



Memorandum

DATE: October 29, 2021
TO: The Honorable County Council
FROM: Cliff Strong, Senior Planner
THROUGH: Mark Personius, Director
RE: Continued Review of Shoreline Management Program (SMP) Periodic Update 2020

Today's Goals

On November 9th the Council's Committee of the Whole will continue its review of the SMP Update, focusing on No Net Loss, the Shoreline Restoration Plan Update, and on Department of Ecology required and recommended amendments to WCC Title 23 (SMP) and Chapter 16.16 (Critical Areas).

Attachments

- **Exhibit I** – SMP No Net Loss and Cumulative Impacts Summary Memo
- **Exhibit J** – Restoration Plan Addendum
- **Exhibit K** – Department of Ecology required and recommended amendments

All documents are available in pdf and Word versions on PDS's SMP Update webpage:
<https://www.whatcomcounty.us/3119/SMP-Update-2020-Documents>.

SMP No Net Loss Memo

On 9/10/2019, staff gave a presentation to Council's Natural Resources Committee on how No Net Loss is determined under the Shoreline Management Act. Following is a synopsis of that presentation.

What does No Net Loss Mean?

No net loss incorporates the following concepts:

- The existing condition of shoreline ecological functions should not deteriorate due to permitted development.
 - The existing condition or baseline is documented in the shoreline inventory and characterization, which was done for the 2007 Comprehensive SMP Update.
 - Shoreline functions may *improve* through shoreline restoration.
- New adverse impacts to the shoreline environment that result from planned development should be avoided. When this is not possible, impacts should be minimized through mitigation sequencing. However, mitigation for development projects alone cannot prevent all cumulative on-going impacts and shoreline violations, so restoration is also needed.
- No net loss should be achieved over time by establishing environment designations, implementing SMP policies and regulations that protect the shoreline, and restoring sections of the shoreline.

Nonetheless, based on past practices current science tells us that most, if not all, shoreline development produces some impact to ecological functions. However, the recognition that future development will occur is basic to the no net loss standard. The challenge is in maintaining shoreline ecological functions while allowing appropriate new development and ensuring adequate land for preferred shoreline uses

and public access. With due diligence, local governments can properly locate and design development projects and require conditions to avoid or minimize impacts.

