



Skagit County Planning & Development Services

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Staff Report

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Re: Shoreline Master Program Update

Date: February 5, 2016

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Background

The state's Shoreline Management Act ("the Act" or "the SMA") is the law that requires cities and counties to establish Shoreline Master Programs. The SMA was approved by the Legislature in 1971 and overwhelmingly approved by public initiative in 1972. Under the SMA, all 39 counties and cities that have shorelines of the state within their boundaries are required to prepare a shoreline master program in accordance with shoreline guidelines issued by the Washington State Department of Ecology. The Shoreline Management Act has an overarching goal to "prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines."

Skagit County's Shoreline Master Program ("the SMP"), adopted in 1976, is a combined planning and regulatory document that contains policies, goals, and specific land-use regulations for shorelines. The program balances development, public access, and shoreline protection.

In 2003, the state Legislature established funding, timelines, and guidelines requiring cities and counties to update their local Shoreline Master Programs prepared under the Washington State Shoreline Management Act. The new shoreline guidelines passed in 2003 set a higher level of environmental protection for shorelines in the state and a goal of "no net loss" of shoreline ecological functions. [RCW 90.58.080](#) requires local governments to update their Shoreline Master Programs on a set schedule.

Skagit County has been working on the required SMP update since 2011, including significant public outreach and multiple rounds of review by the Planning Commission. See "Process" on page 9.

Frequently Asked Questions

What are "shorelines"?

Shorelines are special water bodies that meet certain criteria. The SMP applies to marine shorelines, rivers and streams with a flow greater than 20 cubic feet per second, lakes and reservoirs 20 acres or larger, upland areas within 200 feet of these water bodies and portions of the floodplains and wetlands associated with these shorelines. It only applies to unincorporated areas of the county—lands outside cities and towns.

Why do we protect shorelines?

In the early 70's, the people of the state of Washington observed a trend of development along marine, stream, and lake shores that blocked visual and physical access to public waters. Legislators and voters decided something needed to be done. Through the SMA, the Legislature determined:

- the shorelines are among the most valuable and fragile of Washington's natural resources;
- there is great concern throughout the state relating to the utilization, protection, restoration, and preservation of shorelines;
- the increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state;
- much of the shorelines and the adjacent uplands are in private ownership;
- that unrestricted construction on the privately owned or publicly owned shorelines is not in the best public interest;
- coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest;
- there is a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

In addition to the reasoning from the SMA, shorelines are important to the state's economy. We all benefit from having thriving waterfronts made up of ports, marinas, shellfish facilities, and other

water-dependent businesses. Fishing, tourism, and recreation provide jobs and income. Planning for our use of shorelines helps preserve what we value, and protects lives and property.

Is Skagit County required to update its SMP?

Yes. [RCW 90.58.080](#) requires local governments to update their Shoreline Master Programs on a set schedule.

What happens if we don't update our SMP?

The Department of Ecology is authorized by [RCW 90.58.070](#) and [.090](#) and [WAC 173-26-070](#) to itself adopt a SMP for the shorelines of the state within our county. Opportunity for our own determination of how to regulate shoreline areas would be reduced.

Why do we want to update the SMP?

For a variety of reasons, it's in the County's interest to update our Shoreline Master Program:

1. Our current plan was adopted in 1976 and it is no longer based on current science, current law, or current conditions.
2. Our current plan results in duplicate permit processes that are an unnecessary burden on property owners. The proposed revision would streamline permitting and provide clearer guidance to applicants.
3. Updating our plan is required by state law. Skagit County may be subject to pre-emption by Ecology if we fail to update our plan as required.

Proposal Summary

This staff report describes the **February 4, 2016, public comment draft** of the County's SMP Update. Although this is a *complete* draft, it is not a *final* draft. The Department expects final adoption of the SMP Update will not occur for approximately 18 months. See "Process" on page 9.

Components

The proposed SMP Update package consists of many different parts. The substantive policy and regulation proposal is available now on the SMP website (www.skagitcounty.net/smp), including:

- **Shoreline Master Program policies and development regulations**
This document is the "meat" of the SMP update. SMP policies will become part of the County's Comprehensive Plan; the development regulations will become part of the County Code in Chapter 14.26. Parentheticals at the end of policies and regulations are notes to the reader to explain the source of the policy, and will be deleted in the adopted version.
- **Shoreline Environment Designation Maps**
Shoreline areas are designated as one of five "environment designations"—akin to a zoning overlay—that prescribes the level of review that shoreline uses and modifications require. Environment designations are determined through the use of "designation criteria" that are contained in the SMP policies.
- **Additional Title 14 County Code updates**
Some additional code changes are required to existing sections of the County Code to help integrate the new SMP with our existing permit processes.

