



Skagit County Planning & Development Services

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Memorandum

To: Planning Commission
From: Betsy Stevenson
Date: February 25, 2014 (and March 12, 2014 for corrections)
Re: Updates to draft for review on March 4

Staff has made the following changes to the portions of the SMP Update that you are scheduled to review next week:

1. New CP 6C-1.1(f), as recommended by Ecology

New agricultural uses and development in support of agricultural uses, should be located and designed to ensure no net loss of ecological functions and no significant adverse impact on other shoreline resources and values.

2. Revised CP 6C-7.1, as recommended by Ecology

Forest practices, including road construction, timber harvesting, and debris disposal, which meet or exceed established regulatory provisions should be allowed.

3. Delete CP 6C-7.2

4. Revise CP 6B-5 and 14.26.240 to simplify RC-SF:

Purpose

The purpose of the Rural Conservancy – Skagit Floodway environment incorporates the purpose of the Rural Conservancy environment. The Rural Conservancy – Skagit Floodway environment provides additional notice to map readers that all of the Rural Conservancy policies apply, but the property is also within the floodway of the Skagit River from the State Route 9 bridge upstream to the confluence of the Skagit and Sauk Rivers. Development within the floodway is significantly constrained by SCC Chapter 14.34, Flood Damage Prevention.

Designation Criteria

6B-5.1 A Rural Conservancy – Skagit Floodway environment designation should be assigned to shoreline areas that would receive a Rural Conservancy designation but are located within the floodway of the Skagit River from the State Route 9 bridge upstream to the confluence of the Skagit and Sauk Rivers.

Management Policies

6B-5.2 The management policies of the Rural Conservancy environment also apply to Rural Conservancy – Skagit Floodway.

5. Revise 6C-13.2(a)ii:

Sewage treatment and stormwater system outfall pipes and diffusers.

6. Revise CP 6D-2.1(a):

commercial “developments” not “enterprises”

7. Delete CP 6D-2.1(c)

8. Revise CP 6H-2.2:

Locate and design development, including public access, within and adjacent to critical areas to ensure that ecological functions are not adversely impacted.

9. Rename CP 6J:

“Flood Hazard Management” to “Flood Hazard Reduction”

10. Revise 14.26.130(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.

11. Revise 14.26.150(3):

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 as provided in SCC Chapter 14.24 is accomplished exclusively by this SMP (and its incorporation by reference, where applicable, of SCC Chapter 14.24 as adopted on the date of adoption of this SMP and included as Appendix 3).

12. Revise 14.26.200(3)(a):

Any areas within shoreline jurisdiction that are not mapped or designated due to minor mapping inaccuracies in the lateral extent of shoreline jurisdiction from the shoreline water body related to site-specific surveys of OHWM are automatically assigned the category of the contiguous waterward shoreline environment designation.

13. Revise 14.26.360, Public Access, and CP 6E:

See attached.

14. Revise 14.26.380(2), second sentence:

Decking or other structural materials must be used consistent with state or federal standards for contact with water to avoid discharge of pollutants from leaching, wave splash, rain, or runoff.

6E – Public Access

Policies

- 6E-1.1 In conjunction with federal and state agencies, Skagit County should ~~provide~~ promote safe, convenient, and diversified public access to publicly owned shorelines without infringing upon the personal or property rights of adjacent residents. Such access should not have an adverse impact upon the environment. (based on Current SMP Goal A, modified)
- 6E-1.2 Skagit County should promote public access as part of private shoreline development in accordance with shoreline public access plans, the natural shoreline character, property rights, constitutional limitations, public rights under the Public Trust Doctrine, and public safety.
- 6E-1.3 Applicants for shoreline development activities should demonstrate that public access improvements do not result in a net loss of shoreline ecological functions.
- 6E-1.4 Where appropriate, Skagit County should ensure that proposed shoreline developments are designed to preserve, maintain, consolidate, enhance, and create opportunities for physical or visual shoreline contact at the ends of roads, streets, alleys, and similar rights-of-way abutting bodies of water. Vacations of roads, streets, and alleys should be discouraged and only allowed in strict compliance with RCW 35.79.035 (Streets and Alleys) or RCW 36.87.130 (County Roads).
- 6E-1.5 Skagit County should seek willing property owners to participate in public access projects, such as through voluntary conservation easements and trail easements.
- 6E-1.6 Skagit County should ~~ensure~~ require that public access facilities ~~are designed to~~ protect public health and water quality ~~such as ensuring by providing~~ adequate restrooms, trash cans, pet waste disposal, and similar measures.
- 6E-1.7 Skagit County should ~~strive to~~ require that applicants demonstrate compatibility with the following public access objectives, where applicable to the use, location, and level of demand for public access:
- a. Provide a network of pedestrian, biking, and horse trails that access interpretive and scenic resources and that offer safe and direct routes. (based on UGA Open Space Concept Plan, Goal C.1.6 and Goal C.1.7)
 - b. Provide opportunities for linking privately-owned open space systems to the overall public access network. (based on UGA Open Space Concept Plan, Objective C.2.2)

