

**DRAFT October 26, 2021**

**Skagit County Planning Commission’s Recorded Motion Regarding Skagit County Shoreline Master Program Comprehensive Update and Periodic Review**

<b>Proposal publication date:</b>	April 22, 2021
<b>Proposal name:</b>	Skagit County Shoreline Master Program Comprehensive Update and Periodic Review
<b>Documents available at:</b>	<a href="http://www.skagitcounty.net/smp">www.skagitcounty.net/smp</a>
<b>Public hearing body:</b>	Skagit County Planning Commission
<b>Public hearing date:</b>	Tuesday, May 11, 2021, at 6 p.m.
<b>Written comment deadline:</b>	Tuesday, June 22, 2021, at 4:30 p.m.
<b>PC deliberations:</b>	October 12, 2021; October 26, 2021; November 9, 2021;

After considering the written and spoken comments and considering the record before it, the Planning Commission enters the following findings of fact, reasons for action, and recommendations to the Board of County Commissioners.

**Findings of Fact and Reasons for Action**

1. The State of Washington requires the Shoreline Master Program, originally adopted in 1976, be updated consistent with current law.
2. The Shoreline Master Program should value environmental protection, aesthetics, recreational enjoyment of the shoreline, and private property rights.
3. Aquaculture and other natural resource industries are important parts of Skagit County’s economy and culture.
4. In the early 1990s, Skagit County’s rivers were identified as prime habitat sites due to Skagit County’s agriculture and rural nature. Local stewardship of natural resources was respected and viewed positively. Property owners know best the nuances of their properties and the effects that neighboring projects can have on them.
5. The Dike and Drainage Districts play a critical and unique role in Skagit County protecting farmland and infrastructure on the vast lowlands that make up the Skagit River delta.
6. Human safety should be evaluated when considering dock widths for local shorelines.
7. There is a housing crisis in Skagit County and the planning commission should not be limiting future opportunities for unique housing strategies such as floating residences.

While the technology and infrastructure is not ready yet, the county should prepare for future floating residences to provide more housing opportunities.

*[The following findings are process based]*

8. The Washington State Shoreline Management Act (SMA), RCW 90.58.080 (4)(a)(ii), mandates Skagit County to periodically review its SMP every 8-years. The County must also conduct the 2020 Periodic Review per the state mandated timeline<sup>1</sup>.
9. An extensive review and public process with Shoreline Advisory Committee, visioning workshops, and the Planning Commission culminated on August 17, 2016, with a recommendation by the Planning Commission to approve the proposed SMP with specified changes. However, final adoption of the SMP Update by the Board of County Commissioners did not occur.
10. Skagit County has combined the completion of the Comprehensive Update and the Periodic Review into the current SMP document.
11. The 2016 draft SMP and Shoreline Environment Designation maps provide a starting point for the current amendments.
12. The proposed update is a complete rewrite of the current SMP and Shoreline Environment Designation maps, to comply with new state rules and the best available science, and to integrate the shoreline policies into the Comprehensive Plan and the shoreline development regulations into the Skagit County Codes, including: shoreline development regulations SCC 14.26, and supplemental changes to the Unified Development Code, SCC 14 as necessary.
13. The goals and policies of the Shoreline Management Act in RCW 90.58.020 are considered one of the 14 goals of the State Growth Management Act and an element local Comprehensive Plans<sup>2</sup>.
14. The Shoreline Master Program Public Participation Plan was presented to the Planning Commission on January 26, 2021.
15. A draft SMP document was made available on February 2, 2021 for preliminary review by the Planning Commission and the public.
16. Planning and Development Services reviewed the draft SMP with the State Department of Ecology in February and March 2021.

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<sup>1</sup> WAC 173-26-090

<sup>2</sup> RCW 36.70A.481

17. The second draft SMP, April 12, 2021, was developed following work sessions with the Planning Commission and feedback from the State Department of Ecology.
18. A notice of public comment period and hearing was issued on April 22, 2021. A request for an extension of the public comment period accepted, extending the comment period from June 7 to June 22, 2021, for a total comment period of 60 days.
19. Public notice and outreach on the amendments was conducted through:
  - a. A dedicated Skagit County SMP webpage, and online open house
  - b. Publication in the local newspaper of general circulation (April 22, 2021)
  - c. Press release, Social media, and email listserve
  - d. A post card mailer was sent to shoreline landowners in unincorporated Skagit County
  - e. Monthly project updates and community question and answer time offered virtually throughout the periodic review process
  - f. Notification letters to federally recognized tribes in Skagit County
  - g. SEPA Register
20. The Planning and Development Services staff and consultant team held monthly public meetings. The meetings were offered virtually, and have been held on January 21, 2021, February 11, 2021, March 11, 2021, April 8, 2021, and May 27, 2021. Turnout has been between 20 and 40 participants, with meaningful discussion and question and answer sessions.
21. The Planning Commission held SMP work sessions on December 8, 2020, January 26, 2021, February 9, 2021, March 9, March 23, 2021, April 27, 2021, May 11, 2021, and June 15, 2021.
22. A Staff Report was provided to the Planning Commission on May 5, 2021.
23. On April 26, 2021 the 60-day Notice of Intent to adopt an amendment was submitted to the Department of Commerce as required under RCW 36.70A.106.
24. A SEPA Determination of Non-Significance was issued on April 22, 2021, finding that this non-project proposal does not have a probable significant adverse impact on the environment.
25. A public hearing was held on May 11, 2021 and the public comment period was open from April 22 through June 22, 2021.
26. Twenty-two (22) public comments were taken at the public hearing and eighty-seven (87) written comments were compiled in a table and posted on the Planning Commission website on June 29, 2021.