Some work remains to be done on the analysis reports required by Ecology. We expect to add those to the website during the last week of February. Those reports, which are not regulatory, include:

- SMP Update Checklist
- Cumulative Impacts Analysis Report
- No Net Loss Report
- Shoreline Restoration Plan

A Channel Migration Zone map is also required for the SMP Update. Skagit County is revising that map and will hold public participation processes associated with it in the second half of 2016.

The Shoreline Analysis Report for Skagit County, Hamilton, and Lyman, which was completed September 1, 2011, is available on the website.

How to Read the Plan

The first several pages in the policies and development regulations document include concise guides to:

- how the SMP document is organized
- how to apply the SMP to your own property
- the type of shoreline permits and exemptions
- acronyms, initialisms, and other abbreviations used in the document

In the electronic version of the document, the tables of contents, as well as the header of every page contains active links to other areas of the document.

While the comprehensive plan policies in the first section of the plan prescribe how development regulations are written, it is the development regulations themselves that are binding on development, not the comprehensive plan policies. The policies are intended to describe the objectives and requirements in general terms; the development regulations are where specific verbiage controls development. The rest of this memo summarizes just the development regulations in the document, which are divided into eight parts.

Part I: Authority, Purpose, and Jurisdiction

This initial section of the development regulations describes the policies and purpose of the SMP, and, most importantly, defines the jurisdiction of the SMP (in SCC 14.26.140). The jurisdiction includes:

- all marine waters;
- rivers and streams with more than 20 cubic feet per second mean annual flow (cfsmaf);
- lakes and reservoirs 20 acres or more in area;
- associated wetlands;
- shorelands adjacent to these water bodies, typically within 200 feet of the OHWM; and
- floodways and contiguous floodplain areas extending 200 feet from the floodway;

Shoreline jurisdiction also extends to buffers necessary to protect critical areas that are located wholly within shoreline jurisdiction.

The Ordinary High Water Mark (“OHWM”) plays a large role in determining the extent of shoreline jurisdiction. The method for determining the OHWM is defined by Ecology rules, but is essentially the place where the presence and actions of waters is so common and usual that it marks on the soil a distinct character different from the abutting upland. The rule includes additional guidance for determining the OHWM on a variety of waters.

Part II: Shoreline Environment Designations

Shoreline environment designations are classifications of shoreline areas that reflect local shoreline conditions, including ecological functions and shoreline development. Classifying shorelines into specific designations provides the means of adapting broad policies to shoreline reaches with distinctively different conditions and resources. The proposed shoreline designations are based on the information contained in the Shoreline Analysis Report.

For each environment designation:

- The **purpose statement** (in Comprehensive Plan Chapter 6B) describes the unique shoreline management objectives of the designation in a manner that distinguishes it from other designations.
- **Designation criteria** (in Comprehensive Plan Chapter 6B) describe the basis for assigning the particular designation to specific sections of the shoreline.
- **Management policies** (in Comprehensive Plan Chapter 6B) are the basis for the environment regulations and should be sufficient in detail to assist in their interpretation.
- **Regulations** (in this Part of SCC Chapter 14.26) impose requirements on uses and modifications specific to each environment designation.

Ecology provided new environment designations that are different from the old designations. The table below shows *approximately* the corresponding new designations.

Old Environment Designation		New Environment Designation(s)
Aquatic	→	Aquatic
Natural	→	Natural
Conservancy	→	Natural
		Rural Conservancy
		Rural Conservancy – Skagit Floodway
Rural	→	Rural Conservancy
		Residential
Rural Residential	→	Residential
Urban	→	Urban Conservancy
		High Intensity
Any missed/unmapped areas	→	Rural Conservancy

The “Rural Conservancy – Skagit Floodway” designation is a new designation we created to alert readers to the presence of the designated regulatory floodway, where building is largely prohibited by floodplain development regulations. It is otherwise identical to Rural Conservancy.

Most of the sections in Part II are “reserved” so that if the need arises for any general regulations that apply to all uses within a specific environment designation, a logical place in the code is available for such a regulation.

Part III: General Regulations

Part III describes regulations for general kinds of uses and activities that are applicable across all environment designations. The first two major sections are:

- 14.26.320, which describes regulations for uses and activities within shoreline jurisdiction that are upland of the Ordinary High Water Mark (the “OHWM”).
- 14.26.330, which describes regs for uses and activities that are waterward of the OHWM.

The other sections of Part III regulate other common and generalized shoreline impacts. Notable ones are described below:

No Net Loss (14.26.305)

Uses and developments on shorelines must be designed, located, sized, constructed, and maintained to achieve no net loss of shoreline ecological functions necessary to sustain shoreline natural resources. This is an important new principle that is required to be included in the SMP Update.