- c. Protect existing scenic landscapes, especially those that exemplify unique features visible from open space viewpoints. Protect scenic landscapes that are prominent features of protected areas such as Padilla and Skagit Bays. (based on UGA Open Space Concept Plan, Objective C.4.1)
- d. Protect scenic roads, rivers, and shorelines by preserving rural and marine land uses and activities, natural environments and vegetation, and scenic or visual features along road and shoreline edges especially including the established SR-11 and SR-20 scenic byway corridors. (based on UGA Open Space Concept Plan, Objective C.4.2)
- e. Protect and enhance scenic viewpoints that look upon scenic landscapes including prominent high points, as well as strategic overlooks or look-into places alongside the Baker and Skagit Rivers, Gages Slough, Nookachamps Creek, and Swinomish Channel. (based on UGA Open Space Concept Plan, Objective C.4.3)
- f. Design public access facilities and structures that respect unique, fragile, and scenic elements and protect existing views from public lands or large numbers of residences, through the application of flexible design standards regarding height, bulk, scale, setbacks, lighting, and view corridors.
- g. Where public access is determined to be incompatible due to reasons of safety, security, or impact to the shoreline, consider alternate methods of providing public access, such as offsite improvements, viewing platforms, separation of uses through site planning and design and restricting hours of public access. Off-site public access improvements may be preferable, if such improvements would provide a greater public benefit and reduce safety and environmental impacts.

~~h.a. Partner and coordinate public access education and awareness programs with facilities such as those at the Padilla Bay and Tommy Thompson Trails, and the Padilla Bay National Estuarine Research Reserve. (based on UGA Open Space Concept Plan, Objective C.6.1) [moved to recreation, modified]~~

~~i.a. Link the regional or countywide multiuse trails with city or local trails that increase urban and rural resident access to parks, recreational areas, schools, public facilities, commercial, and employment areas. (based on UGA Open Space Concept Plan, Objective C.7.2) [moved to recreation]~~

~~j.h. Where possible, connect on and off road trails with water trails to the Guemes and San Juan ferries and private excursion boat routes on the Skagit River, Swinomish Channel, Padilla, Similk, and Skagit Bays to increase public access and interpretive opportunities. (based on UGA Open Space Concept Plan, Objective C.7.4) [deleted]~~

~~k.i. Promote [access to](#) hand-carry and other nonmotorized watercraft routes that flow alongside and through countywide and UGA open spaces on the Baker River, Skagit~~

River including the North and South Forks, Samish River, Swinomish Channel, and Samish, Padilla, Fidalgo, Burrows, Similk, and Skagit Bays. (based on UGA Open Space Concept Plan, Objective C.8.4)

h.j. Ensure public access is usable ~~Encourage the use and enjoyment of shorelines~~ by those with physical disabilities similar to what has been provided on the Tommy Thompson, Padilla Bay, and Cascade Trails, designed with consideration of ~~the~~ environmental conditions and the Americans with Disabilities Act ~~provisions~~. (based on UGA Open Space Concept Plan, Objective C.7.5)

14.26.360 Public Access

(1) Applicability.