27. Comments were grouped according to topic areas and responded to by Skagit County. There were sixteen (16) topic areas, and seventy-five (75) subtopics.
28. Planning and Development Services reached out to the State agencies, tribes, and relevant tribal organizations in April 2021. Outreach resulted in formal comments submitted by the Swinomish Indian Tribal Council, Skagit River Systems Cooperative, Washington Department of Fish and Wildlife, and Department of Natural Resources.
29. Additional Planning Commission work sessions to address public comments were held on June 29, July 27, August 10, September 14, and September 28<sup>th</sup>.
30. All of the comments were responded to by Planning and Development Services in a comment response matrix. The department recommended eleven (11) changes to the April 12 Draft SMP as a result of the public comments.
31. A second Staff Report was provided to the Planning Commission on October 25, 2021.
32. Planning Commission deliberations were held on October 12, 2021, October 26, 2021, November 9, 2021 and XXXX.
33. Skagit County Code (SCC) Chapter 14.08. sets forth a process and criteria for making amendments to plans and development regulations. Specifically, SCC 14.08.080 outlines review by the Skagit County Planning Commission. In its making recommendations, the Planning Commission shall consider:
  - a. whether the proposal is supported by the capital facility and functional plans;
  - b. whether the proposal is consistent with the requirements of the GMA, the Countywide Planning Policies and other applicable provisions of the Comprehensive Plan;
  - c. whether the proposal bears a substantial relationship to the public general health, safety, morals, or welfare.
34. No additional capital facilities are required to implement the Shoreline Master Program amendments.
35. These amendments constitute Chapter 6 of the Skagit County Comprehensive Plan, the Shoreline Master Program Element, and by incorporation the amendments are consistent with the Skagit County Comprehensive Plan.
36. The proposed SMP amendments improve compliance with the State Shoreline Management Act.
37. The proposed updates are consistent with the Countywide Planning Policies, specifically:

*Policy 5.14: Commercial and industrial activities directly related to or dependent on local aquatic resource areas should be encouraged in shoreline areas provided they are shoreline dependent and/or related.*

*Policy 10.1: Natural resource lands, including aquatic resource areas and critical areas shall be classified and designated, and regulations adopted to assure their long-term conservation. Land uses and developments which are incompatible with critical areas shall be prohibited except when impacts from such uses and developments can be mitigated.*

*Policy 10.2: Land use decisions shall take into account the immediate and long-range cumulative effects of proposed uses on the environment, both on- and off-site.*

*Policy 10.5 Recognize the river systems within Skagit County as pivotal freshwater resources and manage development within the greater watershed in a manner consistent with planning practices that enhance the integrity of the aquatic resource, fish and wildlife habitat, and recreational and aesthetic qualities.*

*Policy 10.8: The conversion of tidelands to uplands by means of diking, drainage and filling shall be prohibited, except when carried out by a public body to implement Comprehensive Plans for flood plain management or to respond to a natural disaster threatening life and property.*

*Policy 11.3: For land use proposals, including those within the marine environment, all applicants shall bear the costs for public notification, by mail, and by posting of signs. Affected neighbors and surrounding shoreline owners shall be notified as prescribed by ordinance.*

38. The proposed amendments reflect local conditions and promote the general public health, safety, morals, and welfare.

### Recommendation

The Planning Commission recommends that the Board of County Commissioners **approve** the Skagit County Shoreline Master Program Update (Appendix A), Shoreline Environment Designation Maps (Appendix B), List of Shoreline Jurisdiction (Appendix C) attached hereto with the following changes:

1. Delete SCC 14.26.370(4)(a) & (b) regarding the Shoreline Public Access Plan.
2. ~~Move the content of proposed SCC 14.26.550, Additional Provisions for Fish and Wildlife Habitat Conservation Areas, into SCC Chapter 14.24, Critical Areas.~~
3. Revise proposed SCC 14.26.415(2)(b)(ii) to read: "Ongoing maintenance, harvest, replanting, changing culture techniques or species does not require shoreline review unless

**Commented [PjG1]:** Not attached on this draft.

**Commented [PjG2]:** This first set of recommendations come from previous (2016) recorded motion or from PC work sessions.

