

# OPPORTUNITIES TO IMPROVE SHORELINE MANAGEMENT IN PUGET SOUND

Final Report on Findings  
NFWF Project: 2010-0060-002 Protect Puget Sound  
Shoreline Ecosystems

*Prepared by:*  
Jim Kramer  
Carol MacIlroy  
Margaret Clancy (ESA Adolfson)

*Prepared for:*  
National Fish and Wildlife Foundation  
1133 15th Street N.W.  
Suite 1100  
Washington, D.C. 20005

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## **EXECUTIVE SUMMARY**

The Department of Ecology is working diligently with local governments across the state to achieve the legislative mandate of updating shoreline master programs (SMPs) in accordance with state guidelines adopted in 2003. This report summarizes the successes and challenges that the state, local governments and other stakeholders are encountering in the process and recommends actions for improvement. The findings presented here were developed based on surveys, meetings, and discussions with a wide range of stakeholders involved in the SMP update process. This report was funded by the National Fish and Wildlife Foundation with guidance and technical support from Ecology's Shorelands and Environmental Assistance (SEA) Program.

Many people believe the SMP update process is making a difference. Some see this difference as positive, with local governments adopting more protective buffers, setting more stringent limits on hard armoring, and protecting areas where rivers naturally flood and migrate. Others see the SMP updates as mainly negative because of additional burdens placed on private property owners. Many people do not believe there are environmental threats or a need for increased regulation, while others do. Others view the SMP updates as not doing enough to protect and restore shoreline resources.

This range of viewpoints is inevitable when the issue is land use management. However, we believe from our experience and the perspectives gathered through our white paper, survey, and meetings that enhancements to the SMP update process are important to more fully achieve the three goals of the Shoreline Management Act (SMA). We believe enhancing the current process will heighten the chance to rekindle public support for the future of shorelines, while saving money and making the process more efficient and constructive for local communities.

From the range of views, the authors identified 14 key issues that need to be addressed more successfully to improve the protection of ecosystem functions and contribute to the broader effort to recover Puget Sound by 2020. These issues are:

1. **Explicit Linkages between Ecosystem Function, Human Action and Impacts:** To successfully manage our shorelines, we need to improve our ability to reliably define the relationships between human actions that occur via SMPs and their effects on ecological functions.
2. **No Net Loss:** We need a system for measuring ecological functions (or indicators of function) to establish a baseline against which protection and restoration efforts can be monitored over time.
3. **Mitigation and Restoration:** Mitigation and restoration policy and procedural improvements are necessary to successfully address the impacts from new development.
4. **Incentives:** Property owners, developers, and government staff need examples of non-regulatory techniques that create incentives for the use of soft-shore or bioengineered techniques to protect threatened structures and promote other stewardship habitats.

5. **Effective Public Engagement:** To increase public support for SMPs, it is imperative that we identify the scientific bases for policy decisions in a way that is clear and relevant to stakeholders. Stakeholders in the SMP process want to know and understand the issues by seeing the scientific basis for assumptions and policy conclusions.
6. **Ecology Review and Approval:** Ecology needs to continue to emphasize the importance of providing consistent and timely feedback to local governments to increase predictability in the final review process.
7. **Aquaculture:** A Sound-wide approach to identifying the needs of the aquaculture industry and its effect on shoreline resources is needed to address the perspectives of both the industry and those concerned about environmental impacts.
8. **Nonconforming Uses:** This issue does not appear to be consistently understood or described by key stakeholders, nor does it appear that the immediate or long-term impact of a non-conforming use designation on private property owners is well understood or clearly articulated.
9. **Monitoring:** The need for coordinated monitoring of no net loss and mitigation was an issue raised by all categories of respondents.
10. **Future Updates:** Local governments need strategic, financial, and coordinated support to execute current updates, implementation, and monitoring in a manner that best prepares them to make meaningful use of the next round of updates.
11. **Common Solutions:** There is a need for additional regional approaches to SMP planning and implementation.
12. **Implementation:** Continued public engagement and resources are needed to successfully implement the new SMPs. Local governments need resources to manage and implement these highly complex policy documents.
13. **Coordinated Protection Program:** We need a comprehensive program for protection that integrates the authority under SMPs with other state and federal programs.
14. **Agricultural and Forestry Exemptions:** Additional research is necessary to further refine this issue.

Tackling all of these issues will take time, but there are several actions that could create tangible benefits if implemented immediately. We recommend the following immediate actions from the longer list because in combination they will (1) produce positive results for the parties most involved, (2) likely improve the cost-effectiveness of the process and the environmental results, and (3) resolve some of the concerns expressed by shoreline property owners. If implemented in a manner that involves a broad spectrum of stakeholders, these actions will resolve many of the key issues and build support for solutions to more complex challenges. Our recommendations for immediate enhancement are:

## **Improve the Linkage between Science and Policy**

Several issues such as vegetated buffers, shoreline armoring, and aquaculture are essentially the same across Puget Sound but each jurisdiction is taking its individual path to synthesize scientific information and determine the right policies and regulations. The recent work by the Puget Sound Nearshore Ecosystem Restoration Project can be useful in bringing to light several of these issues. A well-structured set of workshops involving scientists, industry leaders, residents, and policy experts would help illuminate where additional analysis and research would significantly benefit SMP updates and identify appropriate SMP policy and regulatory choices given our current knowledge. Addressing these priority issues would help clarify where there is misinformation, where there needs to be more scientific work, and where we have to make policy decisions. The workshops could also help emphasize and build support for the additional actions needed that are beyond the scope of most SMP updates such as incentives, technical assistance to property owners, and funding of science and restoration.

