



Planning & Development Services

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Memorandum

To: Board of County Commissioners
From: Betsy Stevenson, AICP, Senior Planner, Team Supervisor and Project Manager
Re: Shoreline Master Program Update
Date: September 1, 2016

Summary

The County's long process to adopt an update to our Shoreline Master Program has now reached the Board of County Commissioners. The Department has completed a draft, accepted public comment, received a Planning Commission recommendation, and will be formulating its own recommendation to the Board. The Department will appear before the Board on Tuesday, September 6 to familiarize the Board with the document and the process so far, before scheduling a later time to ask the Board for formal direction on how to proceed.

Update Process

The Shoreline Management Act (SMA) was approved by the Legislature in 1971 and overwhelmingly approved by public initiative in 1972, creating a unique partnership between local governments and the Department of Ecology as co-regulators of Washington's shorelines. More than 260 Washington towns, cities, and counties have marine, lake, and stream shorelines that fall under SMA jurisdiction.

In 2003, Ecology adopted new guidelines for updating SMPs and the State Legislature set up a timetable for all 262 local governments to update their shoreline programs. The new shoreline guidelines outline the elements that new SMPs must include to:

- Address current shoreline conditions.
- Apply new scientific information about managing and protecting our shorelines.
- Accommodate future development while protecting the ecological functions of our shorelines.
- Align better with current environmental and land-use laws such as salmon recovery and watershed management plans, state Growth Management Act and critical areas ordinances, port development plans, public access locations, etc.

Skagit County began work on the SMP in 2010, preparing and executing a contract with Ecology and hiring a consultant to assist with the work. In the spring of 2011, the Board of County Commissioners issued an invitation for applicants to serve on the Shoreline Advisory Committee (SAC). Several letters of interest were received and the Board appointed 17 people to the SAC which was tasked with reviewing and providing input on technical documents created to support development of the SMP as well as on draft SMP policies and regulations. SAC meetings were held

regularly in 2011 and 2012 with some additional work in 2013. SAC members attended public visioning meetings, open houses and several Planning Commission meetings. A joint meeting between the SAC and the Planning Commission was held on May 22, 2012.

The Planning Commission review process began with a first round rough draft document at that meeting. They were involved in the review and rewrite process, which was something different than the usual legislative project review process. After several work sessions, rewrites and edits, we developed a plan that we believe meets our reading of the state guidelines and also provides some language reflective of unique circumstances in Skagit County.

Comments were solicited and received both during an early public comment opportunity on the initial rough draft presented to the Planning Commission and during the formal public comment and public hearing process. The 263 pages of comments are available at www.skagitcounty.net/smp.

The Planning Commission completed its work on the Shoreline Master Program Update on August 17 by issuing a recommendation in the form of a recorded motion, which is included in this packet and at www.skagitcounty.net/smp.

Highlights of the SMP

Critical Areas integration. The state guidelines provide various options for implementing critical areas ordinances (CAO) within shoreline jurisdiction. We have been working with our Ecology regional planner throughout the process and received comments and made edits based on those comments.

Buffer reductions and variance procedures. Based on our current regulations, all shoreline areas are, by definition, a critical area (fish and wildlife habitat conservation area) and are subject to the regulations of both the CAO and the SMP. Quite often landowners are faced with buffer and setback standards that require variances from both critical area buffer requirements and SMP shoreline setback requirements. The updated SMP contains language that will include CAO variance procedures, which allows for varying buffer reductions:

- Less than 25% buffer reduction with mitigation approved by staff
- 25-50% buffer reduction with administrative variance
- >50% buffer reduction with Hearing Examiner variance

If approved by Ecology, this adds a new suite of opportunities for landowners to address shoreline buffer requirements. Under current county and state requirements, any reduction in the shoreline setback requires a Hearing Examiner variance and approval by Ecology. We have received an indication from our Ecology regional planner that a 25% buffer reduction would be acceptable, but anything beyond that would require approval by Ecology. We are still discussing this, but the state seems amenable to the administrative variance process at the local level, but Ecology would still need to approve the 25-50% buffer reduction requests, along with the Hearing Examiner variance requests.

Dock standards. We received comments from Lake Cavanaugh residents on the dock standards in the original proposal released for public comment. We have proposed replacing those standards in

our SMP with a reference to the Department of Fish and Wildlife's rules for freshwater and saltwater docks.

Public access. We received several comments with various viewpoints regarding public access. We spent a considerable amount of time with the Planning Commission coming up with policies and regulations that meet the state laws and guidelines, but provide flexibility for development applicants.