**Commented [PjG3]:** Motion Passed, 6 - 1 - 1 (10/12/21) Remove Dept recommendation on the Public Access Plan.

**Commented [PjG4]:** May no longer be an issue since no longer referencing the Critical Areas Ordinance. Cross references to 14.26.550 that would need to be fixed if placed into 14.24.

**Commented [PjG5R4]:** Removed by motion 10/26/21

cultivating a new species in the waterbody or using a new culture technique, and that new species or culture technique has significant adverse environmental impacts (if not allowed by an existing shoreline permit).”

4. Revise proposed SCC 14.26.415(2)(b)(iii) to require “shoreline review,” not necessarily a “shoreline permit.”
5. Revise SCC 14.26.415(8)(d)(vi) to delete “and avoid conflicts with neighboring uses.”
6. Add a note to proposed SCC 14.26.440, Fill, Excavation, and Grading, to explicitly exempt aquaculture from that section.
7. Add a definition of “flood hazard reduction” to Part VIII, Definitions, and make it clear that it includes dikes and levees.
8. Reverse the order of (1)(d) and (1)(e) in SCC 14.26.140.
9. Add Shoreline Exemptions to the list of applications exempt from Notice of Development Application in SCC 14.06.150(2).
10. 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.
11. In proposed SCC 14.26.420(4)(b), regarding development standards for docks, replace Table 14.26.420-1 (and related dimensional standards in the narrative) with a requirement for all saltwater docks to comply with WAC 220-660-380 or the conditions of Hydraulic Project Approval, and all freshwater docks to comply with WAC 220-660-140 or the conditions of Hydraulic Project Approval. Move the numeric limits on the number of boat lifts and canopies into the development standards section.
12. Add definitions of “dock” (already defined in Boating Facilities but not in Part VIII) and “pier,” “ramp,” and “float” from WAC 220-660-140(1) to Part VIII. Add cross-references to Part VIII, Definitions, for the definitions contained in SCC 14.26.420.
13. Extend the Rural Conservancy-Skagit Floodway designation on the map to cover all Rural Conservancy upstream on the Sauk River ~~and on the upper Skagit River,~~ to the limit of the FEMA floodway, and make the designation criteria (policy 6B-5.1) consistent.
14. Add definitions in Part VIII for each of the Shoreline Environment Designations that include cross-references to SMP Part II, Shoreline Environment Designations.
15. Public access on dikes must be agreeable to all parties including the property owner, and the process to determine feasibility should be written into the regulations in SMP Section 14.26.350(3)(d). Clarify new vs. existing dike maintenance.

**Commented [PjG6]:** Stopped PC review 10/26/21 for staff to refamiliarize with 2016 motions, moved to current motions beginning on #15.

**Commented [PjG7]:** Matrix issue 14(c.) Also, see Dept. recommendation on item #27 below.

**Commented [PjG8]:** This was done on the upper Skagit, but not on the Sauk River due to the changed river conditions on the Sauk.

**Commented [PjG9]:** Text added at 10/26 meeting with consensus of the Planning Commission.

**Commented [PjG10]:** Matrix issue 8(c.)

16. Include statement about flood protection and drainage in policies. The SMP should contain a statement on the unique role of the dDike and dDrainage special districts in Skagit County and their relevance to Shorelines. Add to 6C-1.4.

**Commented [PjG11]:** Matrix issue 13(b.)

17. Amend SMP Section 14.26.130, Applicability, to read: (5) As provided in RCW Title 85 and through the US Army Corps of Engineers PL84-99 Program, the provisions of this SMP do not affect the authorities and powers of diking and drainage districts.

**Commented [PjG12]:** Requested by Commissioner Hughes from Staff report on 10/26/21. Approved by consensus.

~~18. Remove requirement in Table 14.26.420-1 for Watercraft lift canopies to be constructed of light permeable fabric.~~

**Commented [PjG13]:** Matrix issue #1(a.)

18. Forest practices that are not intended for conversion to other uses consistent with SCC 14.26.445(1) should be allowed to construct temporary access roads without a shoreline substantial development permit. Roads should be properly abandoned following harvest.

**Commented [PjG14]:** Amended 10/26/21 by consensus.

19. Maintenance of public access should not be the financial responsibility of the land owner.

**Commented [PjG15]:** Motion passed 8 - 0 (10/12/21)

20. We recommend that the Skagit County SMP allow for the future possibility of floating homes when they can be properly sited, designed, supported, regulated, and served by appropriate infrastructure such as access, power, water, and waste disposal.

