



Skagit County Planning & Development Services

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Memorandum

To: Planning Commission
From: Betsy Stevenson
Date: April 22, 2015
Re: SMP Final Planning Commission Pre-Release Review for May 5 Meeting

Background

The County has been working on the SMP since 2011. Visioning workshops were held in Concrete, Lyman, Mount Vernon and Anacortes in June and July 2011. The Board of County Commissioners appointed a 17-member advisory committee to review draft materials and advise County staff throughout the process. The Department accepted comments on the first working draft document in May-June 2012. Open houses were held in May and June 2013 in Mount Vernon, Anacortes, Lyman and Concrete to discuss the SMP with the public and receive comments. The Department accepted comments on the first working draft document in May-June 2012. The Planning Commission has held two rounds of study sessions on drafts of the SMP.

Process Going Forward

As we complete revisions to various sections of the draft plan, we are bringing those sections to the Planning Commission for your final review and comment before we release them as the complete proposal for public comment. We hope that you will review the sections attached to this memo and send us comments and questions on typos, incorrect cross-references, or other minor issues in advance; save only substantial questions or discussion points for the Planning Commission meeting so that we can stay on schedule. New PC members who are unfamiliar with the document and the process should feel free to arrange a meeting with me so that we can prepare you for the meetings and hearings.

We anticipate bringing the remaining sections to the Planning Commission for final pre-release review on June 2. We are *tentatively* scheduling release of the SMP Update for public comment in June-July, with a public hearing in July or August, with close of the written comment period 60 days after release. The Planning Commission will have at least two work sessions after the public comment period to generate its recommendation on the SMP; the Board of Commissioners will then approve the draft SMP for forwarding to Ecology for their approval before it will return to the Board for final adoption.

Where We Are Now

Since completion of last year's annual Comprehensive Plan amendments, staff have returned attention to the SMP Update and have been working through the Planning Commission's comments from last year as well as general organization and streamlining.

We have completed for the PC's final review prior to release for public comment the following sections:

Part I: Shoreline Jurisdiction

We changed the phrasing in 14.26.130, Applicability, a bit per the PC's recommendations.

We modified 14.26.140 to include only the buffers for critical areas wholly within normal shoreline jurisdiction. This is the opposite of our prior approach. We still intend to find a way to streamline permits so applicants for a project wouldn't need to get shoreline permit inside 200 feet from the OHWM and a separate critical areas permit outside 200 OHWM (in those cases where projects straddle the shoreline jurisdiction boundary) but we will probably accomplish that through a modification to the CAO. This modification avoids the problem, identified by the Planning Commission, of shoreline jurisdiction potentially being read to extend all the way to the headwaters of a non-shoreline stream.

We did not put defined terms in 14.26.140 (e.g. shorelines of the state or shorelands) in quotes. Those terms will appear with dotted underlines in the online version of the code.

In SCC 14.26.150(3), we replaced prior text about how the critical areas ordinance is applied inside shoreline jurisdiction with a cross-reference to Part V, where the critical areas ordinance is incorporated by reference.

Part III, .370 Public Access

We made a couple of changes to Applicability to clarify, consistent with the WAC, that as a general rule, all water-enjoyment, water-related, and nonwater-dependent uses must provide public access.

Reorganized various provisions into a new section 2 that first indicates that the type of public access that has to be provided is proportionate to the impacts created by the proposed development. The determination of that type follows the Nollan and Dolan nexus and proportionality tests. Section 2 also clearly delineates the order of preference for the types of public access. We differentiate between "physical access" and "visual access" (both of which are described in the definition of public access). Here is the definition of public access from Part VIII:

"Public access" means the public's ability to reach and use the State's public waters, the water/land interface, and associated shoreline area. It includes physical access that is either lateral (areas paralleling the shore) or perpendicular (an easement or public corridor to the shore), and visual access facilitated by means such as scenic roads and overlooks, viewing platform, and other public sites or facilities.

[WAC/new]

We condensed several provisions for infeasibility or exceptions to the general rule into a new subsection of section 2 that explains how to determine infeasibility. We clarify that "community access" is only required and available for land divisions of five or more lots.

