

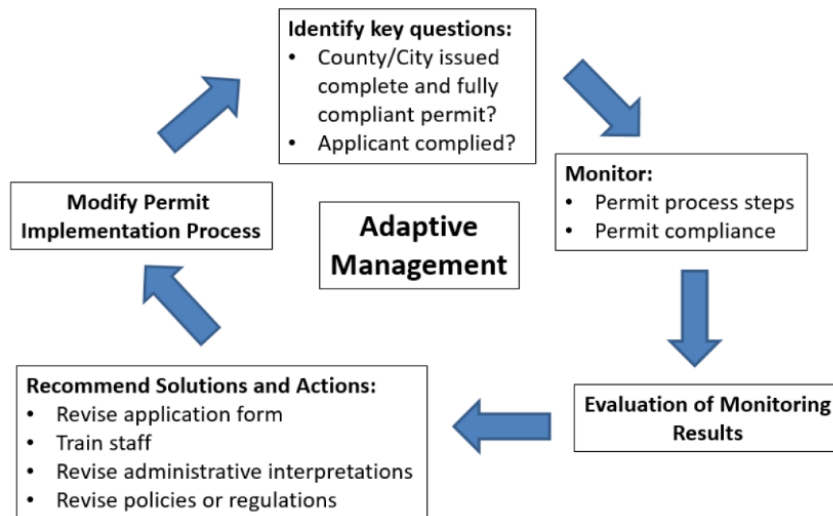
New Shoreline Master Program Compliance Program: Ensuring No Net Loss

Introduction

The Shoreline Management Act (SMA) calls for a cooperative program between local government and the state. The SMA directs local governments to adopt Shoreline Master Programs (SMPs) that plan for preferred uses while protecting the environment. Ecology rules provide the basis for SMPs that hold the line on new environmental impacts through regulations that “ensure No Net Loss of Ecological Functions necessary to sustain shoreline resources.”¹ Regulations systematically protect functions through a mitigation sequence that includes measures to avoid and minimize impacts, and requirements to compensate for unavoidable impacts. Methods include riparian buffers and setbacks, impervious surface limits, and restrictions on uses that are not water-dependent or preferred under the SMA. Regulations are tailored to local conditions, informed by shoreline characterization reports developed specifically for each jurisdiction. For vegetated areas that historically supported trees, SMPs typically protect existing riparian areas with a 150’ buffer – an estimate derived from Site Potential Tree Height (SPTH). Within shoreline jurisdiction, protections for critical areas “transfer” from GMA Critical Areas Ordinances (CAOs) to SMPs upon Ecology approval of a comprehensively updated SMP.

Many independent assessments have identified the need for improved compliance actions to ensure these regulations are being followed.² In 2018, Commerce, WDFW and Ecology developed [guidance and tools](#) for monitoring and adaptively managing both SMPs and CAOs. In 2021, the agencies worked with local partners to create an [11-part webinar series](#) built on the guidance.

In 2022, in response to a state/tribal riparian initiative, the state Legislature provided funds for six new ongoing shoreline compliance positions at Ecology to work with local governments to build on the momentum created by this updated guidance and training. These positions will help ensure consistent implementation of Shoreline Master Programs through improved efforts in both compliance and enforcement. This paper describes Ecology’s overall approach to working with local governments and describes a pilot local grant program.



Monitoring implementation of local permit process and outcomes is the foundation for an informed approach to adaptively managing regulations to ensure “no net loss” of ecological functions.

¹ RCW 90.58.020; WAC 173-26-186(8); WAC 173-26-201(2)(c)

² For ex, *Analysis of Effective Regulation and Stewardship Findings*, Puget Sound Institute, 2015 summarizes a number of these, which include *Puget Sound Compliance Assessment Report*, Ecology 2014; *Cost-Effective Compliance with Shoreline Regulations*, Futurewise 2014. Also see *Analysis of newly approved county SMP and recommendations for change*, Salmon Recovery Council, 2015.

Improving compliance

The SMA directs Ecology to ensure compliance with SMPs, and Ecology has final approval authority for locally-issued Variances and Conditional Use Permits.³ For the past 50 years, Ecology staff levels funded core functions of permit review and high priority enforcement actions. However, Ecology did not have a systematic shoreline compliance program with staff dedicated solely to improving local capacity and following up on permit conditions.

