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Betsy Stevenson
Skagit County Planning and Development Services
1800 Continental Place
Mount Vernon, WA 98273

Re: Comments on Draft Shoreline Management Program ("SMP")

Dear Ms Stevenson:

Once again the County Planning Staff has proposed new regulations that far exceed what is required by state law with the obvious goal of placing additional draconian regulations on Skagit County citizens and taxpayers that are unnecessary, incredibly burdensome and ambiguous. If the current critical areas ordinance constitutes a monumental taking of private property, then this draft ordinance seeks to exercise excessive dominion and control over much of Skagit County, including those areas are ready fully developed. How the same staff who worked "diligently" to come up the long term Envision Skagit 2060 can claim that those goals and platitudes are realistic in light of current and proposed regulations like this one defies all logic. The entire draft SMP uses vague conceptual language instead of clear objective terms. As with the existing critical areas ordinance. such language creates unfairness and provides the County planning personnel with total discretion to expand the reach of the SMP through administrative interpretation. This ambiguity makes it impossible for citizens to determine how the rules will be applied. The rules should list the ecological functions at risk and clearly list and specifically define the requirements for avoiding "net loss" of ecological function. Any and all restrictions should be based upon clear scientifically-based evidence.

I have only had a limited amount of time to review the 280-page draft SMP and cannot devote the time to complete a thorough analysis of all its provisions or to point out the plethora of its ambiguities. It is my belief that such a monumental change does not constitute a "revision" but constitutes a new set of regulations much more restrictive that the current SMP. As such, it should be afforded full due process with , notices to all affected or potentially affected property owners with a series of well-publicized public hearing before the Planning Commission and the County Commissioners. The speed that the County is processing this new regulation to avoid public input should be a matter of great concern not only to property owners but elected officials as they will be held accountable.

My specific comments on the draft SMP follow:

1. The County should exclude the 100-year flood plain from the SMP. RCW 90.58.030(2)(d)(i) does not require the flood plain to be included and provides that counties "may" include portions of their 100 year flood plain in the SMP. Much of the 100-year flood plain is zoned for agriculture and imposing new burdens would threaten if not destroy the viability of base industry. Adding additional restrictions making it more difficult for farmers to compete will significant harm an already declining industry. The language in the draft SMP and its associated critical area regulations on agricultural land is unnecessary

and unreasonable. The provisions that provide additional for leverage by agencies and tribal interests against farmers are unconscionable, if not unconstitutional. The draft SMP's definition of what is allowed to occur excludes expansion and new structures. Why ? It make no sense and basically places a death knell on farming expansion. The draft SMP unduly limits the natural evolution of the agricultural industry by subjecting new or expanded structures in the flood plain to burdensome rules. The draft SMP undermines the statutory intent to exclude new agricultural construction and does so by converting all of our valuable agricultural land into critical areas. It makes no sense to do so, especially in light of the language in Skagit County's Comprehensive Plan.

2. The setbacks should remain the same to avoid creating additional regulatory burdens. RCW 90.58.030(2)(d)(ii) provides that counties are not required to impose critical area buffers in the shoreline. The setbacks should remain the same to avoid creating additional regulatory burdens. Currently Skagit County uses setbacks to regulate how close citizens may build to the shoreline. The draft SMP changes the setbacks into *critical area buffers* and increases the distances that homes must be built from the shore. The draft SMP would covert most shoreline residences on Samish Island, Sinclair Island, Guemes Island, Skagit Bay, Smilk Bay and other areas, where is a 50 foot setback, into "nonconforming structures" in part because they will encroach on this new buffer distance (100 feet in the shoreline residential zone). This "nonconforming" status would prevent expansion and significantly increase permit processing time consuming, costing both property owners and the County staff more time and money and may eroding the tax base. Moreover, allowing development in areas already densely developed would not cause a net loss of ecological function and would be a waste of resources. In fact, new development would be *cleaner* in that citizens would have to upgrade septic systems and other infrastructure to current code. Increasing the setback from 50 to 100 feet may also have the unintended consequence of forcing citizens to locate septic drainfields in front of homes and closer to the shore than if they had the option of building their home closer to the shore and putting the drain field farther away. Because the draft SMP treats the entire saltwater shoreline as a critical area (due to prevalence of eel grass, etc. and because the sandy shoreline may be classified as a liquefaction risk) the entire area currently developed for waterfront residential use would become a critical area buffer. Thus is just a very bad idea. Some people believe that more regulation tends to create job security for the planning staff. Could they be right?

