



Planning & Development Services

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Supplemental Staff Report #5

To: Planning Commission
From: Betsy Stevenson, AICP, Senior Planner, Team Supervisor, Project Manager
Re: Shoreline Master Program Update – Comprehensive Plan Policies, Development Regulations and Shoreline Environment Designation Maps
Date: August 9, 2016

This memo prepares for the Planning Commission deliberations on the SMP on Wednesday, August 17, 2016, and addresses public comments received during the written comment period between February 4 and April 4, 2016, and testimony received at the public hearing on March 15, 2016. We anticipate that the Planning Commission's August 17 meeting will be the last on the SMP Update.

The Recorded Motion

Now that the comment period has concluded, the Planning Commission is charged with generating a recommendation on the proposal, i.e.:

- The proposed Comprehensive Plan policies
- The proposed development regulations (shoreline development regulations SCC 14.26 and supplemental changes to SCC 14.04, 14.06, 14.24)
- The proposed Shoreline Environment Designation maps

The Planning Commission's recommendation takes the form of a Recorded Motion, including findings of fact, reasons for action, and recommendations. The Planning Commission adopted a structured deliberation protocol for the SMP Update that included a linear review of identified issues with the draft SMP.¹ The only remaining issues are related to Lake Cavanaugh and dock standards, and a few other cleanup items.

¹ See previous memos for the complete issue list at www.skagitcounty.net/smp.

Responses to Comments, Part 5

Public comments are in bold marked with **P-#** and followed by the Department response. Where the Department agrees with a particular change, we have marked proposed language for the Planning Commission recommendation with “RC-#” in the margin.

Dock Standards

The draft Shoreline Master Program includes a section in Part IV, Uses, on “Boating Facilities and Related Structures and Uses” (SCC 14.26.420 starting on page 94.) Several Lake Cavanaugh property owners wrote comments about these dock standards, especially as applied to Lake Cavanaugh. See, especially, [letters from Jeff Eustis](#), representing the Lake Cavanaugh Improvement Association (“LCIA”), which PDS staff has met with several times over the course of the SMP Update process. LCIA commenters notably suggested:

- The proposed standards for docks are unclear.
- The maximum dimensions for floats also are unclear.
- The proposed widths for piers and ramps are inadequate.

WDFW comments also suggested edits for dock standards found in proposed SCC Table 14.26.420-1 regarding length of docks and the landward edge of docks.

Residential docks qualify for a shoreline permit exemption (WAC 173-27-040(2)(h)). While the County would not issue permits for such docks, the construction would be required to be consistent with the SMP regulations. Additionally, the Washington Department of Fish and Wildlife requires Hydraulic Permit Approval (HPA) for construction or repair of piers and docks and boat launches, pile driving, and other activities that “will use, divert, obstruct, or change the natural flow or bed of state waters” (Chapter 77.55 RCW). Projects may be approved with conditions to prevent damage to fish habitat.

Especially because of the permit exemption, staff recommends that we simply require docks to comply with the WAC requirements, or other conditions that may be required by the HPA. Because those docks would have to comply with their HPA requirements anyway, we believe this approach simplifies the permitting and regulatory requirements while still accomplishing the purpose of protecting ecological functions. The SMP Handbook notes that some Puget Sound jurisdictions have adopted similar provisions in their SMPs that utilize the [US Army Corp of Engineers Regional General Permits](#) as their baseline. (No current RGPs for over water structures are applicable to Skagit County.)

Staff has compared proposed Table 14.26.420-1 to [WAC 220-660-380](#) (for saltwater docks) and [WAC 220-660-140](#) (for freshwater docks), which are administered by the Department of Fish and Wildlife and used to issue HPAs. The WACs cover all of the issues addressed in the table, with the exception of limits on the number of boat lifts and canopies, and the maximum lengths for freshwater docks (maximums for saltwater docks *are* addressed). Ecology’s SMP Guidelines ([WAC 173-26-241](#)) do not explicitly require us to set maximum lengths for docks, although the [SMP Handbook](#) recommends it.

RC-1. In proposed SCC 14.26.420(4)(b), regarding development standards for docks, replace Table 14.26.420-1 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.

SRSC commented that overwater lights should be hooded or screened to avoid the dock from becoming an unnatural feeding station, with a disproportionate effect on protected species. Docks are already prone to harbor predatory fish, and become feeding stations at night when lights attract plankton, plankton attract small fish (e.g. juvenile salmon and forage fish) and small fish attract larger predatory fish. Staff agrees. This concern is addressed in WAC 220-660-140(3)(d).

SRSC also objects to planting of riparian vegetation as mitigation for docks, as allowed by proposed SCC 14.26.420(5)(c)(iii). Staff agrees that kind of mitigation would not be like-kind mitigation for overwater structures.

RC-2. Modify proposed SCC 14.26.420(5)(c)(iii) allowing planting of riparian vegetation as mitigation for overwater structures only when all other mitigation options are proven infeasible.

