dependent uses.

6. Reliance On Existing Regulations

- Most local governments rely on some existing regulations to meet guidelines requirements
- Almost all rely on CAO and flood ordinances
- Some go further and rely on their zoning code for density, height, and bulk limits

6. Reliance On Existing Regulations

- Nothing wrong in principle with this approach but demonstration of how the existing regulations mesh with findings of the shoreline characterization is needed, to meet the no-net-loss requirement

6. Reliance On Existing Regulations

Problems with this approach include:

1. Existing regs not designed to serve shoreline management purposes
2. No connection between inventory and regulations
3. Level of detail in existing zoning code, for example, may not be necessary in the SMP
4. Can be difficult to determine what is part of the SMP and what is not
5. Must show how often complex existing regulations achieve SMA policy and no net loss
6. No presumed validity exists (this is not GMA!). Remember - adopting by reference makes the provisions a part of the approved SMP, requiring Ecology approval for any future changes.

7. No Use Analysis

- 173-26-201(3)(d)(ii) requires a “use analysis” to estimate future demand for preferred shoreline uses and to understand potential use conflicts

7. No Use Analysis

- Some SMPs have included narrative analysis, but few have quantified their findings
- SMPs approved so far have been cities with limited shoreline space
- More Ecology guidance is needed to describe what a rigorous analysis would look like
- Estimated impacts of anticipated future shoreline uses not analyzed

8. No Connection Between SMP, Restoration Plan, and Cumulative Impacts Analysis

- 173-26-186(8)(d) requires SMPs to include policies and regulations to address cumulative impacts
- See also 173-26-201(3)(d)(ii)
- 173-26-201(2)(f) requires restoration planning

8. No Connection Between SMP, Restoration Plan, and Cumulative Impacts Analysis

- Recommendations of the CIA and RP should be included as policies or regulations in the SMP
- Particular restoration projects do not have to be included in the SMP
- Often, it appears the CIA and RP are justifications for existing regulations rather than steps on the way to development of an SMP
- Ecology now encourages future SMP updates conduct RP and CIA earlier in the process before development of policies and regulations

Example of Cumulative Impacts Analysis

- Bainbridge Island analysis of dock proliferation in Blakely Harbor
- Upheld by the Growth Management Hearings Board in *Samson v. City of Bainbridge Island*, CPSGMHB No. 04-3-0013 (1/19/05)
- Estimated number of docks based on number of developable lots
- Quantified impacts to navigation and views
- Used the analysis to support SMP regulations limiting docks

Summary

- Defining local jurisdiction involves lots of choices and technical considerations
- Local gov'ts are reluctant to make changes to local critical areas provisions
- GMA/SMA integration is very complicated in practice
- Translating inventory findings into SMP regulations can be difficult, “what’s good enough?”
- Projecting impacts of future shoreline development is difficult, complicating efforts to demonstrate no net loss
- Distinction between no net loss (mitigation) and restoration of ecological functions is at times fuzzy
- Specific guidance and good “models” are still lacking
- Available funding and Ecology staff support may be inadequate

That's all for now folks!



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Or our website at:

<http://www.ecy.wa.gov/programs/sea/sma/index.html>