SMP updates: Achieving no net loss of ecological function

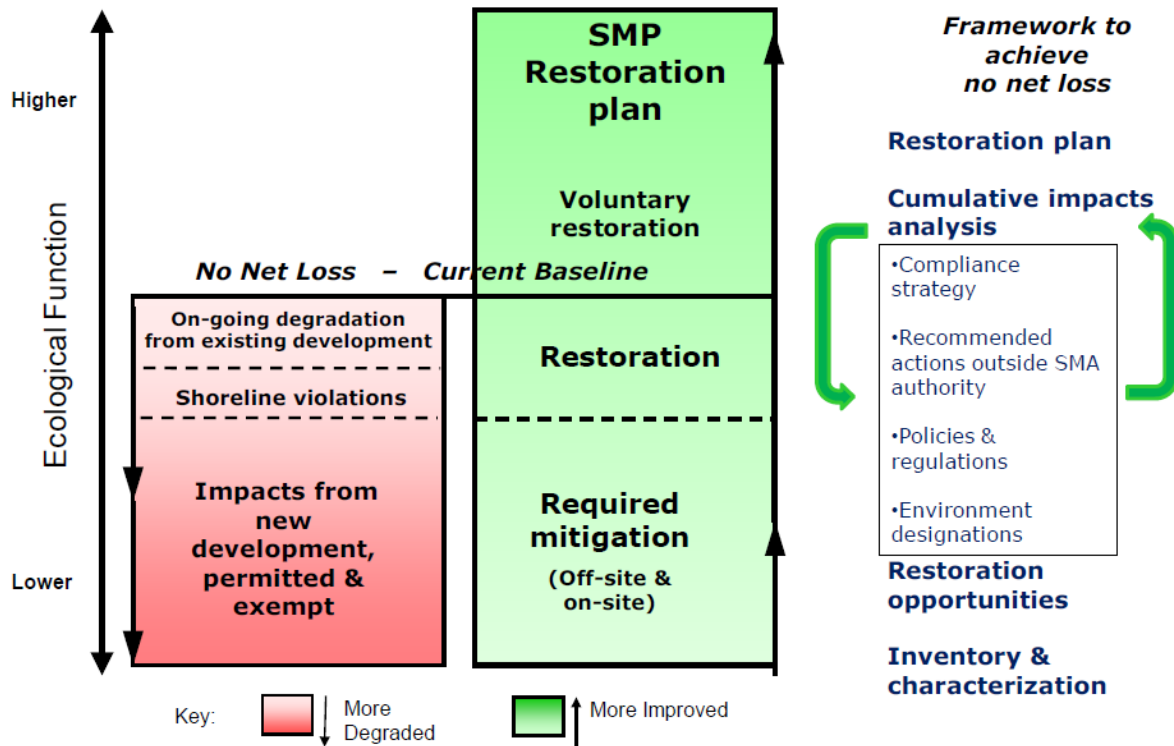


Figure 4-1: During the SMP update process, local governments should use existing shoreline conditions as the baseline for measuring no net loss of shoreline ecological functions.

Over time, the existing condition of shoreline ecological functions should remain the same as when the SMP was adopted in 2007. Simply stated, the no net loss standard is designed to halt the introduction of new impacts to shoreline ecological functions resulting from new development by requiring mitigation. However, over all, protection, restoration, and mitigation are needed to achieve no net loss. *Restoration is the only mechanism by which we can improve shoreline functions and ecosystem-wide processes over time.*

Local governments must achieve this standard through both the SMP planning process and by appropriately regulating individual developments as they are proposed in the future. Local governments show that their SMP will result in no net loss of ecological function by completing several tasks in the *comprehensive* SMP update process, including:

- Shoreline inventory and characterization (done in 2007 and no changes made in this current *periodic* update that warrant updating it)
- Shoreline use analysis (done in 2007 and no changes made in this current *periodic* update that warrant updating it)
- Shoreline management recommendations (done in 2007 and updated for this current *periodic* update)
- Restoration plan (done in 2007 and updated for this current *periodic* update)

- Cumulative impacts analysis (done in 2007 and updated for this current *periodic* update)
- No net loss summary (done in 2007 and updated for this current *periodic* update)

To approve our 2007 *comprehensive* SMP, Ecology's Director formally concluded that when implemented over its 20-year planning horizon it would result in "no net loss of ecological functions necessary to sustain shoreline natural resources."

How to Demonstrate No Net Loss in the Permit Process

During the planning process, incomplete information about a potential future development and its impacts limits our ability to address no net loss. To close this information gap, unanticipated development impacts are identified through more detailed, site-specific information received at the permit review level.

When implementing the SMP, mitigation sequence principles (first avoiding, then minimizing and compensating for ecological impacts) are applied as individual shoreline project applications are reviewed and approved, conditioned, or denied.

Project review completes the Guidelines' combined planning and permit review framework for achieving no net loss. It assures that unanticipated impacts will still be subject to a cumulative impacts evaluation as applications for shoreline exemptions, conditional uses, and shoreline permits are reviewed.

No Net Loss and Restoration

The concept of no net loss of shoreline ecological functions is rooted in the Act and in the goals, policies, and governing principles of the state's shoreline guidelines. These principles suggest that no net loss is achieved primarily through regulatory approaches and that restoration occurs mainly via goals, policies, and voluntary or incentive-based mechanisms.

It is also important to note that more than simply preventing further loss of ecological functions, master program provisions must also "...achieve overall improvements in shoreline ecological functions over time when compared to the status upon adoption of the master program." The mandate to improve functions over time provides the basis for restoration planning and creates a distinction between mitigation and restoration.

As mentioned, applicants for shoreline permits must fully mitigate new impacts caused by their proposed development. However, applicants are not required to restore past permitted ecosystem damages as a condition of permit approval. Nor are permit applicants required to implement the restoration measures identified in the plan as mitigation for project impacts. But they may elect to implement elements of this plan as mitigation for shoreline development if appropriate, and they may be required to mitigate for recurring impacts.