With ongoing funding for six new positions, Ecology will work with local partners to improve local and state systems for evaluating compliance with shoreline permits as well as permit-exempt activity.

The program would build on Ecology's existing mitigation compliance program that currently focuses exclusively on wetlands (*see sidebar*).

Staff would develop and refine tools and training for local compliance system tracking. Staff would work with individual jurisdictions to improve local permit review systems, and conduct "soft audits" to provide focused feedback.

Staff would follow through if problems are identified or technical assistance is needed, provide recommendations in formal follow-up letters, review monitoring reports, track deadlines, and ensure reports have complete information per permit conditions.

Staff would also track compliance with a subset of priority projects, e.g., focusing on Conditional Uses and Variances where Ecology has attached permit conditions. Staff would conduct site inspections, review "as-built" drawings, and conduct monitoring at the end of the time period described in individual permits.

Wetlands Evaluation Program model

Ecology has administered a Wetland Evaluation Program since 2006, conducting compliance reviews for wetland mitigation projects authorized under the Clean Water Act. When a project includes unavoidable wetland fill (e.g., for road construction), the applicant is required to compensate for the lost wetland functions and area. The program allows Ecology to determine if these "compensatory mitigation" projects are achieving No Net Loss, ensures that mitigation projects follow permit conditions, and provides a system for the state to work collaboratively with permittees to achieve compliance and success at individual sites. Site inspections answer the following questions:

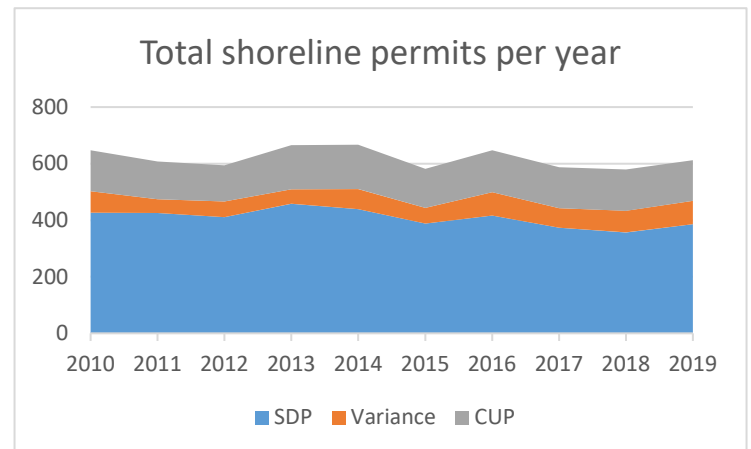
- Is the site meeting its performance standards?
- Is the site being maintained?
- Is the site meeting acreage requirements for wetland and buffer?
- Is there an improvement in site conditions since as-built?
- Are the habitat features still in place?
- Are there signs of general ecological success?

Because of these compliance checks we now have the ability to determine whether mitigation sites are working to compensate for filled wetlands. The program reduces the need for costly enforcement actions by helping permittees comply. It allows Ecology to identify problems and determine corrective actions needed to ensure mitigation sites are successful.

³ RCW 90.58.050.

Summary of compliance program

- New positions in Ecology regional offices to provide ongoing training for local governments to build local permit compliance programs.
- Staff would build a state permit evaluation program informed by Ecology’s wetlands evaluation program. This would include follow-up on a subset of shoreline permits issued.
- Increased site inspections and contact with local partners will improve compliance with mitigation and other permit conditions. For priority permits that have high potential for ecosystem damage, Ecology will conduct pre-construction and post-construction site inspections to ensure compliance with permit conditions.
- Improving compliance will reduce the need for costly enforcement actions by helping permittees comply; allowing Ecology to identify problems and determine the corrective actions needed to ensure mitigation sites are successful; establishing an expectation of follow-up that will lead to increased rates of voluntary compliance; and improved consistency and predictability by standardizing requirements (permit conditions, requirements for plans, etc.).
- Staff will oversee implementation of local grant programs (described below).

