



Planning & Development Services

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Supplemental Staff Report #4

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: July 14, 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 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 resulted in further changes to schedule.

June 7 meeting (now complete):

- Monitoring of enhancement projects
- Structure size for redevelopment vs lot size
- Regulatory flexibility
- Ecology Comments

July 19 meeting (addressed in this memo):

- Comments on other specific code/policy sections
- Further review of Ecology comments

July 26 meeting (future memo):

- Lake Cavanaugh (other lake/river communities)
- Docks (dimensional standards)

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 4

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.

WDFW (Wendy Cole)

P-1 Before dredging is allowed, the cause of the need for dredging should be addressed.

Dredging can often be very harmful to both aquatic habitat and organisms. We attempt to avoid the need for repetitive maintenance dredging through proposed SCC 14.26.435(2)(b), which reads:

New development must be sited and designed to avoid or, if that is not possible, to minimize the need for new and maintenance dredging.

The Department believes this is the most effective and direct response to the problem of maintenance dredging.

P-2 Insert agency names and phone numbers into the policies regarding notification of fish kills and water quality problems.

The Department does not feel that this level of detail is appropriate in the shoreline policies.

P-3 The plan should include reference to the Washington Hydraulic Code or requirement for an HPA (Hydraulic Project Approval) anywhere one would be required.

The Department thinks this is too much detail to be included with specificity in the policies or code. We do include proposed SCC 14.26.330, General Provisions Applicable Waterward of the OHWM:

(3) Required permits. Projects involving in-water work must obtain all applicable local, state, and federal permits or approvals, e.g. those from the U.S. Army Corps of Engineers, Washington Department of Ecology, Washington Department of Fish and Wildlife, Washington Department of Natural Resources.

Staff does regularly mention to clients the other agencies that should be contacted and the other permits that may be required for their proposed activity or use.

Skagit Audubon Society (Irene Perry, Tim Manns)

P-4 Shoreline armoring should not be allowed to protect new structures (proposed SCC 14.26.480(2)(c)(ii)).

This proposed code section *only* allows shoreline armoring for new structures in a very limited set of circumstances, and is completely consistent with the cited WAC.

Skagit River Systems Cooperative (Tim Hyatt)

We previously addressed sea-level rise in Supplemental Staff Report #1, aquaculture in Supplemental Staff Report #2, and monitoring of enhancement projects in Supplemental Staff Report #3.

P-5 The Rural Conservancy-Skagit Floodway designation should cover all Rural Conservancy areas that are also floodway, as it is intended.

The RC-SF designation does not cover some of the RC areas that are floodway south or east of the confluence with the Sauk River. We agree that everywhere RC is in floodway, should be mapped RC-SF.

RC-2. Remap any Rural Conservancy designation that is in floodway to be RC-Skagit Floodway.

P-6 Mitigation planning requirements (formerly in SCC 14.26.310) is not sufficient to achieve the no-net-loss standard.

The mitigation planning section (SCC 14.26.310) was deleted from the draft three years ago because the critical areas code, in existing SCC 14.24.080(5), provides for mitigation and mitigation sequencing, and is applied by reference to all shoreline uses. All such mitigation provisions should be included in the critical areas code in SCC Chapter 14.24.

RC-3. Correct citations to the mitigation sequencing in SCC 14.26.310, which has changed location from a prior draft.

P-7 Replacement of trees, SCC 14.26.380(3)(d)(v), should require replacement of vegetation “naturally” found at the site instead of “historically” found at the site.

The Department believes “historically” provides more guidance and is less ambiguous than “naturally.”

P-8 In calculating tree loss, restoration, and mitigation, a multiplier should be applied to compensate for the time it takes for planted saplings to replace the functions of the large trees that are removed. A 1 : 1 replacement ratio, either by area or number of trees, does not compensate for the lost function while the planted trees mature.

The proposal requires, in the event you have to do a restoration plan for unauthorized cutting of vegetation, that the plan include “compensation for temporal loss of function through the proposed design.” Proposed SCC 14.26.380(3)(f)(ii)(B). Subsection (D) provides that “Removed trees must be replaced at a ratio of three to one.” Outside of the enforcement context, the ratio is also 3:1. Proposed SCC 14.26.380(3)(d)(iv).