- (a) This section applies to the following shoreline uses and activities, which are required to provide shoreline public access:
- (i) Shoreline recreation pursuant to SCC 14.26.470; (WAC 173-26-241(3)(i))
 - (ii) 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))
 - (iii) Shoreline development by public entities, including local governments, port districts, state agencies, and public utility districts; (WAC 173-26-221(4)(d)(ii))
 - (iv) New marinas when water-enjoyment uses are associated with the marina; (WAC 173-26-241(3)(c)(iv))
 - (v) New multi-unit residential development that involves five or more multi-unit residential dwelling units, including:
 - (vi) Land divisions creating five or more lots or dwelling units; (WAC 173-26-241(3))
 - (vii) Commercial development proposed on land in public ownership. (WAC 173-26-241(3)(d))
- (b) This section does not apply to the following shoreline uses and activities, which are exempt from the requirement to provide public access:
- (i) a use, activity, or development that involves four or fewer multi-unit residential dwelling units;
 - (ii) a subdivision of land into ~~of~~ four or fewer lots;
 - (iii) agriculture or aquaculture;
 - (iv) an element of an overall development, a binding site plan, or a planned unit development that has previously provided public access through other application-permit processes.

(2) Requirement to provide public access.

(a) A development, use, or activity to which this section applies must provide public access consistent with this section when the Administrative Official makes the following findings:

(i) the proposed project increases demand for public access to the shoreline (nexus);

(ii) the shoreline access provided is reasonably consistent with the nature and type of demand created (proportionality); and

~~(iii) public access is reasonably necessary at this location or an approved offsite location to mitigate the incremental demand created by the project.~~

(b) Onsite public access is required except as provided in subsections (3) and (4).

(c) The cost of providing the public access must be proportionate to the total development value at build-out per approved designs.

~~(d) Public access may be essentially visual but must include some physical elements.~~

(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.

~~(e) Mitigation measures must address the responsibility and cost for operation and maintenance.~~

(3) Limited exception to public access requirement.

(a) Potential exceptions. The shoreline development may not have to provide public access in the following circumstances when the applicant can demonstrate no feasible alternatives exist consistent with (b) of this section:

(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 ~~and public access is not feasible;~~
 - (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; or
 - (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.
- (b) Requirement to prove no feasible alternatives. To qualify for an exception from the public access requirement, a shoreline applicant must demonstrate to the satisfaction of the Administrative Official that all feasible public access alternatives have been exhausted, including, but not limited to:
- (i) providing visual access where physical access is not feasible;
 - (ii) regulating access, e.g. by limiting hours of use to daylight hours;
 - (iii) designing for separation of uses and activities, e.g. fences, terracing, hedges, landscaping, signage; and
 - (iv) providing an alternative to onsite public access consistent with section (4).
- (4) Alternatives to Onsite Public Access.
- (a) Offsite public access:
- (i) must result in a public benefit equal or greater to onsite access;
 - (ii) 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;

(iii) 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.

(b) **Community access**, i.e. ~~access~~ that serves a subdivision but not the public, is allowed if there is no planned public access required along the shoreline in the Shoreline Public Access Plan.

(5) 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.

(6) Public Access Design Standards and Other Requirements.

(a) Shoreline public access must incorporate the following design features:

~~(i)~~ Shoreline 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)~~ (ii) Where feasible, physical shoreline public access must be designed to connect to existing or future public access features on adjacent or abutting properties, **or must connect to** existing public rights-of-way or access easements.

~~(iii)~~ (iii) Shoreline trails and pathways must be located, designed, and constructed to protect bank stability.

~~(iv)~~ (iv) Shoreline trails and public parks must be designed consistent with the County's Comprehensive Parks and Recreation Plan.

~~(iv)~~(v) Shoreline public access must define ~~Include techniques defining the~~ separation between public and private space, ~~including, but not limited to,~~ e.g. with natural elements such as logs, vegetation, and elevation separations.

~~(v)~~(vi) Shoreline public access must minimize the removal of on-site native vegetation.

~~(vi)~~(vii) _____ Shoreline public access must minimize the impact on views of shoreline water bodies from public lands or substantial numbers of residences. The Administrative Official may require a visual analysis and establishment of a view corridor pursuant to SCC 14.26.370, Shoreline Vegetation Conservation, and SCC 14.26.320, General Provisions Applicable to Uses and Modifications Waterward of the OHWM.

(b) Shoreline 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 the appropriate agency logo and hours of access; and

(vi) landscaping using native vegetation.

~~(c) The applicable Shoreline Permit must:~~

~~(i) establish operation and maintenance responsibilities for the public access.~~

~~(ii) identify dedication and recording requirements;~~

~~(iii) determine timing of public access installation in relation to the construction of the proposal; and~~

~~(iv) determine ongoing availability to the public or community for which it is designed.~~

~~(d)~~(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 home owner's association, unless otherwise accepted by a public or non-profit agency through a formal agreement recorded with the Auditor.