3. Each restriction on building in the shoreline should be supported by best available science with evidence demonstrating that the restriction is necessary to avoid additional harm to shoreline ecology - and not merely a conclusory statement that no net loss is equivalent to no new development. This seems so obvious that it shouldn't have to be mentioned, but unfortunately the planning staff doesn't get or intentionally writes the regulations so they can use their subjective interpretations to dictate what happens. It has been my experience that that latter is the reality. Adding restrictions without such evidence, and adding restrictions not closely tailored to avoid an identified harm, is contrary to the goal of the statute to avoid arbitrarily impairing property rights. Citizens understand the need to upgrade septic systems to avoid pollution, especially in light of issues with oyster producing areas, but many other restrictions seem to be based upon nothing but a desire to regulate and restrict the use of private property and are not aimed at avoiding additional harm to shoreline ecology. Vague restrictions on private property not targeted at some specific risk to shoreline ecology violate RCW 36.70A.020(6) in that they are arbitrary, and they may also be an unconstitutional taking of private property without compensation. I realize that has never been a concern in the past (just read the critical areas ordinance) but sooner or later a lawsuit will be filed.

4. The County should adopt the provisions of RCW 90.58.620 which would save County resources and protect private property rights. The legislature added RCW 90.58.620 to address the concerns of citizens whose homes were rendered nonconforming due to setback and buffer changes. This statute allows counties to treat residences in the shoreline as "conforming" even though they no longer meet setback or buffer rules. The legislature, in its findings, determined that "classifying existing structures as conforming will not create a risk of degrading shoreline natural resources."

5. The draft SMP critical area ordinance expands what are ordinarily considered geologically sensitive areas near the shoreline (steep slopes that may be destabilized by construction) to include soils subject to the risk of liquefaction. This provision should be amended to remove soils potentially subject to liquefaction from the definition of geologically hazardous areas; otherwise the entire flood plain and all shoreline may be regulated as a critical area buffer. Most shoreline areas consist of sandy soils and much of the Skagit River 100-year floodplain areas consist of soil with similar characteristics. Unfortunately, the consequence of this provision is a significant burdening of most shoreline residences, and farms across the Skagit Valley, with new regulation that is absolutely unnecessary to protect shoreline ecology. There is no threat of causing a net loss of shoreline ecological function from building on sandy soil – it merely requires the proper foundation. The term "no net loss of ecological function" (whatever that means) certainly does not mean "no new development". If the legislature had intended such a meaning it would have said so in the statute or in its findings. It did not. Rather it is my understanding that the legislature expressly found that existing structures can expand without degrading the environment.

6. Proposed SCC 14.26.500 of the draft SMP should be stricken . This provision, which purports to allow the County to enforce tribal law, is clearly unconstitutional because it says that the County can choose, on a case-by-case basis, to substitute other jurisdictions' regulations into its code, including tribal regulations, and enforce those regulations against Skagit citizens . Skagit County cannot legally implement and enforce tribal law. To the extent the DOE guidelines purport to authorize such a provision, then such proposed regulation far exceed the statutory authorization and expose the County to the risk of costly litigation. Again I must ask "why"? The statutory preference for cooperation among local governments does not list tribes, and it limits the definition of "local governments" to those subject to RCW 90.58 – which the tribes are not.

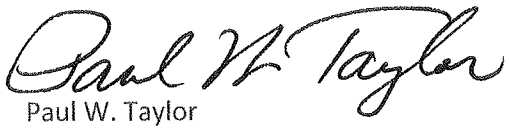
7. Section 14.26.450 of the draft SMP should be rewritten to provide that construction is allowed if construction standards imposed by FEMA for the rate map area are met. The entire 100 year floodplain would be regulated under the draft SMP. Under the draft SMP, development in any area requiring "flood damage reduction facilities" is not allowed . This may be read to prevent new construction in any area where buildings have to be elevated, or where breakaway walls or flood openings are required by FEMA – much of our saltwater shoreline as well as 100-year floodplain. The SMP should not prevent citizens from building merely because certain construction standards are required by FEMA. The FEMA construction standards mitigate the flood risk in the same way that snow load calculations mitigate the risk of building in northern climates.

8. The draft SMP would threaten landowners' privacy by allowing the County to require public access as a condition of permit approval or as mitigation, and require owners to grant the County a permanent easement for access to inspect private property without cause. Requiring such a broad invasion of privacy as a condition of utilizing private property is unconstitutional and this provision should be deleted.

9. The period for public comment should be extended to include hearings before the Planning Commission and the Board of Commissioners. The period allowed for public comment was unreasonably short given the far reaching nature of the changes proposed in this draft SMP. Calling the draft SMP an "update" seems deceptive in that the draft SMP fundamentally changes the existing regulatory scheme.

10. Finally, the provision of the critical area element of the draft SMP that imposes PCA requirements should not apply in the shoreline residential zone. The requirement for recorded descriptions of PCAs, for markers and signs, and for fences enforcing no-touch areas impose incredible burdens in residential areas and would not benefit or protect the critical area. Most of the available lots are already developed and development would not produce a net loss of ecological function. PCAs and fences would destroy property values and render shorelines unusable. Similarly, the PCA requirements should not apply to AG-zoned land in crop production. Crops do not present a risk of harm and the creation of buffers would serve no purpose while taking valuable land out of production.

Respectfully submitted,



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Cc: Skagit County Commissioners