P-9 “Significant tree” should be defined.

“Significant tree” is already defined in the draft in SCC 14.26.820, Definitions. The “S” terms are not in alphabetical order; we will correct this.

P-10 Dredging regulations should distinguish between four different types: (1) for navigation, (2) for sand and gravel extraction for use, (3) for small farm

ditches and tributaries to alleviate local flooding, and (4) to restore channels to natural conditions.

The Department believes the proposed regulations already distinguish between various dredging purposes. For example, proposed SCC 14.26.435(2), When Allowed, sets some different rules for when dredging for various purposes is allowed.

P-11 SCC 14.26.435(2)(e)(iv) should prohibit dredging in *all* fish, shellfish, and wildlife spawning, nesting, harvesting, and concentration areas, not just “officially designated” areas.

While the commenter notes that there are very few “officially designated” spawning areas, outright prohibiting dredging in *all* such areas would be an overbroad restriction, especially without having mapped or identified all those areas where it would be prohibited. These factors will be evaluated during the Hydraulic Project Approval process.

P-12 The SMP should require forest practice conversions to comply with all aspects of the Flood Damage Prevention code.

Until Skagit County assumes jurisdiction over forest practices (as required by state law), we cannot apply county code.

P-13 Mining should be prohibited on river shorelines, like it is for marine and lake shorelines.

There are existing sand and gravel extraction operations on river shorelines; the Department recommends they be allowed to continue, with appropriate standards, permitting, and mitigation.

P-14 Reclamation of floodplain mining sites (also a common source of sand and gravel) should include requirements that all floodplain pits be filled or leveled so that they do not become riverside or floodplain ponds.

The Department agrees; however a reclamation plan is approved by DNR and not itself subject to a shoreline permit.

P-15 Definition of “appurtenance” to a residential structure should specifically exclude beach stairs and tramways.

Our proposed definition of “appurtenance” is directly from the WAC. It does not specifically *include* beach stairs and tramways and we have never interpreted the term “appurtenance” to include beach stairs and tramways. The Department would not oppose adding this exclusion to the definition.

P-16 Restoration projects approved locally by the Skagit Watershed Council for funding by the state Salmon Recovery Funding Board (SRFB) also be granted an exemption from shoreline substantial development permits.

The approval process at the Skagit Watershed Council does not consider the same factors as a shoreline permitting process. The Department opposes expanding the exemption.

P-17 The definition of “soft shoreline stabilization” in SCC 14.26.480(1) should not include boulders.

The Department believes the use of occasional boulders should be allowed as part of a soft shoreline stabilization design.

RC-4. Specify that “soft shoreline stabilization” includes only “occasional” boulders.

P-18 Where underground utility lines (such as pipelines and electrical cables) cross river corridors, they should be completely buried well below the river scour depth.

The Department agrees.

RC-5. In SCC 14.26.490(4)(c), require underground utility lines be buried below the river scour depth.

P-19 Requiring shoreline exemptions to be a Level 1 application with a required published Notice of Development Application is welcome.

The Department intended to include a modification to SCC 14.06.150(2) to exempt shoreline exemptions from the requirement to publish a Notice of Development Application. That is consistent with what we do now.

RC-6. Add Shoreline Exemptions to the list of applications exempt from Notice of Development Application in SCC 14.06.150(2).

P-20 Shoreline variances should expire if the project is not built within an acceptable timeframe.

The Department agrees that is reasonable, that is standard practice today, and is required by the SMA.

RC-7. Add expiration of shoreline variances for commencement within two years, and completion within five years, consistent with RCW 90.58.143.

Futurewise (Tim Trohimovich)

P-21 Proposed SCC 14.26.305(1) and (2) regarding no-net-loss should apply to “activities” in addition to “uses and developments.”

The Department does not recommend this change. We do not have a mechanism to ensure activities that do not constitute development or uses conform to the no-net-loss standard.