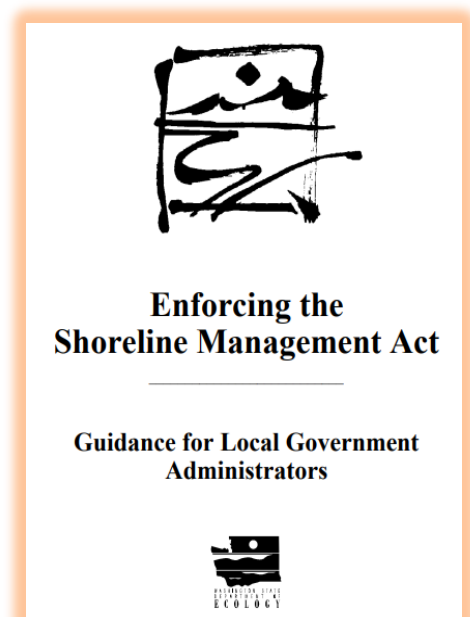


Ecology’s compliance program will help improve the state’s oversight of both permitted development and permit-exempt activity. Substantial Development Permits comprise the majority of local permit authorizations.

Improving enforcement

The SMA provides for a variety of means of enforcement, including civil and criminal penalties, orders to cease and desist, orders to take corrective action, and permit rescission.⁴ When someone damages riparian buffers or aquatic habitat in violation of an SMP it is expensive and time-consuming to follow all the necessary enforcement steps to restore the damage. Ultimately it is far cheaper and more efficient to invest in education and technical assistance that avoids the need for enforcement in the first place. However, the deterrent effect of enforcement programs is well documented.

Currently Ecology and local government enforcement actions are driven almost entirely by complaints. Enforcement tasks have historically been combined with the essential day-to-day duties of our shorelines specialists. Enforcement is an intense focused workload that pulls staff from core review duties and requires different skills and knowledge.



Ecology will update enforcement guidance for local governments, and expand shoreline enforcement and technical assistance.

⁴ [WAC 173-27-240](#)

Ecology’s new compliance positions will expand Ecology’s capacity to follow through on enforcement of high priority violations. The positions will also develop local/state collaborative programs to identify unauthorized shoreline development and riparian clearing making use of current tools such as WDFW High Resolution Change Detection and Ecology oblique aerial photos.



Ecology oblique photos can be used to identify unpermitted development.

Summary of enforcement program

- New positions will increase capacity to pursue enforcement on priority violations of aquatic habitat protection regulations. This will relieve existing staff from the specialized and time-consuming enforcement steps, allowing more time to focus on citizen outreach, technical assistance, and obtaining compliance before enforcement is needed.
- Staff will work with existing data and develop new tools to monitor shorelines to identify and correct unauthorized activities on priority shorelines.
- Staff will coordinate with the Attorney General’s Office on formal enforcement actions, and appeals of Ecology permits, orders, or penalties.
- Staff would create ongoing systematic programs to identify un-permitted activities in the shoreline using tools (e.g., WDFW High Resolution Change Detection (HRCO), Ecology’s oblique photos).

Local SMP compliance grants

Locally-administered SMPs are key mechanisms for protection of riparian areas. Yet most local permit systems are designed for project review and issuing permits, and do not include mechanisms for follow-through on compliance with permit conditions.⁵

There is currently no ongoing state grant source for local governments that is focused on improving SMA implementation. Ecology currently has a base level of ~\$3 Million per biennium to pass through for local governments, but the primary purpose is to fund statutorily-mandated periodic reviews of SMPs.⁶ Periodic review grants are distributed by formula to each jurisdiction. Grants for counties are ~\$90,000 each, and grants to cities range from \$15,000 to \$75,000 based on population.

Because the 2021-23 periodic review grant cycle includes a fewer number local governments, and most jurisdictions are smaller, Ecology established an ~\$800,000 competitive grant pilot program to build local capacity for implementation monitoring and other tasks such as sea level rise planning.

⁵ See surveys conducted during Commerce 2018 Adaptive Management workshops and the 2021 webinar series.

⁶ RCW 90.58.250

Implementation grants include the following:

Clark County will develop and test a methodology for evaluating permit data that has been collected since 2012. The County's goal is to learn about the cumulative effects of authorized development on shoreline conditions and how effectively the SMP is being implemented through the permit process. Grant funds will also be used to evaluate the current process for collecting permit data and to recommend process improvements.

San Juan County will implement a previously developed methodology to assess permit records, environmental data, and case studies sites to better understand the cumulative effects of shoreline development on the shoreline environment. The project will also consider whether permits are being issued correctly and if development is occurring consistently with what is permitted. The goal of the project is to ensure SMP development regulations and permit procedures are achieving no net loss of shoreline ecological functions.