## **Make the Process Efficient**

A number of changes to the update process and the administration of local government grant programs would increase the efficiency and effectiveness of local updates. Each jurisdiction spends significant time, money, and resources on the inventory and characterization of the existing shoreline. This step could be streamlined by having Ecology contract to complete the inventory and characterization instead. Alternatively, Ecology could create an inventory checklist of questions (similar to a SEPA checklist) that local governments could fill out to address the guidelines requirements. A similar checklist could be used to support other technical requirements such as the cumulative impacts analysis or the restoration plan. Local governments also would benefit from having a model ordinance that they could tailor to their circumstances.

Changes to the contracting approach and requirements would also increase efficiency. An expedited SMP update process for cities and towns that have limited shoreline area or that issue very few shoreline permits would save time and resources. The current contracts to local government prescribe the process and the percentage of funds to be used on each stage. Allowing local governments to tailor their process and the budget to local conditions would improve the effectiveness of the funds and allow for more emphasis on the later stages of the process where the public engages and the policy decisions are made. Allowing a rollover of funds would allow funds to be applied to the most important tasks as each update evolves, rather than strictly adhering to a timeline and tasks imagined prior to the start of the process.

## **Increase the Certainty of the Review and Approval Process**

If local governments and others had a more complete understanding of Ecology's process and criteria for developing comments during the update process, and in the final approval phase, this would help them know in advance if they are meeting Ecology's standards. A workshop where Ecology transparently illustrates its analysis and findings would help demonstrate what is expected and expedite the final approval process. For example, we recommend that Ecology use a locally adopted county and city SMP to illustrate the decision criteria and process.

Ecology could host an open dialogue meeting with the jurisdiction to review the adequacy of the locally adopted program and discuss concerns. The meeting would be predicated on Ecology staff having completed a thorough internal review of the technical supporting materials, and proposed policies and regulations. This meeting would occur prior to writing the formal Ecology comment letter, so that local planning staff and elected officials would be apprised of Ecology's interim conclusions. If this meeting were open to the public and other interested planners, it would help people understand how Ecology is arriving at decisions and allow for those at the local level to explain their rationale and thinking. Ecology would then write its comment letter based on the discussion.

### **Reduce the Conflict and Misunderstanding Regarding Nonconforming Structures**

This issue has generated substantial public concern and opposition to SMP updates in part because the policy issues and choices are poorly understood and often poorly communicated. The ramification of nonconforming structure policies on property owners is unclear. Property owners want to understand how their homes impact ecological health and the ramifications of new policies and regulations on their ability use their property. Some property owners believe that if their homes are rendered nonconforming because a new buffer standard is adopted, they will not be able to maintain or expand their homes or rebuild them if they are destroyed. Others want to ensure that SMPs contain adequate safeguards on redevelopment and expansion of homes and structures that may be located close to the shore, on unstable bluffs, or in other potentially damaging or hazardous locations.

The State Legislature has attempted to address the concerns about nonconformity in Engrossed House Bill 1653, but this may not go far enough toward addressing property owner concerns. We believe the concerns could be addressed to a significant degree with clear guidance and sample language on the policy choices that are available to local governments. Some jurisdictions have identified ways of addressing nonconformity without generating substantial public opposition. These options need to be vetted with stakeholders, sanctioned, and communicated to the public. Further clarifying the issue of restrictions on homes that were legally established before buffers were increased by an SMP update would create more support from landowners with potentially little if any adverse environmental consequence. We also recommend using a less inflammatory term such as "grandfathered" instead of "nonconforming."

### **Foster a Learning Community of Shoreline Managers**

Ecology is contributing staff resources to continually improve the understanding and expertise of their staff and local government planners through meetings and training. There is tremendous expertise, both in Ecology staff and local governments, to increase learning across the community of local and state planners. We suggest restructuring the shoreline planner meetings and Ecology training sessions to be directed by local planners and consultants who have been through the process and successfully updated their SMPs. We also recommend allowing more time for local planners and state staff to meet on specific topics and have discussions sharing their perspectives and experience in addition to presentations and briefings. An effort to build a sense of community across the state and local planners would help broaden the feeling of

responsibility to collectively address challenging issues, acknowledge success, and create a sense of momentum in achieving the SMA goals.

## **1.0 INTRODUCTION**

Washington's Shoreline Management Act (SMA)<sup>1</sup> established statewide policies for the use, protection, and enjoyment of shoreline resources. Under the SMA, each city and county with "shorelines of the state" must prepare and adopt a Shoreline Master Program (SMP) that implements the state law and responds to the needs of the community.

In 2003, the Washington State Legislature took a significant step to revitalize the 32-year-old SMA and increase the emphasis on environmental protection. The Legislature, stimulated by agreement from a wide range of environmental, business, and government interests, set out an ambitious framework requiring 264 towns, cities, and counties across the state to update their Shoreline Master Programs (SMPs) by 2014.

The Department of Ecology adopted new implementing regulations known as the Shoreline Guidelines<sup>2</sup> in 2004 to implement the legislative mandate. Over the past six years, Ecology has worked with nearly 150 local governments to fund and support comprehensive SMP updates as mandated by the State Legislature. Thirty local governments have completed the update process or are nearing final approval by Ecology.

There is much to celebrate in the accomplishments of local governments and the State. It is also timely to assess the experience and ways to improve the process and outcomes for SMP updates over the next several years.

This report, which identifies opportunities for improving the SMP update process, was developed by Jim Kramer, Carol MacIlroy, and Margaret Clancy, who are independent consultants with experience in shoreline management in Washington State. The work was funded by the National Fish and Wildlife Foundation with guidance and technical support from Ecology's Shorelands and Environmental Assistance (SEA) Program. The process for developing this report included:

- developing a written summary ("white paper") of issues based on our personal experiences and observations,
- circulating the white paper to a broader audience for review in March 2010; and
- conducting an online survey and engaging in conversations with private citizens and members of the business, nonprofit, and governmental sectors.

