



Planning & Development Services

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Supplemental Staff Report #3

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: June 5, 2016

This memo prepares for the Planning Commission deliberations on the SMP on June 7, 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.

The Proposal

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.

Deliberations Process

The Planning Commission adopted a structured deliberation protocol for the SMP Update at its April 19 meeting. The Commission adopted a list of issues to discuss, in the following order:

April 19 meeting (now complete):

- Guemes Island (setbacks, prohibitions on docks and aquaculture)
- Tree clearing
- Sea level rise
- Public access
- SMP Update process
- Public notification for the SMP Update + process

April 26 meeting (now complete):

- No net loss of ecological functions (baseline)
- Buffers

- Shoreline code v critical areas code
- Dikes (maintenance/reconstruction, OHWM/jurisdiction)
- Maps
- Aquaculture (Taylor Shellfish changes)
- Concept plans
- Shoreline Environment Designation Map changes (other than Guemes)

SMP deliberations were interrupted by the Comprehensive Plan Update deliberations (May 3, 10, 17, 24, and 31) in order to keep that project on schedule for adoption by the statutory deadline. **That interruption and staff changes and medical absences have necessitated some further changes to the SMP deliberations schedule:**

June 7 meeting:

- Monitoring of enhancement projects (addressed in this memo)
- Structure size for redevelopment vs lot size (PC topic; addressed in this memo)
- Regulatory flexibility (PC topic; addressed in this memo)
- Ecology Comments (addressed in this memo)

June 15 meeting (to be addressed in the next memo):

- Lake Cavanaugh (other lake/river communities)
- Docks (dimensional standards)
- Comments on other specific code sections

At each meeting, the Planning Commission will:

Take each concept one at a time. The chair should require discussion to follow the outline and, on his or her own, rule out of order any member who strays from the topic on the floor. If the chair does not interrupt a member who strays from the topic, any planning commissioner can call for a point of order.

Focus on the content of the recorded motion. The PC's objective is to generate a Recorded Motion that captures their recommendation and reasons for it. Staff has prepared a draft Recorded Motion to work from. As the discussion proceeds and coalesces into specific points, PC members should make motions using the following process:

- Articulate, in general terms, and as many words as you need, what finding/reason or recommendation you want included in the Recorded Motion.
- Staff will type that into a concise statement in Track Changes on the screen.
- Say, "I move that we add the [statement on the screen] to the Recorded Motion."
- If the motion is seconded, discuss *only* the motion, and then take a voice vote.
- Move to the next recommendation or finding.

Responses to Comments, Part 3

Public comments are in bold marked with ☛ 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.

Monitoring of enhancement projects

The County received substantive comments on this topic from Tim Hyatt (Skagit River Systems Cooperative) and Wendy Cole (Washington Department of Fish and Wildlife).

P-1 Extended monitoring of habitat enhancement and restoration projects should not be required because it isn’t covered under many grant funded projects.

Proposed SCC 14.26.790, Monitoring, provides important information on all types of development within shoreline areas. This includes projects that may have beneficial long term effects, but may have short term adverse impacts. Many fish-related restoration projects are eligible for an exemption under RCW 90.58.030(3)(e) and WAC 173-27-040 (2)(p) from local permitting; those that do not are typically larger projects and require shoreline review and in most cases a shoreline permit.

The monitoring requirement will assist Skagit County in tracking the restoration projects as part of our no net loss reporting, which the County is responsible for preparing to help evaluate the adequacy of our SMP. If these projects are not working as proposed, the result could be a decrease or worsening of ecological functioning.

The Department understands the commenter’s concerns, but once the rule requiring monitoring is established, grantors will either concede and pay for monitoring, or agencies and organizations will build the cost of monitoring into their pro formas. The Department recommends this language remain unchanged.

Structure size for redevelopment vs lot size

Staff spoke individually with the Planning Commissioner who raised this issue; the concern was that landowners who have existing shoreline residential structures are constrained to use only the existing footprint if they choose to rebuild.