Ultimately, the County is responsible for ensuring no net loss through the permit review process, requiring mitigation for those developments, *but also by implementing the adopted Restoration Plan.*

NNL Monitoring

State guidance identifies 3 types of NNL monitoring:

- **Permit implementation monitoring** (done by local jurisdictions) – Determining whether the local government issued a permit consistent with the regulations; and whether the projects as built comply with all of the conditions noted in the permit.
- **Permit effectiveness monitoring** (done by local jurisdictions) – The same monitoring as above, but over a longer period of time. Can also address procedural improvements to improve

efficiency of the permit system. The data is not about the individual permit, but whether and how to adaptively manage the system.

- **Validation monitoring** (best done by regional entities) – Whether functions and values are being protected, and whether we are achieving no net loss of the ecosystem. This type of monitoring requires extensive scientific research that is probably beyond the resources of most local governments

PDS already:

- Tracks and monitors shoreline permits to ensure regulations are being implemented consistently and that direct impacts are avoided or mitigated (Permit Implementation).
- Requires cumulative impact analysis and mitigation sequence for all project permits.
- Monitors critical areas
- Works on continually improving our Permit Implementation monitoring, and
- Created standardized mitigation for single family residences and is working on standard mitigation measures for all development.
- Is developing a Permit Effectiveness Monitoring System in conjunction with implementing the our new permitting system

As mentioned, based on our regulatory approach and restoration plan, Ecology’s Director formally concluded that our 2007 SMP will result in “no net loss of ecological functions necessary to sustain shoreline natural resources” over the 20-year planning horizon.

Nonetheless, as we’re making some changes to our SMP we are required to update our 2007 No Net Loss and Cumulative Impacts summaries. This was one of the tasks we assigned to our consultant, The Watershed Company. You can find it in the record as Exhibit I.

Shoreline Management Program Restoration Plan Addendum

As mentioned in the previous section, achieving No Net Loss in the shoreline relies on having development projects mitigate for their impacts, but also on the County (and/or some of our partners) implement our SMP Restoration Plan. Our initial restoration plan was developed as part of the 2007 Comprehensive SMP Update (and can be found at <https://www.whatcomcounty.us/3119/SMP-Update-2020-Documents>).

As part of this periodic update, our consultant reviewed the restoration plan to determine which projects (if any) had been accomplished. Their work is shown in the Restoration Plan Addendum (Exhibit J). It lists all the projects in the Plan and provides a status update for each: 2 projects have been completed and 6 projects are in design, construction, or ongoing, though 20 have seen no change. The consultant also identified six additional projects that, while not in our original restoration plan, contribute to achieving No Net Loss (even though done not by the County but by our partner jurisdictions).

Council should remember that when contemplating funding new projects (e.g., Public Works construction projects), departments really should turn to this Restoration Plan as guidance as to what the Council has identified as important in achieving No Net Loss in our shoreline environment.

Department of Ecology Required and Recommended Amendments

Remember that the Department of Ecology has a role in approving this periodic update. Ultimately they have to approve it as being consistent with the Shoreline Management Act and their guidance, and certify that it will lead to no net loss of shoreline ecological functions. As part of their review and approval process they first make an initial determination and provide us with a list of required and recommended amendments. That list is attached and labeled for the record as Exhibit K.

Staff has reviewed this list and finds no problems with either their required or recommended amendments. None of them substantively change what we're trying to achieve or what the Planning Commission approved. Thus, we have updated the exhibits that represent Planning Commission's recommended amendments¹ by incorporating these changes into them. These new versions will be provided for introduction tonight and your public hearing.

Next Steps

Unless Council has anything else to discuss in workshop, staff suggests that we schedule your public hearing for November 23rd and "approval" for December 7th (these are your last two meetings of the year). We use the word "approval" here because unlike other regulations, Council must first approve them by resolution to be sent to the Department of Ecology for their final review and approval. Once we get Ecology's approval then staff will bring a final ordinance to Council for adoption sometime in early 2022.

¹ Provided to you on July 13th, 2021, and the same documents you've been reviewing