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<sup>1</sup> Chapter 90.58 Revised Code of Washington (RCW).

<sup>2</sup> Chapter 173-26, Part III Washington Administrative Code (WAC).

The report includes sections covering the background of the SMP update process, a summary of what we heard from parties involved in the process, priority opportunities for improvement, and next steps and conclusions. Appendices include the original description of issues in the white paper, a detailed summary of the feedback we received, a copy of the survey results, comment letters, and our biographies.

We hope this report inspires those who have a stake in the future of Puget Sound shorelines to work together to refine the SMP update process to best achieve the overall goals of the SMA: protecting ecological functions, supporting water-dependent and water-related uses, and providing public access to the marine and fresh waters of the state (RCW 90.58.020). Ecology has committed to review this final report and set up a process with others to craft solutions to the issues raised.

## **2.0 BACKGROUND**

The passage of the SMA in 1972 was a momentous legislative action that grew out of a burgeoning public awareness of the value and importance of shoreline areas. The SMA changed the way we view and interact with shoreline environments. Since its passage almost 40 years ago, we have made substantial progress in addressing important issues that once threatened the health and sustainability of our lakes, rivers, and marine waters. Compared to 1972, our shorelines today support cleaner industrial facilities and a mixture of residential and commercial developments that enjoy views of and access to marine and fresh water. By promoting greater public access to the water, the SMA has expanded opportunities for people to enjoy the shoreline and experience its fish and wildlife. All of this has happened as more and more people have come to live along our shores and in the watersheds that drain to them.

Good investments have been made in reducing pollution and restoring habitat. People recognize that healthy waters are important to the economy, the region's culture, maritime history, and recreational interests and people appreciate the beauty of Puget Sound. However, even with these advances, continued pressures from growth have resulted in declines in the health of Puget Sound. More species are being listed as endangered, more toxic pollutants are being discovered in the rivers and bays from rainwater runoff, and more habitat is being lost. Along the shoreline, more beaches have been armored, affecting the natural processes that form habitat; more docks are being placed that could affect native fish and underwater vegetation; and more trees are being removed that provide shade and food for fish and animals living along the shoreline.

The Puget Sound region is expected to accommodate 1.5 million more people in the next 20 years. It is unclear if current efforts to protect the environment and private property rights are going to successfully achieve the goals of the SMA.

In 2006, the State Legislature created the Puget Sound Partnership with the intent to build a community effort of citizens, governments, tribes, scientists, and businesses to protect and restore Puget Sound. The Partnership adopted its Action Agenda in 2008, setting what the State believes are the priority actions needed to protect and restore Puget Sound's fresh and marine waters, as well as terrestrial environments, by 2020. The Partnership is developing specific goals and indicators to measure the effectiveness of restoration actions being undertaken across

Puget Sound. The update of SMPs is specifically called out in the Action Agenda as a key tool to protect existing ecological processes and functions, as well as providing for water-dependent industries and public access. The goals and indicators under development by the Partnership should directly highlight local government and Ecology's contribution to Puget Sound health and recovery through SMPs.

SMPs are one of the key tools for protecting and restoring shorelines. They regulate use and development of the marine waters, major rivers and streams, and large lakes as well as the adjoining lands (extending approximately 200 feet landward of the ordinary high water mark). Yet many SMPs were developed in the 1970s and 1980s when shoreline planning was a new and emerging discipline, and before tools like geographic information systems (GIS) and prediction of sediment transport were widely available as they are today.

The comprehensive SMP updates initiated in 2003 provide an unparalleled opportunity to reinvigorate our approach to shoreline management using the latest scientific information, land use planning and communication tools, and the experience of landowners and other users and observers of local shorelines. The SMP updates provide a timely opportunity to engage in a new public dialogue about the future of the shorelines for private development, public access, and environmental protection.

The need to strengthen protection of shoreline ecological functions was one of the main reasons the Legislature mandated comprehensive SMP updates in 2003. The concerns centered around new information on the declines in shorebirds, forage fish, salmon, and other species resulting from incremental changes to the shoreline—more docks, houses, and other residential development; loss of native shoreline vegetation, and the armoring of shorelines.

The State Shoreline Guidelines adopted an ambitious policy objective of achieving “no net loss” of ecological function. That mandate was passed on to all local jurisdictions administering SMPs. In 2010, the State Legislature adopted the *no net loss* standard into the Growth Management Act (GMA). *No net loss* aspires to protect current ecological functions even as water-dependent uses and preferred uses like residential homes are developed.

Collectively, Ecology, local governments, and many others have nearly six years of experience in updating SMPs. This experience can be drawn on to assess where the current approach is working and where it can be improved.

## **3.0 WHAT WE HEARD**

This section describes our process for obtaining feedback on the SMP updates, who responded, and the major themes expressed in the feedback.

### **3.1 Outreach Process**

We identified opportunities for improving the SMP update process by asking a variety of people to describe their experiences, challenges, successes, and ideas for improvement. Outreach was conducted in March 2010. We prepared a white paper (see Appendix 1) describing issues that we, the members of the consultant team, had observed or experienced and circulated it to others as a starting point for conversation and to stimulate comments and refinements. We also gained feedback about the issues and challenges inherent in the SMP update process through an online survey, and conversations with stakeholders in meetings and individual discussions.