Two legal standards also have to be met – nexus and proportionality. When requiring public access as part of a project approval, we have the burden of showing that there is a *nexus* between the impacts of the proposed project on public access and an increased demand for public access that is created by the project. Consideration also has to be given to the scale of the proposed project and the scale of the identified impacts to public access from the project. A requirement for public access needs to be *proportional* to the demand for public access created by the proposal.

Next Steps

The Department will schedule further time to meet with the Board to receive additional direction regarding preliminary adoption of the Shoreline Master Program Update proposal. We will then need to take some time to make the edits the Board authorizes (e.g., to implement the changes in the Planning Commission's recorded motion), and various cleanup edits. Then, the Board can adopt a resolution outlining the adoption process and attaching the SMP document the County intends to adopt, provided it is approved by Ecology.

Ecology will then determine if the submittal is complete. Once complete, Ecology will provide notice of a comment period. At their discretion a public hearing could be held. We would provide response to the comments received, as requested by Ecology. Ecology will then issue a letter (usually a conditional approval letter), that will outline required and recommended changes to the SMP submittal packet.

Skagit County will consider the changes and the options moving forward and:

- Agree to the proposed Ecology changes by written notice; or
- Submit an alternate proposal to Ecology for consideration.

Sometime before final adoption, the County will need to open another comment period to receive comments on the aspects of the plan that will have changed between the February draft release and the proposed adoption.

The Department is prepared to provide information and answer questions to facilitate the local adoption of the SMP. Once we have a completed document, we will complete the remainder of the submittal package that must accompany it to Ecology. The final remaining component will be adoption of a Channel Migration Zone map, which is a required component of our shoreline inventory.¹ Unlike other parts of our shoreline inventory, the CMZ map will have a regulatory effect because of our flood regulations. We expect to take on that task later this year.

¹ WAC 173-26-201(3)(c)(vii).

List of Shoreline Public Meetings

Date	Body	Purpose
September 8, 2011	Shoreline Advisory Committee	Meeting
October 13, 2011	Shoreline Advisory Committee	Meeting
November 10, 2011	Shoreline Advisory Committee	Meeting
December 8, 2011	Shoreline Advisory Committee	Meeting
January 12, 2012	Shoreline Advisory Committee	Meeting
February 9, 2012	Shoreline Advisory Committee	Meeting
March 8, 2012	Shoreline Advisory Committee	Meeting
April 12, 2012	Shoreline Advisory Committee	Meeting
April 24, 2012	Shoreline Advisory Committee	Meeting
May 8, 2012	Shoreline Advisory Committee	Meeting
June 14, 2012	Shoreline Advisory Committee	Meeting
March 1, 2011	Planning Commission	Meeting
December 6, 2011	Planning Commission	Meeting
February 7, 2012	Planning Commission	Meeting
March 6, 2012	Planning Commission	Meeting
May 22, 2012	Planning Commission	Meeting
June 5, 2012	Planning Commission	Meeting
June 19, 2012	Planning Commission	Meeting
July 10, 2012	Planning Commission	Meeting
July 24, 2012	Planning Commission	Meeting
September 11, 2012	Planning Commission	Meeting
November 13, 2012	Planning Commission	Meeting
December 4, 2012	Planning Commission	Meeting
March 5, 2013	Planning Commission	Meeting
May 7, 2013	Planning Commission	Meeting
July 2, 2013	Planning Commission	Meeting
January 7, 2014	Planning Commission	Meeting
February 4, 2014	Planning Commission	Meeting

Date	Body	Purpose
March 4, 2014	Planning Commission	Meeting
Date	Body	Purpose
March 18, 2014	Planning Commission	Meeting
April 1, 2014	Planning Commission	Meeting
April 15, 2014	Planning Commission	Meeting
May 6, 2014	Planning Commission	Meeting
May 20, 2014	Planning Commission	Meeting
June 3, 2014	Planning Commission	Meeting
July 1, 2014	Planning Commission	Meeting
March 3, 2015	Planning Commission	Meeting
May 5, 2015	Planning Commission	Meeting
May 12, 2015	Planning Commission	Meeting
June 2, 2015	Planning Commission	Meeting
January 19, 2016	Planning Commission	Meeting
February 2, 2016	Planning Commission	Meeting
March 1, 2016	Planning Commission	Event
March 15, 2016	Planning Commission	Public Hearing
April 19, 2016	Planning Commission	Meeting
April 26, 2016	Planning Commission	Meeting
June 7, 2016	Planning Commission	Meeting
July 19, 2016	Planning Commission	Meeting
August 17, 2016	Planning Commission	Meeting
December 14, 2011	Ag Advisory Board	Meeting
April 11, 2012	Ag Advisory Board	Meeting
June 13, 2012	Ag Advisory Board	Meeting
March 13, 2013	Ag Advisory Board	Meeting
January 8, 2014	Ag Advisory Board	Meeting
April 9, 2014	Ag Advisory Board	Meeting
August 20, 2014	Ag Advisory Board	Meeting