We rewrote the Availability, Dedication, and Maintenance subsection to clarify in response to PC comments last time around.

Part III, .380 Vegetation Conservation

This section is completely reorganized. The rules within it have been simplified. The aquatic vegetation management paragraph has been moved to section .320 General Provisions Waterward of the OHWM.

What's Next?

At your next Shoreline work session, we plan to provide you with the following updated sections:

- **Part IV: Shoreline Uses and Modifications Regulations**
- **Part VIII: Definitions**

Reminder: all the RCW and WAC references that are in brackets at the end of various sections will be removed when the final document is assembled.

As always, if you have questions or thoughts you'd like to share, please feel free to contact me. betsyds@co.skagit.wa.us or (360) 416-1323. Thank you for your time and thoughtful consideration. It has been very valuable.

Part I: Authority, Purpose, and Jurisdiction

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14.26.110 Authority

- (1) The Shoreline Management Act of 1971, RCW Chapter 90.58, is the authority for the enactment and administration of this Shoreline Master Program.
- (2) SCC Chapter 14.26 constitutes the implementing development regulations for the Skagit County Shoreline Master Program.

14.26.120 Purpose

The purposes of this SMP are:

- (1) To promote public health, safety, and general welfare by providing comprehensive policies and effective, reasonable regulations for development, use and protection of jurisdictional shorelines; and
- (2) To further assume and carry out the local government responsibilities established by the SMA in RCW 90.58.050 including planning and administering the regulatory program consistent with the policy and provisions of the SMA in RCW 90.58.020; and
- (3) To provide a high quality shoreline environment where:
 - (a) Recreational opportunities are abundant;
 - (b) The public enjoys access to and views of shoreline areas;
 - (c) Natural systems are preserved, restored, or enhanced;
 - (d) Ecological functions of the shoreline are maintained and improved over time;

- (e) Water-oriented uses are promoted consistent with the shoreline character and environmental functions; and
- (4) To condition uses to ensure they are consistent with the control of pollution and prevention of damage to the natural environment
- (5) To discourage uses that are not unique to or dependent upon use of the state's shoreline; and
- (6) To ensure no net loss of shoreline ecological functions.

14.26.130 Applicability

- (1) All proposed uses, activities, or development occurring within shoreline jurisdiction must conform to the intent and requirements of the SMA and this SMP even when a permit or other form of authorization is not required. But see the exemption in SCC **Error! Reference source not found.**
- (2) The shoreline permit procedures, policies, and regulations established in this SMP apply countywide to all nonfederal uses, activities, and development.
- (3) This SMP applies to lands subject to nonfederal ownership, lease, or easement, even though such lands may fall within the external boundaries of federal ownership. The following subsections guide the determination of SMP applicability on federal lands:
 - (a) Federal development on land owned or leased by the federal government is not subject to this SMP;
 - (b) Non-federal development on land owned or leased by the federal government is subject to this SMP.
- (4) As recognized by RCW 90.58.350, the provisions of this SMP do not affect treaty rights of Indian Nations or tribes.

14.26.140 Shoreline Jurisdiction

- (1) The Shoreline Master Program jurisdiction applies to all shorelines of the state and their associated shorelands. This includes:
 - (a) all marine waters;
 - (b) rivers and streams with more than 20 cubic feet per second mean annual flow (cfsmaf);
 - (c) lakes and reservoirs greater than 20 acres in area;

- (d) associated wetlands;
 - (e) shorelands adjacent to these water bodies, typically within 200 feet of the OHWM;
and
 - (f) floodways and contiguous floodplain areas extending 200 feet from the floodway;
- (2) Extension of shoreline jurisdiction. Shoreline jurisdiction also extends to buffers necessary to protect critical areas that are located wholly within shoreline jurisdiction, with the exception of forest practices described in RCW 90.58.030(2)(d)(ii).