The draft white paper and online survey were distributed to Ecology's shoreline planners listserv, the Washington Association of Counties Coastal Caucus, the Puget Sound Partnership Ecosystem Coordination Board, several environmental organizations, property owners, and property rights groups. The email solicitation encouraged recipients to distribute the survey and information to other interested parties.

Meetings were held with the Puget Sound Partnership Shoreline Subcommittee, the Washington Association of Counties Coastal Caucus, the Puget Sound Partnership's Ecosystem Coordination Board, Ecology's shoreline management staff, shoreline planners (at Ecology's quarterly shoreline planners meeting), and the Puget Sound Partnership Leadership Council. We also had several phone conversations with citizens and shoreline planners and met with representatives of the aquaculture industry at their request. Overall, we received input from staff and representatives of city and county government, conservation groups, state and federal agencies, tribal governments, property owners, and consultants.

We designed the outreach program to obtain a broad perspective on the issues and opportunities for improvement from a wide range of people and groups that participate in the update process. Outreach was not designed to be statistically valid, and survey results do not represent the conclusive views of any group. For example, it is not accurate to say the results reflect the majority of county planners or any other group. However, the results can be used to understand the perspectives of county elected officials, local government planners, property owners, consultants, and others who provided feedback.

### **3.2 Responses**

Overall, 230 people responded to the online survey, 24 comments on the white paper were received, and approximately 200 people shared their feedback in meetings with us (Table 1). Most of the survey respondents were from jurisdictions that have received SMP update grant funding from the state and are beginning or in the midst of the update process. The highest response levels to the online survey by county included San Juan (80), Kitsap (24), King (22),

and Jefferson (16). We received comments or survey responses from county elected officials and/or planners from all Puget Sound counties except Mason<sup>3</sup>.

More than half of the 62 local government responders to the online survey were in jurisdictions that are less than one year into the update process. Most of the respondents were affiliated with a jurisdiction that has not yet completed the SMP update.

**Table 1 – Number of Online Survey Responses and Comments on White Paper by Affiliation**

Respondent Affiliation	Number of Survey Responses	Comments on White Paper
Business Members	17	
City Planners	35	4
Consultants	19	3
County Elected	9	1
County Planners	18	
Environmental Organization	NA	3
Other Affected Parties	43	7
Property Rights Members	16	2
Scientists	22	
Shoreline Property Owners	83	2
State Agency Staff	11	
Tribal Staff	4	2
<b>Total</b>	<b>230 *</b>	<b>24</b>

\* Note: 230 people completed the survey but the total for the table adds up to 284. The online survey asked people to identify their affiliation including: city or county elected official or planner, shoreline property owner, property rights organization, consultant, scientist, state agency, business, Ecology staff, tribe and other affected party. The survey allowed people to pick more than one affiliation (for example, a person could pick shoreline property owner, consultant, and business).

### **3.3 Summary of Feedback**

This summary provides an overview of the comments we received through the survey, white paper review, and conversation but does not capture the full level of detail. We recommend consulting the more detailed information provided via the comment letters and survey when crafting solutions for a particular issue. A full list of comments and results of the survey can be found in the appendices.

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<sup>3</sup> Mason County has not yet initiated the SMP update process.

Across the range of respondents, there is a very sophisticated understanding of the problems and issues that would improve the SMP updates and implementation. The respondents were articulate in their observations of the current update effort and often provided creative and practical suggestions for improvement. We were impressed by the broad interest in improving the update process and willingness to convene groups, provide possible solutions, or give explicit examples of what has not worked and what could.

In general, county and city planners thought the white paper accurately described the important issues that need to be addressed, but there were differences regarding which issues were the highest priority.

Survey respondents who identified themselves as property owners or property rights group members often disagreed with the issue descriptions in the white paper and felt alienated by the SMP process. Property owners and property rights group members strongly stated their view that the scientific basis used to justify new regulations is lacking and/or poorly articulated. Surprisingly, these sentiments were the same for property owners regardless of whether they were proponents of more regulation or thought current regulations were overly restrictive. Property owners and property rights group members were largely supportive of the effort to improve the process and grateful for the opportunity to comment and participate. Some property owners felt that the entire process was unnecessary or unfixable.

Staff from several different tribes expressed concern that the process is not defining baseline ecological conditions nor achieving no net loss of ecological functions (especially if the baseline set through the new updates is current conditions). They do not feel we are on track to achieve the Puget Sound recovery goals espoused by the State and others.

### **What problem is the SMP update process trying to address?**

Based on the responses received, there appears to be a lack of clarity about what we are trying to protect through SMPs and why additional protection is necessary. More than 80 percent of the property owners who responded to the survey indicated that current regulations provide sufficient protection for shorelines. While the majority of other respondents felt new regulations and programs were needed to protect the environment, many commented about the lack of a clearly stated scientific justification for new regulations or restrictions. Other shoreline property owners felt that the current regulations impeded their ability to contribute to resolving problems. The need to more clearly link scientific information with policy and management decisions, and to describe the SMP update process in terms of actual problems affecting key stakeholders, was evidenced by the following:

- city planners cited the need for more monitoring to better understand what mitigation measures are necessary,
- more than half of the county elected officials indicated SMP policy issues are not being discussed in a manner that is compelling or interesting to affected property owners or other interested parties,

- many respondents asked for a clear definition and framework to better understand and apply the concept of no net loss of ecological function, and
- several respondents said they could not find the scientific linkage (despite reviewing hundreds of pages of text) between the ecological problems that need to be addressed and the locally proposed SMP policies and regulations.

Although the SMP update process is generating a great deal of technical information in the form of inventories and other documentation, the manner in which it is compiled, organized, and conveyed to stakeholders does not appear to be creating a correspondingly robust level of understanding or support for policy decisions.