Date	Body	Purpose
December 10, 2014	Ag Advisory Board	Meeting
June 10, 2015	Ag Advisory Board	Meeting
January 13, 2016	Ag Advisory Board	Meeting
February 10, 2016	Ag Advisory Board	Meeting
September 14, 2016	Ag Advisory Board	Meeting
September 14, 2010	BOCC	Meeting
March 15, 2011	BOCC	Meeting
June 21, 2011	BOCC	Meeting
September 27, 2011	BOCC	Meeting
May 20, 2013	BOCC	Meeting
December 10, 2013	BOCC	Meeting
February 11, 2014	BOCC	Meeting
February 9, 2016	BOCC	Meeting
August 2, 2016	BOCC	Meeting
May 2011	Public	Mailer
June 7, 2011	Public	Event
June 8, 2011	Public	Event
June 15, 2011	Public	Event
July 13, 2011	Public	Event
Summer 2013	Public	Event

Skagit County Planning Commission’s Recorded Motion Regarding Shoreline Master Program Update

Proposal publish date:	February 4, 2016
Proposal name:	Shoreline Master Program Update
Documents available at:	www.skagitcounty.net/smp
Public hearing body:	Skagit County Planning Commission
Public hearing date:	Tuesday, March 15, 2016, at 6 p.m.
Written comment deadline:	Monday, April 4, 2016, at 4:30 p.m.
PC deliberations:	April 19, April 26, June 7, July 19, and Wednesday, August 17, 2016

After considering the written and spoken comments and considering the record before it, the Planning Commission enters the following findings of fact, reasons for action, and recommendations to the Board of County Commissioners.

Findings of Fact and Reasons for Action

1. The State of Washington requires the Shoreline Master Program, originally adopted in 1976, be updated consistent with current law.
2. The Shoreline Master Program should value environmental protection, aesthetics, recreational enjoyment of the shoreline, and private property rights.
3. Aquaculture and other natural resource industries are important parts of Skagit County’s economy and culture.
4. In the early 1990s, Skagit County’s rivers were identified as prime habitat sites due to Skagit County’s agriculture and rural nature. Local stewardship of natural resources was respected and viewed positively. Property owners know best the nuances of their properties and the effects that neighboring projects can have on them. Pre-application neighborhood meetings (for habitat enhancement projects) reflect the value Skagit County places on local stewardship, knowledge, and experience.
5. Skagit County encompasses a diverse environmental ecosystem. Rivers and streams originate at the crest of the North Cascades from north of the Canadian border, to south of Glacier Peak in Snohomish County. These vibrant river and stream systems cascade through Skagit County and into the marine habitats in the west. The Planning Commission recognizes that the Skagit County landscape is not static.

6. While the process of erosion is a concern in shoreline areas, it should also be recognized that accretion (especially of sediment flowing down the Skagit River) is also a natural process that creates new shoreline areas.
7. Staff has indicated that notices will be sent to (a) owners of property that would receive new shoreline environment designations as a result of this recorded motion (recommendation #1) before final adoption of the SMP Update, and (b) owners of property not already designated natural that would be designated natural in this SMP Update.

Recommendation

The Planning Commission recommends that the Board of County Commissioners **approve** the proposal with the following changes:

1. Change the Shoreline Environment Designation map as requested in Nancy Fox's March 15 comment letter, and shown on the attached map, with the exception of the ferry dock area:
 - a. Guemes map issue 1, from Rural Conservancy to Shoreline Residential.
 - b. Guemes map issue 4, from Rural Conservancy to Natural.
 - c. Guemes map issue 6, from Shoreline Residential to Rural Conservancy.
 - d. Guemes map issue 8, from Shoreline Residential to Rural Conservancy.
 - e. Guemes map issue 9, from Rural Conservancy to Natural.
2. Delete SCC 14.26.370(4) regarding the Shoreline Public Access Plan.
3. Require legal markers at public access points to assist the sheriff and first responders.
4. Delete empty proposed SCC 14.26.520-540, and section .560.
5. Move the content of proposed SCC 14.26.550, Additional Provisions for Fish and Wildlife Habitat Conservation Areas, into SCC Chapter 14.24, Critical Areas.
6. Update the table in existing SCC 14.24.530(2), Lake and Marine Shoreline Buffers, to reflect the new shoreline environment designations.
7. Fix the reference to mitigation sequencing in SCC 14.26.415(4)(c) and (d).
8. Revise proposed SCC 14.26.415(2)(b)(ii) to read: "Ongoing maintenance, harvest, replanting, changing culture techniques or species does not require shoreline review unless cultivating a new species in the waterbody or using a new culture technique, and that new species or culture technique has significant adverse environmental impacts (if not allowed by an existing shoreline permit)."
9. Revise proposed SCC 14.26.415(2)(b)(iii) to require "shoreline review," not necessarily a "shoreline permit."