Dimensional Standards (14.26.310)

This section includes an important table that sets out the buffer widths, height limits, and impervious surface limits for development in the various Shoreline Environment Designations.

Outdoor Advertising and Signs (14.26.360)

As in the existing SMP, outdoor advertising and signs is significantly constrained inside shoreline jurisdiction to protect views and avoid aesthetic pollution of shorelines.

Public Access (14.26.370)

Development on shorelines requires provision of access to the public to the shoreline below the OHWM and to the water, either physically or visually, in certain circumstances.

Part IV: Shoreline Uses and Modifications

The Uses and Modification Matrix in SCC 14.26.405 is the most important table in the plan, as it lists which uses are allowed in shoreline jurisdiction, and what level of review each requires. Most of the substantive requirements in Part IV are required by Ecology rule; see [WAC 173-26-231](#) and [WAC 173-26-241](#).

The sections in Part IV follow a standard pattern:

- **Applicability.** Describes which shoreline uses the section applies to, and which it doesn’t. The rules in the section, even if written broadly, *only* apply to the uses listed in Applicability.

- **When allowed.** While the Use and Modification Matrix broadly describes when particular uses are allowed in each Shoreline Environment Designation, this section provides further guidance, or guidance that doesn't relate to Environment Designations.
- **Application requirements.** Standard requirements for all types of applications are in Part VII; this section describes any additional application requirements for specific uses.
- **Development standards.** Any specific regulations for the use, which are in addition to the applicable general provisions in Part III.

Exempt Activities

Very few activities are wholly exempt from regulation under the SMP, except qualifying agricultural activities and forest practices. Those qualifying uses are exempt both from permits and from complying with the substantive regulations of the SMP. The uses and activities that qualify for this exemption are described in the appropriate Part IV section.

Part V: Critical Areas (and Shoreline Buffers)

“Critical areas” are defined as wetlands, aquifer recharge areas, flood hazard areas, geologically hazardous areas, and fish & wildlife habitat conservation areas. Some of these areas are critical because of the hazard they represent to public health and others are critical because of their public value. Critical areas are regulated by Skagit County Code Chapter 14.24.

Incorporation by Reference

Part V of the policies and development regulations document is reserved for special critical areas regulations in shoreline jurisdiction, but largely just incorporates by reference the County's existing critical areas code chapter that was adopted in 2008. The most significant differences are:

- Critical area variances must be processed following the procedures in the Shoreline Master Program.
- Critical area Reasonable Use Exceptions are prohibited in shoreline jurisdiction. The applicant must instead seek relief through a Shoreline Conditional Use or Shoreline Variance Permit.
- Additional mitigation requirements are included in the critical areas code specific to activities within shoreline jurisdiction.

Some additional changes to the critical areas code (e.g., an update to the wetlands rating system) will be proposed as part of the Comprehensive Plan Update process. The critical areas code effective on the date of adoption of the SMP will be the version incorporated into the SMP.

Shoreline Buffers

“Buffers” (sometimes interchangeably called “setbacks”) are physical separations from another use or special area. Buffers are the standard prescription for protecting wetlands, streams, and other critical areas, including shorelines. The shoreline buffer widths and allowed uses within the buffer that Skagit County adopted in 2008 in its Critical Areas Ordinance are not proposed to change in this SMP Update (although the environment designation types are changing, as described above). In the new SMP, the buffer widths are described in the dimensional standards table in SCC 14.26.310.

Part VI: Pre-Existing Uses

Typically, when new land use regulations are adopted, uses and structures that were legally created prior to adoption of the new regulations are allowed to continue, but may not expand, and in some cases, may not rebuild. For the Shoreline Master Program, however, state law allows for special treatment of such “legally established pre-existing uses,” especially single-family residences. This part describes how different types of pre-existing uses and structures are treated under the program.

Part VII: Administration

The SMP is required to include procedures describing how shoreline permits are to be processed, but it is allowed to refer to the County’s standard processes for other types of permits. That is the approach the County has chosen to take in this update, which is a significant improvement over our current SMP. In the proposed draft, all types of shoreline permit applications fall into one of our existing permit application levels.

Shoreline review includes four possibilities, which are categorized under one of the following existing application processes:

Shoreline Application Type	Application Level
Substantial Development Permit	Level I
Substantial Development Permit Letter of Exemption	Level I
Conditional Use Permit	Level II
Variance, Administrative	Level I
Variance, Hearing Examiner	Level II
Permit Revision	Level I

A Level I application is an application that gets review and approval by the Administrative Official or designee (i.e., PDS staff level review); appeals are possible to the Hearing Examiner and then to the Board of County Commissioners. A Level II application gets a staff recommendation, followed by a public hearing and decision by the Hearing Examiner; appeals are possible to the Board of County Commissioners.