### **Are shoreline property owners respected and supported in managing their land?**

Over 75 percent of property owners, county elected officials, and county planners responding to the online survey said they did not feel that shoreline property owners are respected for their role in managing their land. This finding was mirrored in meetings, conversations, and written feedback. This finding is very concerning because the vast majority of the Puget Sound shoreline is in private ownership. The effective engagement and involvement of this constituency is critical to the long-term protection of shoreline resources and achieving the other goals of the SMA.

The property owners who responded to the survey are very engaged in their local SMP updates. Many expressed that the SMP update process was fostering and galvanizing their connections to other property owners, which they saw as a benefit. Almost every written comment from a shoreline property owner or property rights advocate expressed concern, frustration, and exasperation with the manner in which private property owners are treated in the SMP update process. Many property owners reported being regarded by government staff as uninformed or misinformed. They expressed frustration at not getting clear answers to their questions and at being addressed in dismissive and/or condescending tones. They believe the SMP updates make significant policy assumptions and conclusions under the guise of science because finding scientific documentation or the basis for these conclusions has been difficult if not impossible for them. This viewpoint was held by property owners who responded to this survey regardless of their position on regulations.

Citizens and shoreline property owners spent a significant amount of volunteer time providing written feedback and comments over the phone. When asked what would help address their concerns, responses included:

- involve property owners early in the process,
- give credit and acknowledgement for good stewardship,
- recognize that property owners care about shorelines,
- be respectful and answer property owner questions with specific and cited information,
- conduct workshops with property owners and property rights advocates,

- give clear and local examples of problems that need to be addressed,
- acknowledge what is scientifically known and be honest about scientific uncertainty, and
- recognize the rights of property owners and value their experience and knowledge.

In contrast to the responses from property owners, several city and county planners identified public involvement as one part of the SMP update process that was working well.

In addition to the rights of individual property owners, tribal staff, government officials, and others noted that there is a responsibility to safeguard the public resources of the shoreline. One person succinctly put it: “How do we help the shoreline property owner with their special role in both enjoying their property and stewarding the public resources that benefit from good environmental practices on their land?” The tribes pointed out their treaty rights for meaningful harvest in their usual and accustomed places, rights that depend upon the sound stewardship of others. People also articulated that the benefits and rights for economic gain from water-dependent uses like aquaculture also rely on the actions of others.

### **Why are nonconforming uses and structures a major issue for property owners?**

Existing developments and uses in the shoreline zone that are not consistent with the newly adopted SMP regulations are typically deemed to be “nonconforming.” The issue of nonconformity is not new or unique to shoreline planning, but it is one of the issues confounding to shoreline property owners. They expressed that the term “nonconforming” carries a negative connotation. Property owners are worried that nonconforming uses or structures will be required to conform. Owners are also concerned there will be additional requirements like having to perform expensive special studies or surveys if they want to maintain or expand current uses. Shoreline property owners and others express suspicion that additional restrictions would be adopted in the future or implemented through permit interpretations as owners seek to conduct activities on their property. They also worry that being deemed nonconforming will reduce their property values. It is not clear to them what new environmental problems can be created within existing nonconforming developments.

Nonconformity is also a concern for elected officials and city and county planners. Over 70 percent of these respondents rated this as a priority issue in the online survey, and this was also expressed by local government staff and elected officials in meetings.

### **How does the SMP contribute to overall recovery of Puget Sound?**

Based on the written responses and conversations that took place in meetings, there is significant confusion about the role of the SMP—and the mandate to achieve no net loss—in the overall attempt to recover Puget Sound by 2020. Many are unclear about how much of what is necessary for recovery is being addressed via SMPs. Some people believe *no net loss* means rural counties would be required to make up for the ecological losses that have taken place in urban areas such as King County. Others look to mitigation banking and in-lieu fee programs to help achieve no net loss on a Sound-wide scale. Others want no net loss to occur on a project

scale, believing that it will not be possible to achieve recovery if losses continue and are simply traded. Others cited the need to go beyond achieving no net loss of ecological function and want SMPs to make a greater contribution to the overall recovery of Puget Sound. Some believe local governments are held accountable to achieve no net loss of functions (such as water quality and bald eagle counts) even if the action that causes the loss is outside of the local government's direct jurisdictional responsibility.

### **What other tools are available in addition to the regulatory elements of SMPs?**

When asked if incentives were adding significantly to the protection of ecosystem functions, most respondents answered no. People are generally unaware that incentive programs exist, are unsure what they do, or believe that existing incentive programs are underfunded and underused.

### **Are preferred uses like aquaculture being addressed successfully in the update process?**

Aquaculture is a water-dependent shoreline use, which is a preferred use of the shoreline under the SMA. Representatives of the aquaculture industry are concerned that independent approaches to developing regulations by each local government in Puget Sound are resulting in a management system that could severely limit existing operations and the future of their industry here. The approaches under discussion for aquaculture vary dramatically from county to county based on shoreline property owner interest, use of scientific information, and presence of existing aquaculture activities.

Representatives of the aquaculture industry believe the different approaches in SMPs are often not based on an understanding of the industry's needs and effects. The Sierra Club and others believe that some practices of the aquaculture industry diminish ecological functions or impede navigation, access, and aesthetics. These stakeholders report that they do not see the scientific basis the policy decisions local governments are making for aquaculture.

### **Is Ecology's process for review and approval working well?**

There were mixed reviews of Ecology's process, from highly favorable to highly critical. FutureWise, a smart-growth advocacy nonprofit, was highly complimentary of Ecology's review and approval process, concluding that Ecology's decisions were consistent across jurisdictions and that the approved SMPs were advancing the level of ecological protection. City planners also frequently complimented Ecology staff on their involvement in the local process.