14.26.150 Relationship to Other Codes, Plans, and Ordinances

- (1) All applicable federal, state, and local laws apply to properties in the shoreline jurisdiction.
 - (2) When conflict occurs between the provisions of this SMP or between this SMP and the laws, regulations, codes, or rules promulgated by any other authority having jurisdiction, the provision that is most protective of shoreline resources must be applied, except when constrained by federal or state law, or where specifically provided otherwise in this Program.
- (1) All local development regulations including, but not limited to, zoning and subdivision rules apply in addition to this SMP, except that regulation of critical areas is accomplished exclusively by this SMP; see SCC **Error! Reference source not found.**

14.26.160 Liberal Construction

As provided for in RCW 90.58.900, the SMA is exempted from the rule of strict construction. The County must, therefore, in interpreting this SMP, consider not only the regulations but also the purposes, goals, and policies.

14.26.170 Effective Date

This SMP was adopted by the Skagit County Board of Commissioners on _____, 2015. This SMP and any amendments become effective fourteen days after final approval by the State Department of Ecology. (RCW 90.58.090(7))

14.26.370 Public Access

(1) Applicability.

- (a) This section applies to the following shoreline uses and activities, which are required to provide shoreline public access:
 - (i) Water-enjoyment, water-related, and nonwater-dependent uses; (WAC 173-26-221(4)(d)(iii).)
 - (ii) Commercial development proposed on land in public ownership. (WAC 173-26-241(3)(d))
 - (iii) Land divisions creating five or more lots; (WAC 173-26-241(3))
 - (iv) Development that involves five or more multi-unit residential dwelling units;
 - (v) Development by public entities, including local governments, port districts, state agencies, and public utility districts; (WAC 173-26-221(4)(d)(ii))
 - (vi) Marinas when water-enjoyment uses are associated with the marina; (WAC 173-26-241(3)(c)(iv))
 - (vii) Recreation pursuant to SCC 14.26.470; (WAC 173-26-241(3)(i))
 - (viii) New public structural flood hazard reduction measures, such as new dikes and levees, where access rights can be secured. (WAC 173-26-221 (3) (c) (iv))
- (b) Exceptions. This section does not apply to the following shorelines uses and activities, which are exempt from the requirement to provide public access:
 - (i) agriculture;
 - (ii) aquaculture;
 - (iii) a use, activity, or development that involves four or fewer multi-unit residential dwelling units;
 - (iv) a subdivision of land into four or fewer lots;
 - (v) a development that has previously provided public access through other permit processes.

(2) Types of public access.

- (a) The Administrative Official must determine the nature of the public access required for a project. The public access required must be proportional to the demand and impacts created by the use. For a private development, the Administrative Official must make the following findings:
 - (i) the proposed project will increase demand for public access to the shoreline (nexus);
 - (ii) the public access to be provided is reasonably consistent with the nature and type of demand created (proportionality); and
 - (iii) the public access to be provided is reasonably necessary at this location or an approved offsite location to mitigate the incremental demand created by the project.
- (b) Order of preference. The types of public access are listed below in descending order of preference. The development must provide the most preferred type of public access that the Administrative Official determines is feasible.
 - (i) physical access onsite;
 - (ii) physical access offsite;
 - (iii) physical access restricted to a community (available only for land divisions);
 - (iv) visual access onsite;
 - (v) visual access offsite.
- (c) How to determine feasibility. Public access is feasible unless the applicant demonstrates to the satisfaction of the Administrative Official that one or more of the following apply:
 - (i) public access would result in unavoidable public health or safety hazards that cannot be prevented by any practical means;
 - (ii) public access is not feasible due to inherent security requirements of the use that cannot be satisfied through the application of alternative design features or other solutions;
 - (iii) public access is not feasible as part of an ecological restoration project such as a levee setback;

