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SKAGIT COUNTY  
PDS

Jun 26, 2012

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

Dear Ms Stevenson,

The following are my comments on the draft SMP:

1. I urge the County to exclude the 100-year flood plain from the SMP. Much of the 100-year flood plain is zoned for agriculture and imposing new burdens would threaten this essential industry. Skagit County is already a relatively high-cost producing area due to the climate, labor costs, environmental regulations and lack of close proximity to major markets. Adding additional burdens that make it more difficult for farmers to compete will harm the industry. Imposing the SMP and its critical area regulation on agricultural land is unnecessary and will create additional leverage that can be used by agencies and tribal interests against farmers. Agriculture should be allowed to expand and evolve over time as markets and needs change but the definition of "ongoing agriculture" (the draft SMP's definition of what is allowed to occur) excludes expansion and new structures. This draft SMP unduly limits the natural evolution of the industry by subjecting new or expanded structures in the flood plain to burdensome rules. **The statute 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. RCW 90.58.030(2)(d)(i).** This 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.
2. The County should elect *not* to impose buffers for critical areas in the shoreline. Currently the 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. On Samish Island, much of the shoreline is densely developed and there is a 50 foot setback. This draft SMP would covert most shoreline residences on Samish Island, Sinclair Island, Guemes Island, Skagit

Bay, Smilk Bay and other areas 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 make the permit process much more time consuming, costing both citizens and the County more time and money while 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. **The Statue provides that counties are not required to impose critical area buffers in the shoreline. RCW 90.58.030(2)(d)(ii). The setbacks should remain the same to avoid creating additional regulatory burdens.** 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.

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. 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.
4. The legislature added RCW 90.58.620 to address the concerns of citizens whose homes were rendered nonconforming due to setback and buffer changes. The law 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.” Findings - 2011 c 323 § 1. **The County should adopt the provisions of RCW 90.58.620 which would save County resources and protect private property rights.**
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. Because most shoreline areas consist of sandy soils, and because much of our 100-year floodplain areas consist of soil with similar characteristics, this provision has the consequence of burdening most shoreline residences, and farms across the Skagit Valley, with new regulation that is 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. **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.**

6. The term “no net loss of ecological function” 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. Moreover, the legislature expressly found that existing structures can expand without degrading the environment. Findings - 2011 c 323 § 1. Given the goal to avoid unnecessarily impairing private property, development should be allowed except where it is clear based upon scientific evidence and clear standards that the development in question will cause a net loss of ecological function.
7. Under 14.26.500 of the draft SMP, 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 (page 99). Skagit County cannot afford to implement the regulations of other jurisdictions and this provision should be stricken from the SMP. The provision allowing the County to enforce tribal law is unconstitutional. To the extent the DOE guidelines purport to authorize such a provision, then they go beyond the statutory authorization and expose the County to the risk of costly litigation. 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.
8. The entire draft SMP uses vague conceptual language instead of clear objective terms, which will create unfairness and empower the County with unfettered 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 the requirements for avoiding “net loss” of ecological function, and provide clear scientifically-based evidence for each requirement.
9. The entire 100 year floodplain would be regulated under the draft SMP (pages 157-158). Under the draft SMP, development in any area requiring “flood damage reduction facilities” is not allowed (page 77). 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. 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. If this section was intended to apply only to multi-lot developments, then it should be clarified to exclude development of a single family home or accessory structure by an owner or contract purchaser.

10. 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.
11. 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.
12. 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 would impose too great a burden 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.

Ms Stevenson, I have only had a limited amount of time to review the 280-page draft SMP and I may not understand the intended meaning of its provisions. If I have misstated something or if further explanation is necessary, I would be available to meet at your convenience. Thank you for taking the time to read my comments.

Sincerely,



Jack Wallace

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