The proposed SMP does include some opportunity to do limited expansion of an existing residence within a shoreline buffer without any additional process—i.e., a shoreline exemption would be available provided the expansion or enlargement does not increase the extent of the nonconformity. (See SMP Part VI, Legally Established Pre-existing Uses and Structures.) However, if a landowner wants to expand or rebuild an existing residence within the shoreline buffer beyond what is allowed in Part VI, they will need to go through either an administrative or shoreline variance process, as described in Part VII.

Regulatory Flexibility

P-2 The SMP Update should not adopt a one-size-fits-all approach and should provide flexibility depending on the special circumstances of any given area.

The SMP as proposed includes both standards for development and options for departures from those standards where local or existing conditions warrant, and address different types of shorelines in different ways. Here are ways that the SMP is tailored to achieve its objectives:

SMP regulations vary based on **shoreline environment designations**, analogous to a zoning overlay, which are applied based on the natural and built environment of specific lengths of shorelines.

Shoreline buffers are based on best available science and precisely correspond to our existing, adopted buffers in our Critical Areas Ordinance. But buffers are not “no-touch”—in fact, they allow for some uses within the buffer. See existing SCC 14.24.070 and 14.24.540(5). Buffer averaging is also provided for, allowing limited reductions in buffer width in specified locations, while requiring increases in others. See existing SCC 14.24.540.

Different types of **shorelines uses** are regulated differently, based on their typical impacts. Uses that are within a categorical exemption or fall below the monetary threshold for a “substantial development” do not require a permit.

Existing agriculture enjoys a broad exemption in proposed SCC 14.26.410.

Existing aquaculture enjoys significant exemptions in proposed SCC 14.26.415.

Proposed SMP Part VI, **Legally Established Pre-Existing Uses and Structures**, includes a special set of standards for maintenance, repair, and replacement of uses and structures that were created legally but do not meet today’s standards. Especially significant is the treatment of single-family residences and their appurtenant structures, which even allows expansion under certain circumstances. Pre-existing docks and shoreline stabilization structures also are regulated separately.

The proposed SMP also includes **Guemes-specific** conditions to implement the County’s adopted Guemes Island Subarea Plan. Finally, the Department is working with **Lake Cavanaugh** property owners to explore specific changes to standards regarding that area.

Ecology Comments

We generally agree with each of the changes Bob Fritzen has recommended in his April 4, 2016 comment letter (beginning on page 103 of the public comments). We disagree with the following edits:

- 14.26.130: We recommend retaining the cross-reference note about agricultural activities being exempt
- 14.26.310: We believe this proposed change would have the opposite desired effect.
- 14.26.320(4): We oppose insertion of reference to “mixed-use regulations,” which we don’t clearly have.
- 14.26.370(4)(a): The Department and Planning Commission have already recommended a different approach to fixing this provision.
- 14.26.410: We believe this section is constructed appropriately and consistent with the statute, and oppose Ecology’s proposed changes to the characterization of existing agricultural activities as SMP-exempt and subject to the Ag-CAO.
- 14.26.445(3)(b): The proposed SMP allows only the level of selective timber harvest on shorelines of statewide significance that is allowed by statute. We do not agree that we need to add a CUP for greater harvest.
- 14.26.620(3)(b): We do not agree that expansion for height of a pre-existing legal structure increases the non-conformity, nor requires a CUP.
- 14.26.650(4)(d): We believe the other constraints on replacement (e.g., within 12 months) are more sensible than the 75% value limitation Ecology proposes.
- 14.26.735(2)(a): We would like to retain our proposed up-to-50% administrative variance for buffer widths, which is consistent with our existing GMA-compliant critical areas code and appears to be working well.

RC-2. Integrate Ecology’s edits as expressed in their April 4, 2016, comment letter with the exceptions noted in Supplemental Staff Report #3.

The PC should note that 14.26.620(3)(b) includes two alternative provisions regarding allowed expansion or pre-existing legal structures with respect to height that the Planning Commission needs to choose between. It does not make sense to retain both. The PC should add the following to its recorded motion, and fill in (iii) or (iv) in the appropriate blanks.

RC-3. In 14.26.620(3)(b), accept proposed alternative provision ___ and reject alternative provision ___.