- (iv) public access would result in significant adverse environmental impacts that cannot be mitigated;
 - (v) public access would result in significant undue and unavoidable conflict with proposed use or adjacent uses that cannot be mitigated;
 - (vi) public access is not feasible because the subject site is separated from the shoreline water body by intervening public or private improvements such as highways, railroads, existing structures, or similar significant improvements;
 - (vii) the cost of providing the public access is unreasonably disproportionate to the total long-term cost of the proposed development;
 - (viii) public access is deemed detrimental to threatened or endangered species under the Endangered Species Act and the Administrative Official has consulted with governmental agencies or authorities with jurisdiction in making that determination.
- (d) Public access must consist of a dedication of land or easement and a physical improvement in the form of a walkway, trail, bikeway, corridor, viewpoint, park, deck, observation tower, pier, boat launching ramp, dock or pier area, or other area serving as a means of view, or physical approach, or both to public waters and may include interpretive centers and displays.
- (3) Public access design standards and other requirements.
- (a) Public access must incorporate the following design features:
 - (i) Access easements must be at least 10 feet wide, unless the Administrator determines that undue hardship would result. In such cases, easement widths may be reduced only to the extent necessary to relieve the demonstrated hardship.
 - (ii) Where feasible, public access must be designed to connect to existing or future public access features on adjacent or abutting properties, or to existing public rights-of-way or access easements.
 - (iii) Trails and pathways must be located, designed, and constructed to protect bank stability.
 - (iv) Trails and public parks must be designed consistent with the County's Comprehensive Parks and Recreation Plan.

- (v) Public access must define the separation between public and private space, e.g. with natural elements such as logs, vegetation, and elevation separations.
 - (vi) Minimize the removal of on-site native vegetation.
 - (vii) Minimize the impact on views of shoreline water bodies from public lands or substantial numbers of residences.
- (b) Public access must include:
- (i) materials appropriate to the urban or rural character of the property and vicinity and environmental condition;
 - (ii) barrier-free designs consistent with the Americans with Disabilities Act, wherever feasible;
 - (iii) auxiliary facilities such as parking and restrooms, if necessary based on expected demand;
 - (iv) trash and recycling receptacles and pet waste receptacles, to promote appropriate waste disposal and protect water quality, where applicable;
 - (v) signage with any appropriate agency logo and hours of access; and
 - (vi) landscaping using native vegetation.
- (c) Availability, dedication, and maintenance.
- (i) Public access must be fully developed and available for public use at the time of occupancy of the use or activity or in accordance with other provisions for guaranteeing installation through a monetary performance assurance.
 - (ii) Public access must run with the land and be recorded via a legal instrument such as an easement, or as a dedication on the face of a plat. Such legal instruments must be recorded with the Auditor prior to the time of building permit approval or occupancy or with plat recording, whichever comes first.
 - (iii) Public access must be maintained over the life of the use or development. Future actions by successors in interest or other parties may not diminish the usefulness or value of required public access areas and associated improvements.
 - (iv) Maintenance of the public access facility must be the responsibility of the owner or homeowner's association, unless otherwise accepted by a public or non-profit agency through a formal agreement recorded with the Auditor.

- (d) Offsite public access:
 - (i) must allow public access, in descending order of preference, at a site physically separated from, but capable of serving, the project area; or at a site on the same water body; or at a site within the same watershed;
 - (ii) may include, but is not limited to:
 - (A) enhancing an adjacent public property (e.g. existing public recreation site; existing public access; road, street or alley abutting a body of water);
 - (B) providing, improving, or enhancing public access on another property under the control of the applicant; or
 - (C) a similar measure approved by the Administrative Official.

(4) Shoreline Public Access Plan.

- (a) The Skagit Countywide UGA Open Space Concept Plan and the Skagit County 2012 Comprehensive Parks and Recreation Plan provide for a connected network of parks, open space, and trails, and together constitute Skagit County's Shoreline Public Access Plan, which provides more effective public access than individual project requirements for public access.
- (b) Shoreline public access as required by this section should be consistent with the Shoreline Public Access Plan.

14.26.380 Vegetation Conservation.

- (1) Applicability.
 - (a) This section applies to all activities except those Forest Practices (other than conversions) described in WAC 173-26-221(5), and agricultural activities exempt per SCC **Error! Reference source not found.**
 - (b) Where this section conflicts with other sections of County code (e.g. SMP Part V, Critical Areas, or SCC Chapter 14.34, Flood Damage Prevention), the most restrictive applies.
- (2) Application Requirements. In addition to the [standard application requirements], a development proposal must include a vegetation retention plan that includes all of the following:

- (a) location, size, species, and driplines of all existing healthy significant trees within the shoreline area;
 - (b) existing and proposed contours;
 - (c) trees and other vegetation to be retained;
 - (d) designation of a disturbance-free area beyond the tree dripline for all significant trees to be retained;
 - (e) a description of protection techniques to be utilized during construction, including but not limited to five-foot-high chain-link or plastic-net fencing around tree driplines, tunneling instead of trenching, stump grinding instead of stump pulling, and routing of traffic to prevent excessive soil compaction;
 - (f) removal of any noxious weeds and replacement with native plants.
- (3) Development Standards.
- (a) Vegetation clearing must be limited to the minimum necessary to accommodate approved shoreline development, including staging areas.
 - (b) Shrubs and ground cover must be replaced in all disturbed areas by a mixture of native shrubs, groundcovers and other plant material intended to provide 85% surface coverage within two years of planting.
 - (c) Development or uses must be designed and located to avoid the following in descending order of priority:
 - (i) Native significant trees;
 - (ii) Non-native significant trees;
 - (iii) Native non-significant trees;
 - (iv) Other native vegetation;
 - (v) Other non-native vegetation.
 - (d) Significant tree retention.
 - (i) Within critical areas or their buffers, unless otherwise allowed by SMP Part V, Critical Areas Regulations in Shoreline Jurisdiction, or other sections of this SMP, significant tree retention must be 100 percent.

- (ii) Outside critical areas or their buffers, significant trees must be retained using the preferences specified in subsection (b) above as a guide and consistent with the following percentages, based on shoreline environment designation:

Environment Designation	Retention (%)
Natural	90
Urban Conservancy	65
Rural Conservancy	65
Shoreline Residential	25
High Intensity	25

- (iii) A significant tree designated for retention must not have the soil grade altered within its dripline or within 15 feet of its trunk, whichever is greater, unless an alternative tree retention method is approved by the County.
 - (iv) A tree retention plan may provide for the retention of fewer significant trees than required in this subsection only if the additional trees to be removed are replaced at a ratio of three to one.
 - (v) Replacement trees. When required, replacement trees must meet the following requirements.
 - (A) Replacement trees must replicate the vegetation historically found on the site in species types and densities.
 - (B) Replacement trees may be placed in other locations on the property, as approved by the Administrative Official.
 - (C) Where conditions allow, native replacement trees should be placed in on-site wetlands or wetland, stream or shoreline buffers if doing so would improve function of the critical area or its buffers.
 - (vi) Significant trees that are part of a grouping or that otherwise provide mutual support during strong winds must be preserved to prevent blow down of on and off-site trees with particular emphasis on trees that support adjacent wildlife habitat areas.
 - (vii) The County may require site plan alterations to achieve maximum tree retention.
- (e) Tree pruning.
- (i) Topping of trees is prohibited, unless tree poses a documented safety risk associated with overhead utilities.

- (ii) Selective pruning of trees is allowed, but must maintain the existing percent canopy cover. Selective pruning of trees does not include removal of understory vegetation.
 - (iii) Where a tree poses a significant safety hazard, it may be removed or converted to a wildlife snag if the hazard cannot be eliminated by pruning, crown thinning, or other technique that maintains some habitat function. If a safety hazard cannot be easily determined by the County, a written report by a certified arborist or other qualified professional is required to evaluate potential safety hazards.
- (f) Restoration.
- (i) When required. In addition to enforcement pursuant to SCC Chapter 14.44, restoration is required whenever any of the following events occur:
 - (A) Vegetation designated to be retained pursuant to an approved retention plan is damaged or dies prior to issuance of occupancy permits or release of any performance assurance bonding;
 - (B) Vegetation is removed without County authorization.
 - (ii) Restoration must be done consistent with a restoration plan approved by the Administrative Official.
 - (A) The restoration plan must be prepared by a qualified professional.
 - (B) The restoration plan must address the utilization of native vegetation, compensation for temporal loss of function through the proposed design, and the restoration of specific functions adversely impacted by the unauthorized vegetation removal.
 - (C) The restoration plan must meet or exceed the development standards in this section.
 - (D) Removed trees must be replaced at a ratio of three to one, consistent with the requirements for replacement trees in the vegetation retention plan requirements.
 - (E) The Administrative Official may determine a reasonable timeline for implementation of the restoration plan.