Substantial Development Permits are shoreline permits required for almost all uses that exceed a specified, inflation-adjusted dollar value threshold. Some shoreline activities are exempt from requiring a substantial development permit; these are listed in Appendix 1. These “permit-exempt” uses must still obtain a Letter of Exemption from the County to verify the exemption, and must still comply with any applicable substantive regulations of the SMP. Under the current program, substantial development permit application processing is similar to a Level II application and requires a public hearing before the Hearing Examiner; under the new program, substantial development permit applications would not require a public hearing, however public notice provisions in SCC 14.06 ensure opportunity to comment on any substantial development permit application.

Shoreline Conditional Use Permits are permits available for uses that are likely to have effects that need special conditions or review; Conditional Use Permits require local approval *and* require approval from the Department of Ecology.

Shoreline Variances under the current SMP require Hearing Examiner review and public hearing; under the proposed plan, Shoreline Variances are split into two groups: administrative variances that are approved as Level I applications and do not require Ecology approval, and Hearing Examiner variances that remain Level II and require Ecology approval.

Part VIII: Definitions

The many different terms contained in the Shoreline Master Program are defined in this part. Many, if not most of the terms are defined by state law (RCW) or Ecology rule (WAC). Where that is the case, the definition in part VIII is introduced by a reference to the RCW or WAC citation (e.g., “per RCW 90.58....”). Significantly, Skagit County has chosen *not* to use Ecology’s definitions of “should” and some other terms when they differ substantially from normal English definitions.

For clarity and concision, some of the definitions of various shoreline uses are defined in Part IV alongside the use regulations. Those terms still appear in Part VIII, however their definitions are simply cross-references to the definition in Part IV.

The definitions in SCC Chapter 14.04 (which are definitions for the entire Unified Development Code) also apply to the SMP. In the event of a conflict between a definition in SCC 14.04 and the definitions in Part VIII, the Part VIII definitions control. After the SMP is adopted, defined terms in the shoreline code will appear in online versions of the County code with special underline formatting; the reader will be able to click the defined term to immediately see the definition pop up.

Process

Skagit County has been working on the SMP since 2011, starting with development of a [public participation plan](#). The Board of County Commissioners appointed a 17-member advisory committee to review draft materials and advise County staff throughout the process. Visioning workshops were held in Concrete, Lyman, Mount Vernon and Anacortes in June and July 2011. The Department accepted comments on the first working draft document in May-June 2012. Open houses were held in May and June 2013 in Mount Vernon, Anacortes, Lyman, and Concrete to discuss the SMP with the public and receive comments. The Planning Commission has held three rounds of study sessions on drafts of the SMP.

Public Notices

Skagit County has issued, or will issue, the following public notices related to this project:

- Mailed a card in 2013 to landowners in unincorporated Skagit County, introducing the update process and providing dates for the open houses
- Prepared a brochure to handout at public meetings and events
- Provided on-camera updates to the Board of County Commissioners
- Provided notices for the Planning Commission work sessions over the course of the project
- Newspaper advertisements will run in the Skagit Valley Herald noting the availability of the draft documents and to describe the comment period and public hearing date

- Announcements will be sent to the Department public e-mail list, as well as Department Twitter and Facebook feeds

SEPA Threshold Determination

The Skagit County SEPA Responsible Official issued a Determination of Nonsignificance for this proposal on February 4, 2016, available at www.skagitcounty.net/smp.

How to Comment

Comments are accepted via email or on paper. All comments must be received by the deadline and include (1) your full name, (2) your mailing address, and (3) the proposal name (“Shoreline Master Program Update”) in the subject line. Comments not meeting these requirements will not be considered. For deadlines, see the Notice of Availability at www.skagitcounty.net/smp.

Email comments are preferred and must be sent to pdscomments@co.skagit.wa.us. Include your comments in the body of your email message rather than as attachments.

Paper comments must be printed on 8½ x 11 paper and mailed or delivered to:

Comments on the Shoreline Master Program Update
Planning and Development Services
1800 Continental Place, Mount Vernon WA 98273

You may also comment in person at the public hearing at the Commissioners Hearing Room, 1800 Continental Place, Mount Vernon. Public hearing testimony is usually limited to three minutes, so written comments are preferred.

Anyone who plans to attend the public hearing and has special needs or disabilities should contact Planning and Development Services at (360) 416-1320 at least 96 hours before the hearing to discuss and arrange any special accommodations.

For More Information

Please visit the project website at www.skagitcounty.net/smp.