City of Anacortes will develop an approach to reviewing shoreline authorizations, including associated mitigation plans and monitoring reports, to assess compliance with SMP regulations that ensure no net loss of shoreline ecological functions. As part of the project, the City will develop a permit monitoring database for tracking shoreline permits and any associated mitigation plans and monitoring reports.

City of Medina will develop a methodology for reviewing and assessing shoreline authorizations, mitigation plans, and monitoring report. The goal is to assess permit compliance with SMP provisions established to ensure no net loss of shoreline ecological functions. As part of the project, the City will develop a permit monitoring database for tracking shoreline permits and any associated mitigation plan and monitoring reports.

2023-25 grant cycle

During the 2023-25 biennium, there are no periodic review deadlines, so Ecology will be able to offer approximately \$3 million in competitive grants. Grants would enable local governments to:

- improve shoreline development education and outreach so better applications come across the permit counter;
- improve local permit application processes to achieve higher efficiency and SMP compliance;
- purchase and tailor permit software systems to improve and automate tracking of mitigation projects over time;
- improve local enforcement processes; and
- conduct targeted studies to fill in information gaps to inform improved implementation.

Option: Future grant program

Starting in the 2025-27 biennium, SMA grant funds would be needed over the ensuing eight years for periodic reviews, and the competitive program will end. Ecology supports adoption of an ongoing local monitoring and adaptive management program through an additional \$3 million increment to Ecology's current \$3.2 million base grant. The program would provide ongoing capacity for developing and maintaining local systems that will allow monitoring of permit implementation to be integrated into daily permit work.

Citations: Ecology regulations addressing compliance monitoring

Ecology's approval of SMPs is based in part on a cumulative impact analysis that looks ahead at implementation to ensure SMPs will achieve SMA policies.⁷ Do the assumptions in these analyses hold up as the SMP is implemented? How do we know if we are meeting all the goals for which the SMPs were developed? Ecology SMP rules state "effective shoreline management requires the evaluation of changing conditions and the modification of policies and regulations to address identified trends and new information." The rules identify roles for local government and Ecology.

Local governments role: document actions to implement the SMP

Local governments are directed to track and document actions taken to implement the SMP:

- "Local governments should monitor actions taken to implement the master program and shoreline conditions to facilitate appropriate updates of master program provisions to improve shoreline management over time."⁸
- "[M]aster programs or other local permit review ordinances addressing shoreline project review shall include a mechanism for documenting all project review actions in shoreline areas. Local governments shall also identify a process for periodically evaluating the cumulative effects of authorized development on shoreline conditions. This process could involve a joint effort by local governments, state resource agencies, affected Indian tribes, and other parties."⁹

The purpose of monitoring and evaluating project review actions is "to improve shoreline management." This could result in amendments to regulations, or could involve clarifying administrative procedures, improving compliance and enforcement actions, refining monitoring protocols, expanding incentive programs, improving landowner education and training for contractors, or any number of other efforts.

Ecology's role: compile information from local governments, revise rules if needed

Ecology is directed by the SMA to review the SMP guidelines periodically. Ecology rules note that as part of that review the agency will gather local information and revise SMP guidelines if needed:¹⁰

- As part of its review of the SMP guidelines Ecology will "compile information concerning the **effectiveness and efficiency** of the guidelines and SMPs" with regard to accomplishment of SMA policies, as well as the principles and requirements of the guidelines.
- Ecology will review the guidelines, "based in part on information provided by local government, and through that process local government will receive additional guidance on significant shoreline management issues that may require amendments to master programs.

The direction to gather information on efficiency and effectiveness of SMPs extends to all SMA policies, including achieving "no net loss," planning for preferred uses, and promoting public access. If Ecology's review leads to master program guidelines amendments, local governments would then implement those changes during their next statutorily mandated "periodic review."¹¹

⁷ WAC 173-26-186(8)(d); WAC 173-26-201(3)(d)(iii)

⁸ WAC 173-26-201(2)(b) "Basic Concepts," in a section titled "Adaptation of policies and regulations"

⁹ WAC 173-26-191(2)(a)(iii)(D)

¹⁰ WAC 173-26-171(3)(d); WAC 173-26-201(2)(b)

¹¹ RCW 90.58.080(4)