

Smart Growth Anacortes (SGA) submits these introductory comments on the SMP Update. Detailed comments on individual SMP topics will follow as time permits. As a preliminary matter the duties set forth here need not impact the City General Fund. The costs associated with establishing an environmental baseline, monitoring, and corrective action can and should be fee and penalty based. Shoreline developers are not somehow entitled to a subsidy for responsibilities that the SMP and Washington Administrative Code (WAC) places squarely on them.

I. Compliance Assessment(2024)

Smart Growth Anacortes (SGA) supports the findings and recommendations from the third-party, independent report (attached) but points out in Sections II and III that much more is required than complying with these minimum regulations, particularly as relates to cumulative impacts, bonding, and monitoring.

A. FACET Report Determinations

This project was funded by WSDOE to “... assist and determine if development within shoreline jurisdiction is being authorized, consistent with regulations of the City’s SMP and whether completed, authorized projects are compliant with issued permits ... the primary focus of the project was to ascertain whether SMP requirements are achieving no net loss of Shoreline ecological functions (NNL)”. Page 1. The answer is a resounding “no”.

35 shoreline permits issued after the adoption of the 2010 SMP were randomly selected for review. FACET determined that:

- 25 of these required a demonstration of “mitigation sequencing” but **68%** did not meet this standard. Mitigation sequencing is defined as “Avoid, Minimize, Rectify, Reduce, Compensate, Monitor”. 2010 SMP, §6.3.1, p.78.
- Submitted site plans generally lacked existing and proposed conditions, identification of critical areas, and/or quantified impacts making project related impact assessments, difficult to determine
- When landscape and mitigation plans were included with the permit application, they did not consistently meet landscaping standards outlined in the vegetation conservation regulations subsection (SMP 6.5C), specifically development regulations DR-6.5.7 and DR-6.5.8.

- Critical area reports were infrequently required by the city and were often not included in the application materials
- Mitigation plans, and as built reports were inconsistently provided

B. Five key FACET Report Recommendations, p.8

1. **Amend the SMP to clearly state that a demonstration of how mitigation sequencing will be applied to achieve no net loss is always required, and when a more detailed demonstration of how a project meets no net loss is required**
2. **Require necessary documentation during application submittal: (a) critical area reports for projects adjacent to or within fish and wildlife habitat, conservation areas (and other projects with critical areas) in order to assess impacts to species that have a primary association to the project area; (b) site plans must include a description of existing conditions, including existing vegetation; and, (c) landscaping plans for revegetation**
3. **Require a projects length in total linear feet to meet compliance with vegetation conservation standards for new development (50% of project Shoreline length in linear feet) and redevelopment (25% of project Shoreline length) (DR-6.5.8)**
4. **Require a revegetation calculation for projects in the Shoreline residential environment to demonstrate retention or planting area that equates to 15% of the total size; consider establishing a clear nonconforming definition as it relates to degraded vegetation conservation areas within Shoreline setbacks, and what constitutes conformance with the SMP in development scenarios**
5. **Require as built documentation and annual monitoring reports as separate conditions of permit [issuance] to ensure mitigation was implemented according to the approved plans, including installation of native plantings; consider requiring performance funds as necessary and established checkpoints within the permitting documentation to ensure monitoring performance standards are met prior to the release of maintenance bonds, as applicable.**

II. Permit Monitoring

In 2005, and again in 2008, the City recognized the vital importance of monitoring and enforcement of permits both inside and outside shoreline jurisdiction. The City adopted the following provision by ordinance:

“The city will monitor all construction projects undertaken adjacent to a wetland buffer(s) ... at least once a year in order to assess buffer function and the use of City prescribed best operating procedures. From year to year the city will ensure that there is no net loss of buffer, ecological function and value on a citywide basis. In the event that such a situation occurs, the city will promptly mitigate for any loss and take any further corrective action necessary to ensure that this situation does not reoccur. Corrective action may involve widening buffers, fines, and/or performance response”. Old CAO (17.70.530).

However, the record in Growth Management Hearings Board (Board) Case No. 21-2-0002c establishes that this provision was most likely never implemented. Further, the City eliminated this provision in its 2021 Critical Area Update and the Growth Management Hearings Board held that as Ecology supported the CAO Update in its entirety the appeal had not demonstrated that this action was not clearly wrong.

The FACET Report recommends that a provision such as this be reinstated for (at least shoreline permits). Recommendation 5.

III. 2010 Shoreline Master Program Requirements-Environment Protection

A. “The intent of these regulations is to provide policies and regulations that protect the shoreline environment as well as the critical areas found within the shoreline jurisdiction ... and include actions for the restoration of impaired Shoreline ecological functions”. 2010 SMP, §6.1, p.77.

B. Not only will the 2026/27 SMP Update need to comply with the State Environmental Policy Act (SEPA) prior to its adoption but it is important to note that “These regulations are not intended to limit the application of SEPA” as to specific shoreline development projects and activities. Id.

C. The Facet Report supports the conclusions that:

1. The City is simply not complying with its duties and responsibilities under its adopted SMP: “Ensure, through appropriate monitoring and enforcement measures, that all required conditions are met, improvements installed, and properly maintained”. Id.p.79.

2. The City is not complying with the Mitigation Plan requirements of DR-6.3.5: inventory the existing Shoreline environment, address ecological impacts, apply critical area, standards, and regulations, address habitat recommendations from resource agencies, measures to preserve existing habitats and opportunities to restore habitats, success, standards, and contingency plans, mitigation measures to ensure known that loss of ecological functions and value, anticipated effectiveness of the proposed mitigation measures, proposed monitoring and maintenance programs, and contingency plans if the mitigation fails to meet established success criteria. Id. p.80.

3. The city is not complying with the Bonding requirements of DR-6.3.9: “Except for projects, undertaken by public entities, performance or maintenance bonds, or other security **shall** be required by the city to assure that work is completed, monitored, and maintained. Id. p.81(emphasis added).

4.The City is not complying with the monitoring requirements of DR-6.3.10: “As a condition of approval, the City shall require periodic monitoring for up to five years from the date of completed development to ensure the success of required mitigation”. Id. (emphasis added).

5.The City is not complying with the monitoring plan requirements of DR 6.3.11: “ monitoring plans shall be forwarded, for review and comment, to state and/or federal resource agencies and affected tribes with jurisdiction”. Id.

REQUEST

SGA requests that the Planning Commission give the FACET Report the attention it deserves at your opportunity and recommend corrective action and further improvements along the lines that we have set forth.