Consultants who have worked on numerous updates across cities and counties suggest that feedback from Ecology is at times inconsistent, and that Ecology's internal review process and structure are unclear. Consultants and some of the planners also expressed concern that technical review comments from Ecology are not always timely, which can complicate compliance with terms of the grant. Property owners in opposition to the SMP update process were often critical of Ecology's role and suggested Ecology be less directive of the substantive

policies and regulations at the local level. Others, including some property owners, wanted Ecology to be more directive. Local government staff indicated the importance of cross-jurisdictional consistency, fearing they would be requiring more than another jurisdiction.

In general, comments and questions from respondents suggest they did not understand the review process and criteria Ecology uses to make comments and final decisions. Ecology staff had concerns about workload and how SMP process issues like completing the final review in a timely manner could become harder as more and more SMPs are locally adopted.

### **What needs did people see for implementation of the new SMPs?**

Several local government officials observed that in their jurisdictions the updated SMP was one of the most complex land use laws they have ever developed. This may well be true in other jurisdictions. The burden of implementing a complex local ordinance at a time when local staff resources are being cut and public trust is declining is a significant concern. There were a number of comments about the importance of continued policy, technical, and scientific support at the local level during implementation. Several expressed the need to address the administration of critical issues like how to determine if a home is threatened, what type of shoreline armoring is needed for its protection, and how to determine mitigation requirements.

Respondents expressed concern that support of newly adopted SMPs may be diminished if not administered accurately and thoughtfully at the local level. Local governments also questioned what frequency is most useful for updates (7- or 10-year cycle), stating that 7 years may be too frequent given the complexity of the program and its implementation.

### **How is SMP contracting working?**

Ecology staff and some local government staff noted that, due to state budgeting laws, grant funds designated for but not used in a given year are not allowed to roll over, and that this poses a significant barrier to success. This seems to be especially critical during the first year of an SMP update, when it takes a lot of time to begin the update process and create momentum for the work. Many local jurisdictions were forced to quickly spend funds or lost funds because they could not roll them over into subsequent years. Respondents also noted that a large amount of funds is typically spent on the inventory and characterization work, leaving less funding available for public engagement and the final stages which often take longer and require more work than budgeted for.

### **What is most important to focus on?**

Overall, respondents appeared to be most focused on the need to further define the problem and administer the concept of no net loss of ecological functions. Planners from urbanizing areas also focused on improving mitigation approaches and providing incentives for soft-shore alternatives to hard armoring. A majority of respondents wanted to increase the sophistication and respectfulness of the dialogue between government and citizens.

One of the highest priority issues for property owners, also ranked high by over 70 percent of city and county planners through the online survey, was the issue of nonconformity. Other high priorities were the need to monitor and track SMP results and to better address issues related to aquaculture. The need for public support and resources for implementation of the new SMP was ranked high by 70 percent of the county planners and 50 percent of the city planners and continually raised by all sectors during meetings.

Agricultural exemptions were a high priority for the Northwest Indian Fisheries Commission. Elected officials, local government staff, and property owners were less focused on agriculture and forestry exemptions.

Local government staff and Ecology staff thought efficiencies could be gained by working on common issues like inventories and characterizations and creating a model ordinance especially for use by small cities. These priorities may in part reflect the fact that most of the people who provided feedback are early in their SMP update processes.

## **4.0 PRIORITY ISSUES**

Based on the feedback received, we have revised the list of priority issues from the original list (Appendix 1). The consultant team believes successfully addressing these issues will improve the protection of ecosystem functions and contribute to the broader effort to recover Puget Sound by 2020. We suggest interested parties begin working on these issues based on the availability of resources and the potential for success.

1. **Explicit Linkage between Ecosystem Function, Human Action, and Impacts:** To successfully manage our shorelines, we need to improve our ability to reliably define the relationships between human actions and effects on ecological functions under the SMPs.
2. **No Net Loss:** The work conducted in Issue 1 needs to address the concerns raised about no net loss. A system for measuring ecosystem functions (or indicators of function) should be developed to establish a baseline for ecosystem functions against which protection and restoration efforts can be monitored over time. Additional scientific guidance is needed to better understand the scale at which losses or gains in ecosystem function can be mitigated, tracked, and accounted for. Measurable habitat or ecosystem recovery goals are needed for Puget Sound (e.g., what is the jurisdiction by jurisdiction and Sound-wide goal for unarmored shorelines for 2020?). This should be combined with government accountability for no net loss under the SMA to create a clear and consistent program. The method for measuring no net loss must be linked to overall Puget Sound goals and explicitly define the contribution that SMPs provide to achieving the goals. There needs to be a complementary system accounting for actions beyond SMP jurisdiction that affect the overall loss or gain of ecosystem functions since these actions are beyond the control of local SMPs.
3. **Mitigation and Restoration:** Mitigation opportunities in some jurisdictions such as small towns and cities are limited. The tribes, local governments, and non-governmental organizations expressed the need for greater clarity about how and where mitigation will

be implemented. These entities also want clarification about the relationship between mitigation and no net loss, and better monitoring of mitigation sites to improve techniques and requirements over time. At the same time, restoration programs and plans are often not directly tied to known and predicted ecological impacts, timely implementation of projects is uncertain, and a lack of funding for restoration plans makes real and meaningful results questionable. Policy and procedural improvements are necessary to address the issues raised about mitigation and restoration in a manner that successfully addresses the impacts from new development.