10. Revise proposed SCC 14.26.415(3) to read, "A letter of exemption is required for aquaculture activities that require shoreline review and do not constitute substantial development or otherwise require a Conditional Use Permit or Variance.
11. Revise SCC 14.26.415(4)(h) to allow control of invasive species.
12. Revise SCC 14.26.415(8)(d)(vi) to delete "and avoid conflicts with neighboring uses."
13. Add a note to proposed SCC 14.26.440, Fill, Excavation, and Grading, to explicitly exempt aquaculture from that section.
14. Add a definition of "flood hazard reduction" to Part VIII, Definitions, and make it clear that it includes dikes and levees. Add notes to "shoreline stabilization" sections in Part IV and VI to clarify that these sections do not apply to flood hazard reduction measures.
15. Reverse the order of (1)(d) and (1)(e) in SCC 14.26.140.
16. In SCC 14.26.620(3)(b), replace (iii) and (iv) with new (iii) to read: "the enlargement does not cause the existing structure to exceed the height limit, or in the case of an existing over-height structure, the enlargement does not increase the structure's existing height."
17. Correct citations to the mitigation sequencing in SCC 14.26.310.
18. Revise SCC 14.26.380(3)(d)(v)(A) to replace "historically found on the site" with "appropriate to the site."
19. Add Shoreline Exemptions to the list of applications exempt from Notice of Development Application in SCC 14.06.150(2).
20. Add shoreline variances to the list of permits subject to time limits in SCC 14.26.715(3).
21. In SMP Part II, add 10% impervious surface limit to Rural Conservancy and Urban Conservancy for new lots created after the adoption of the SMP.
22. Integrate Ecology's edits as expressed in their April 4, 2016, comment letter with the edits noted in Supplemental Staff Reports #3 and #4, except FB-36.
23. Modify SCC 14.26.480(2)(a) and (2)(c)(i) to replace "an existing structure" with "existing primary structure(s)."
24. In proposed SCC 14.26.420(4)(b), regarding development standards for docks, replace Table 14.26.420-1 (and related dimensional standards in the narrative) with a requirement for all saltwater docks to comply with WAC 220-660-380 or the conditions of Hydraulic Project Approval, and all freshwater docks to comply with WAC 220-660-140 or the conditions of Hydraulic Project Approval. Move the numeric limits on the number of boat lifts and canopies into the development standards section.

25. Modify proposed SCC 14.26.420(5)(c)(iii) allowing planting of riparian vegetation as mitigation for overwater structures only when in-kind mitigation options are proven infeasible.
26. Add definitions of “dock” (already defined in Boating Facilities but not in Part VIII) and “pier,” “ramp,” and “float” from WAC 220-660-140(1) to Part VIII and the applicability subsection in Boating Facilities and move Figure 14.26.420-1 illustrating dock components, into the applicability subsection. Add cross-references to Part VIII, Definitions, for the definitions contained in SCC 14.26.420.
27. Extend the Rural Conservancy-Skagit Floodway designation on the map to cover all Rural Conservancy upstream on the Sauk River and on the upper Skagit River, to the limit of the FEMA floodway, and make the designation criteria (policy 6B-5.1) consistent.
28. Add definitions in Part VIII for each of the Shoreline Environment Designations that include cross-references to SMP Part II, Shoreline Environment Designations.
29. Revise proposed SCC 14.26.420(4)(b)(iv) regarding community docks to allow a 1:1 ratio of boats to residential units.
30. In proposed SCC 14.26.475 Shoreline Habitat and Natural Systems Enhancement Projects, add a requirement to hold a pre-application neighborhood meeting, with details about timing and notifications (in SCC Chapter 14.06), and a requirement that projects may not have negative effects on neighboring properties.

This recorded motion approved August 17, 2016:

Commission Vote	Support	Oppose	Absent	Abstain
Josh Axthelm, Chair	✓			
Annie Lohman, Vice Chair	✓			
Tammy Candler	✓			
Hollie Del Vecchio			✓	
Amy Hughes	✓			
Kathi Jett	✓			
Kathy Mitchell	✓			
Tim Raschko	✓			
Martha Rose	✓			
<hr/> Total	8	0	1	0

SKAGIT COUNTY PLANNING COMMISSION
SKAGIT COUNTY, WASHINGTON



Josh Axthelm, Chair

8/17/16
Date



Dale Pernula, Secretary

8/17/16
Date