P-22 Hard surface limits for the Rural Conservancy and Urban Conservancy shoreline environments should be limited to ten percent consistent with WAC 173-26-211(5)(b)(ii)(D).

Our proposed plan limits “hard surface” (which is very similar to impervious surface). The WAC conflates “lot coverage,” which under our definition is the area occupied by *buildings*, with all impervious surfaces. Our current adopted plan uses another term, “site coverage,” which is akin to impervious surface. For simplicity and integration with our stormwater regulations, for our new plan we proposed using Ecology’s new term “hard surface,” with

similar limits as in the current adopted SMP. The WAC allows for existing lots to exceed the ten percent limit; we propose limiting only new lots within these two environment designations to have to comply with the limit.

RC-8. 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.

P-23 Establish 300' lot widths for the [Rural] Conservancy and Natural shoreline environments to avoid cutting wildlife in the uplands off from the water and vice versa.

The Department agrees with this requirement for the Natural environment.

RC-9. In SMP Part II, for the Natural environment designation, add a requirement for lots to be either at least 300-ft wide or provide for wildlife passage through residential areas to upland and shorelines areas.

P-24 Add areas that are within 200 feet of a site rated as rated “survey recommended moderate risk,” “survey highly advised high risk,” and “survey highly advised very high risk” by the current version of the Washington State Department of Archaeology and Historic Preservation’s archaeological predictive model to the list of areas that require site inspection by an archaeologist

The Department agrees. Not performing site inspection in advance of project construction can lead to higher costs and significant problems later.

RC-10. Add to proposed SCC 14.26.340(3) and (5): areas that are within 200 feet of a site rated as rated “survey recommended moderate risk,” “survey highly advised high risk,” and “survey highly advised very high risk” by the current version of the Washington State Department of Archaeology and Historic Preservation’s archaeological predictive model.

P-25 Mines should be located outside the channel migration zone so that they do not increase the rate of channel migration.

The Department agrees. This also reduces risks associated with later reclamation.

RC-11. Require mines to locate outside the channel migration zone.

P-26 Mines should be no deeper than the bottom of the nearby streams and rivers so when the river moves into the mine, which is a certainty, the impacts will be reduced.

If the mine is already moved outside of the channel migration zone, this should not be an issue.

Ecology Follow-Up

The Planning Commission's review of Ecology's comments at the June 7 meeting generated a series of additional questions. Staff has followed up with Ecology; their responses are listed by comment number in their comments letter.

FB-14. Add "% area outside of buffer" to hard surface limits table

Ecology is OK with us not implementing this change.

FB-15. Insert note about special location rules for mixed uses

Ecology's comment here refers to mixed-use as a mix of water-dependent, water-related, and water-enjoyment uses in the same structure, not mixed-use as in mixed commercial/residential. We recommend implementing this change.

FB-25 Change in outline format

Ecology is OK with us not implementing this change.

FB-27 Delete new construction of ag facilities

Ecology is OK with our formulation if it makes clear that the new construction replaces existing facilities.

FB-34 Forest practices

Ecology is OK with us not implementing this specific change. Staff recommends not specifying that "all other forest practices are regulated by the Forest Practice Rules," but noting that cutting of trees does not constitute "development" and therefore does not require a shoreline substantial development permit.

FB-36 Restrict hard shoreline stabilization to protect a *primary* structure

Ecology would only allow hard shoreline stabilization to protect the primary structure. Staff concurs.

FB-37 Monitoring of woody vegetation

Ecology is OK with our timeline on woody vegetation, and suggests adding discretion for the Administrative Official to reduce or extend the monitoring period for cause. Staff concurs.

FB-41 Minor increase in height of pre-existing single-family residential

Ecology is OK with our formulation here because mitigation is required.

FB-48 Create separate definition for part of existing definition

Ecology is OK with us not implementing this change.

Summary

We recommend the Planning Commission add the following to its Recorded Motion to implement Ecology's changes, with the exceptions noted in the last Supplemental Staff Report, discussed at the last PC meeting, and in this memo.

RC-12. Integrate Ecology's edits as expressed in their April 4, 2016, comment letter with the edits noted in Supplemental Staff Reports #3 and #4.