4. **Incentives:** Many of the recent SMP updates include more stringent restrictions and regulations for shoreline armoring. However, many property owners and local governments may still favor the use of traditional hard armoring because it is a more familiar approach, it is often less expensive than alternative forms of protection, and the permit process is straightforward. Property owners, developers, and government staff need examples and guidance that helps them appropriately choose and promote the use of soft-shore or bioengineered techniques to protect threatened structures. The need for incentives goes beyond techniques for shoreline protection and includes promoting existing incentives, providing more funding to create new incentives, and creating recognition programs that promote good stewardship of shoreline habitats and water quality.
  
5. **Effective Engagement of the Public:** In order to increase public support, it is imperative that we identify the scientific bases for policy decisions in a way that is clear and relevant to stakeholders. Respondents to the survey were knowledgeable and sophisticated in their understanding of shoreline issues. Stakeholders in the SMP process want to know and understand the issues by seeing the scientific basis for assumptions and policy conclusions. The following list describes some of the most frequently sought information from many key stakeholder groups:
  - (a) What is important to protect and why?
  - (b) How is harm to ecological functions directly linked to desired human activities?
  - (c) What is the role of the SMP in protecting ecology, water-dependent uses, and access?
  - (d) How does the SMP relate and coordinate with other protection and restoration programs and policies, including the Endangered Species Act?
  - (e) Affirmation of the rights of private property owners and government's trust responsibilities.
  - (f) Affirmation of government's role and responsibility to provide for the larger community issues of health, safety, and well being.

6. **Ecology Review and Approval:** There needs to be continued emphasis on providing consistent and timely feedback to local governments and continued dedication to increasing predictability in the final review process.
7. **Aquaculture:** A Sound-wide approach to identifying the needs of the aquaculture industry and its effect on shoreline resources could help address the perspectives of both the industry and those concerned about environmental impacts. Aquaculture may be characteristic of other complex issues where local governments are trying to support preferred uses and achieve ecological outcomes of no net loss.
8. **Nonconforming Uses:** Increased regulatory restrictions tend to cause existing structures and uses to be classified as nonconforming. This issue does not appear to be consistently understood or described by key stakeholders, nor does it appear that the immediate or long-term impact of this designation on private property owners is well understood or clearly articulated.
9. **Monitoring:** Monitoring of no net loss and mitigation was an issue raised by all categories of respondents. In addition to the need for monitoring (necessary to address in Issues 1, 2, and 3), there needs to be agreement on how monitoring will be conducted and who is responsible. The monitoring results should be made available to the local governments and interested parties involved in shoreline management.
10. **Future Updates:** It is critical to conduct work now in a manner cognizant of future SMP updates to ensure efficiency of the system. Local governments need strategic, financial, and coordinated support to execute current updates, implementation, and monitoring in a manner that best prepares them to make meaningful use of the next round of updates.
11. **Common Solutions:** Each government duplicates aspects of the SMP update process that are occurring in neighboring jurisdictions. There is a need for greater regional approaches to SMP planning and implementation. Opportunities for improved intergovernmental collaboration include but are not limited to:
  - identification and mapping of channel migration zones;
  - identification and clarification of approaches for addressing impacts from climate change;
  - integration of compliance with the National Marine Fisheries Service's reasonable and prudent alternative for implementing FEMA's National Flood Insurance Program with SMPs and critical area ordinances;
  - strategies for integrating SMPs and critical areas ordinances, given that this issue has been confounded by recent legislation and court findings; and
  - cross-jurisdictional restoration planning.
12. **Implementation:** Public engagement and resources are needed to successfully implement the new SMPs. Local governments need resources to manage and implement these highly complex policy documents. Addressing the issues listed above will provide

needed resources and support for implementation. More work is necessary to determine specifically what resources are necessary to implement the new SMPs.

13. **Coordinated Protection Program:** Many respondents cited the need for a comprehensive program for protection that integrates the authority under SMPs with other state and federal programs. Various attributes were stated as critical to achieve this: data consistency, multiple tools (regulatory, enforcement, monitoring, incentives, education, and outreach), multiple partners (tribal, government, affected parties, and NGOs), and a coordinated and consistent regulatory effort across local, state, and federal governments.
14. **Agricultural and Forestry Exemptions:** It appears that different stakeholders hold varying opinions and present different information about the degree to which agricultural lands and forestry lands interact with SMP jurisdiction. Additional research is necessary to further refine the issue.

## **5.0 RECOMMENDATIONS FOR IMMEDIATE ACTION**

Improving the update process and the outcomes requires some immediate changes and an enhanced commitment to longer-term goals. All of the issues listed in the previous section need to be addressed over time to achieve the maximum results. However, based on our experience and the feedback we have heard, several immediate actions are necessary to gain a supportive response from local governments, tribes, environmental interests, and property owners.

We recommend the following immediate actions from the longer list because in combination they will (1) produce positive results for the parties most involved, (2) likely improve the cost-effectiveness of the process and the environmental results, and (3) resolve some of the concerns expressed by shoreline property owners. Our recommendations for immediate enhancement are listed below and described in the following sections:

1. Improve the Linkage between Science and Policy
2. Make the Process Efficient
3. Increase the Certainty of the Review and Approval Process
4. Reduce the Conflict and Misunderstanding Regarding Nonconforming Structures
5. Foster a Learning Community of Shoreline Managers

We believe acting immediately on these five specific recommendations would shift the process in a significant manner for all involved. We believe working on the five recommendations must be done in a manner that involves the broad spectrum of stakeholders. Multiple perspectives are needed to truly define and resolve the issues and build support for solutions. This type of process, while potentially more difficult in the beginning, will more quickly come to resolution

or clarity about where differences of value or opinion lie and appropriate tools to resolve these impasses.