Staff also noted in this review that the Part IV docks section does not include some important definitions of dock components. We therefore recommend:

RC-3. 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.

Lake Cavanaugh Buffers

P-1 A large number of lake lots do not have sufficient distance between the shore road and the water to accommodate 100-foot buffers.

P-2 Where adjacent or near adjacent lots (within 300 feet) have been developed, the building setback for an undeveloped lot should be the average of adjacent lots.

Many of the shoreline lots around Lake Cavanaugh are substantially deeper than 100 feet; while they may still have difficulty accommodating the 100-foot buffer and a septic drainfield, staff opposes the commenters’ proposed remedy for several reasons:

- A reduction to 50 feet would weaken the existing standards that have been in place for over seven years through the adopted critical areas code—Fish and Wildlife Habitat Conservation Areas buffers are already 100 feet for most lake shorelines and the proposed SMP Update does not increase the buffer width for the lots in question that are proposed to be designated Shoreline Residential. Instead, the SMP Update incorporates this existing CAO standard.

- The established shoreline buffer widths are not arbitrary, but were established using Best Available Science to protect ecological functions. The SMP Update is required to protect ecosystem functions, and buffers are essential for that purpose.
- While the shoreline buffer is 100 feet, there is nevertheless opportunity to reduce this buffer through administrative review processes. Currently, a landowner must often seek both a shoreline and critical areas variance to reduce the shoreline buffer. Once the SMP Update is adopted, the applicant will only have to go through one unified process.
- Notably, where an existing residential structure is to be rebuilt, remodeled, or reconstructed, we have language in SCC 14.26.620(3)(b), Pre-Existing Single Family Residences and Appurtenant Structures, that allows minor enlargement without a shoreline variance if specific criteria are all met.
- Finally, this issue is not specific to Lake Cavanaugh.

P-3 Buffers on non-anadromous-fish-bearing lakes should be reduced administratively without using a variance process.

The code amendment the commenter proposes would be a variance by another name. Staff have worked hard to establish the administrative variance process currently proposed, which is consistent with our existing critical areas ordinance and allows for administrative buffer reductions up to 50% (with Ecology approval required after the first 25% reduction). Further reductions beyond 50% are also possible, but require Hearing Examiner review. We believe this is the most we can do to address the concern.

Follow Up Issues

Eastward extent of Rural Conservancy—Skagit Floodway

One public comment recommended that the Rural Conservancy-Skagit Floodway environment designation should cover all the mapped floodway that is designed Rural Conservancy, and not artificially stop at the confluence of the Skagit and Sauk. See P-5 in [Supplemental Staff Report #4](#). Staff generally agrees with that recommendation, but we noted at the last PC meeting that the designation criteria policy for the RC-SF designation notes that RC-SF should only appear west of the confluence of the Skagit Sauk.

We have since further investigated the provenance of the eastward limit of the RC-SF designation by consulting with the consultant that prepared the environment designation map. We believe that the RC-SF designation ended at the confluence only because one of the maps that we used to generate the RC designation ended there. We found no reason for the RC-SF designation to stop at the confluence of the Skagit and Sauk, and recommend that we correct this deficiency.

RC-4. Extend the Rural Conservancy-Skagit Floodway designation 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.

Utilities in River Below Scour Depth

Based on questions at the last meeting, we attempted to determine whether regulations other than the SMP already require utilities to be located below river scour depth. We were not successful at coming to a conclusion on that question.

Definitions of Environment Designations

Based on feedback from one Planning Commissioner, we recommend adding some additional explanation of the basis for environment designations so that anywhere the environment designations appear in the electronic version of the code (e.g., in the Dimensional Standards Table 14.26.310-1, the defined terms are linked to definitions (while not repeating language that exists elsewhere in the code and policies).

RC-5. Add definitions for each of the Shoreline Environment Designations that reference SMP Part II, Shoreline Environment Designations.

Prohibition on Off-Premises Advertising

Proposed SCC 14.26.360(2)(c) prohibits “off-premises advertising.” One Planning Commissioner has suggested that ads in the paper, radio, flyers, etc. are all off-premises advertising, and may be captured by this prohibition. However, none of those activities are capable of being regulated by the SMP because they are not land uses nor activities that occur within shoreline jurisdiction. Staff do not believe a change to the text is warranted.

Ratio of Dock Slips to Dwelling Units

As previously promised, staff has gone back and reviewed notes from the last two meetings before the draft proposed SMP was released, and the video from the last meeting, to ensure that we reviewed and incorporated the latest Planning Commission feedback before proposal release. It appears that it was just some of the feedback from the last meeting (February 2, 2016) that we missed incorporation into the proposal (February 4, 2016), although we did accomplish much of it (e.g., requirements for spill kits in marinas and allowing ATVs on “approved off-road areas.”). We believe this addresses all of the feedback, but we are willing to be corrected if Planning Commissioners identify other missed items.

RC-6. Revise proposed SCC 14.26.420(4)(b)(iv) regarding community docks to allow a 1:1 ratio of boats to residential units.