### **Improve the Linkage between Science and Policy**

Several issues such as vegetated buffers, shoreline armoring, and aquaculture are essentially the same across Puget Sound but each jurisdiction is taking its individual path to synthesize scientific information and determine the right policies and regulations. The recent work by the Puget Sound Nearshore Ecosystem Restoration Project can be useful in bringing to light several of these issues. A well-structured set of workshops involving scientists, industry leaders, residents, and policy experts would help illuminate where additional analysis and research would significantly benefit SMP updates and identify appropriate SMP policy and regulatory choices given our current knowledge. Addressing these priority issues would help clarify where there is misinformation, where there needs to be more scientific work, and where we have to make policy decisions. The workshops could also help emphasize and build support for the additional actions needed that are beyond the scope of most SMP updates such as incentives, technical assistance to property owners, and funding of science and restoration.

### **Make the Process Efficient**

A number of changes to the update process and the administration of local government grant programs would increase the efficiency and effectiveness of local updates. Each jurisdiction spends significant time, money, and resources on the inventory and characterization of the existing shoreline. This step could be streamlined by having Ecology contract to complete the inventory and characterization instead. Alternatively, Ecology could create an inventory checklist of questions (similar to a SEPA checklist) that local governments could fill out to address the guidelines requirements. A similar checklist could be used to support other technical requirements such as the cumulative impacts analysis or the restoration plan. Local governments also would benefit from having a model ordinance that they could tailor to their circumstances.

Changes to the contracting approach and requirements would also increase efficiency. An expedited SMP update process for cities and towns that have limited shoreline area or that issue very few shoreline permits would save time and resources. The current contracts to local government prescribe the process and the percentage of funds to be used on each stage. Allowing local governments to tailor their process and the budget to local conditions would improve the effectiveness of the funds and allow for more emphasis on the later stages of the process where the public engages and the policy decisions are made. Allowing a rollover of funds would allow funds to be applied to the most important tasks as each update evolves, rather than strictly adhering to a timeline and tasks imagined prior to the start of the process.

### **Increase the Certainty of the Review and Approval Process**

If local governments and others had a more complete understanding of Ecology's process and criteria for developing comments during the update process, and in the final approval phase, this

would help them know in advance if they are meeting Ecology's standards. A workshop where Ecology transparently illustrates its analysis and findings would help demonstrate what is expected and expedite the final approval process. For example, we recommend that Ecology use a county SMP along with a recently submitted city-adopted SMP to illustrate the decision criteria and process.

Ecology could host an open dialogue meeting with the jurisdiction to review the adequacy of the locally adopted program and discuss concerns. The meeting would be predicated on Ecology staff having completed a thorough internal review of the technical supporting materials, and proposed policies and regulations. This meeting would occur prior to writing the formal Ecology comment letter, so that local planning staff and elected officials would be apprised of Ecology's interim conclusions. If this meeting were open to the public and other interested planners, it would help people understand how Ecology is arriving at decisions and allow for those at the local level to explain their rationale and thinking. Ecology would then write its comment letter based on the discussion.

### **Reduce the Conflict and Misunderstanding Regarding Nonconforming Structures**

This issue has generated substantial public concern and opposition to SMP updates in part because the policy issues and choices are poorly understood and often miscommunicated. Some property owners believe that if their homes are rendered nonconforming because a new buffer standard is adopted, they will not be able to maintain or expand their homes or rebuild them if they are destroyed. Others want to ensure that SMPs contain adequate safeguards on redevelopment and expansion of homes and structures that may be located close to the shore, on unstable bluffs, or in other potentially damaging or hazardous locations.

The State Legislature has attempted to address the concerns about nonconformity in Engrossed House Bill 1653, but this may not go far enough toward addressing property owner concerns. We believe the concerns could be addressed to a significant degree with clear guidance and sample language on the policy choices that are available to local governments. Some jurisdictions have identified ways of addressing nonconformity without generating substantial public opposition. These options need to be vetted with stakeholders, sanctioned, and communicated to the public. Further clarifying the issue of restrictions on homes that were legally established before buffers were increased by an SMP update would create more support from landowners with potentially little if any adverse environmental consequence. We also recommend using a less inflammatory term such as "grandfathered" instead of "nonconforming."

### **Foster a Learning Community of Shoreline Managers**

Ecology is contributing staff resources to continually improve the understanding and expertise of their staff and local government planners through meetings and training. There is tremendous expertise, both in Ecology staff and local governments, to increase learning across the community of local and state planners. We suggest restructuring the shoreline planner meetings and Ecology training sessions to be directed by local planners and consultants who have been through the process and successfully updated their SMPs. We also recommend allowing more

time for local planners and state staff to meet on specific topics and have discussions sharing their perspectives and experience in addition to presentations and briefings. An effort to build a sense of community across the state and local planners would help broaden the feeling of responsibility to collectively address challenging issues, acknowledge success, and create a sense of momentum in achieving the SMA goals.

## **6.0 SUMMARY AND NEXT STEPS**

Without protecting the ecosystem functions, processes, and habitats that are working now, Puget Sound will continue to decline—driving up the cost of restoration and making restoration efforts less effective or in some cases futile. In that sense, the SMP updates are a tremendous opportunity to advance science, apply new technologies, and forge new partnerships between governments, private property owners, marine industry, recreation interests, and others committed to environmental stewardship.

We need to improve understanding of how development actions affect the environment, so there is greater certainty that the strategies we put in place for protecting and restoring shorelines are appropriate, effective, and fair. If we expect businesses, taxpayers, and shoreline property owners to make the types of decisions that are likely needed to fully protect and restore the Sound, we need to foster a dialogue based on both values and science. This is essential if we hope to attain the goals and aspirations set forth in the SMA: environmental protection, public access, and vibrant water-related and water-dependent uses.