**Commented [PjG16]:** Motion passed 5 - 3 (10/12/21)

21. The max width for single user pier/ fixed piling is 6 feet.

**Commented [PjG17]:** Motion passed 8 - 0 (10/12/21)

22. The Planning Commission recommends leaving the setback averaging provision in the SMP.

**Commented [PjG18]:** Motion Passed (10/26/21)

23. The dock height

**Commented [PjG19]:** Stopped at dock height above OHWM - Mitchell

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*[The following list of amendments are Department recommended changes in response to public comments. These items were discussed with the Planning Commission as part of the work sessions on the Public Comment and Response Matrix. The matrix issue is noted in the margin for background and reference. If PC agrees with Department recommendation the item will stay, otherwise remove or revise accordingly. Specific code changes are underlined.]*

~~19. Amend Table 14.26.420-1 to return the dimensional standards table for docks to the Planning Commission review version dated February 2, 2021 which required a maximum dock width of 6 feet for lakes without anadromous fish and 4 feet for lakes with anadromous fish.~~

**Commented [PG20]:** See Planning Commission motion re max width of pier, #20. Matrix issue # 1(c)& 14(d). Regarding comments that 4 feet is a safety risk, specifically from lake residents. This is remedied for lakes with non-anadromous fish by replacing table 14.26.420-1 to the February version of the SMP. Dock floats are allowed to be up to 8 feet wide.

20.24. Amend the administrative Shoreline Variance, under 14.26.735, to allow an applicant to reduce a buffer more than 25% but less than 50%. Buffer reductions greater than 50% would only be allowed through a standard variance reviewed by a Hearing Examiner. Less than 25% would not be reviewed as a Shoreline Variance.

**Commented [PjG21]:** Matrix issue #1(h) and #15(c)&(d)&(h)

~~21-25.~~ ~~Aquaculture~~, Modify Table 14.26.405-1 to prohibit all non-native finfish net pen aquaculture and to differentiate net pens for native finfish propagation, which would retain the same permit classifications as the current net pens shoreline use, from net pens for propagation of nonnative finfish species which would be prohibited in all shoreline environment designations across the matrix. New commercial net pens require a Shoreline Conditional Use permit, amend 14.26.415 to match the table.

**Commented [PjG22]:** Matrix issue 2(a.) & (d.)

Add new item to 14.26.415 (7) to read: adding (b) A Conditional Use Permit is required for new native finfish aquaculture., and (e) New commercial net pen aquaculture operations proposing to propagate a nonnative finfish species are prohibited.

~~22-26.~~ Shoreline Development and Use Standards. Amend section 14.26.360(4)(d) Lighting, as follows: Directional sign lighting must be directed away from critical areas, unless necessary for public health and safety. Outdoor advertising may not move or fluctuate in lighting or position in any ~~manner~~.

**Commented [PjG23]:** Matrix Issue 5(k); Kyle Loring Table Page 14-15.

~~23.~~ ~~Skagit Countywide UGA Open Space Concept Plan. Amend SMP Section 14.26.370(4) to explicitly identify the Countywide UGA Open Space Concept Plan as a voluntary plan.~~

**Commented [PjG24]:** Removed per Henley motion regarding the public access plan on item #1.

~~(a) The Skagit Countywide UGA Open Space Concept Plan is a voluntary plan. The UGA Open Space Concept Plan and the Skagit County 2020 Comprehensive Parks and Recreation Plan provide for a connected network of parks, open space, and trails, and together constitute Skagit County's Shoreline Public Access Plan, which provides more effective public access concepts than individual project requirements for public access.~~

~~(b) When required by this section, shoreline public access should be consistent with the concepts in the Shoreline Public Access Plan.~~

**Commented [PjG25]:** Matrix issue #10 and Planning Commission comments.

~~26-27.~~ Define critical saltwater habitat. The following definition from WAC 173-26-221(2)(c) is proposed for ~~14.26.820~~:

**Commented [PjG26]:** Matrix issue 13(a.)

~~*Critical saltwater habitats include all kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as herring, smelt and sandlance; subsistence, commercial and recreational shellfish beds; mudflats, intertidal habitats with vascular plants, and areas with which priority species have a primary association.*~~

~~27-28.~~ Dimensional Standards. Reduce limits on impervious surfaces in the Rural Conservancy environment designation. Add a footnote to Table 14.26.310-1 to acknowledge that new lots in Rural Conservancy created after the adoption of the SMP would need to comply with this 10 percent hard surface coverage ~~limitation~~.

**Commented [PjG27]:** Matrix issue 14(c.) Consistent with item #10, PC recommendation from 2016.

~~28-29.~~ Require predevelopment investigations for areas where archaeological resources are likely to be ~~located~~. Amend SCC 14.26.340 to include a list of exceptions when an archeological survey will not be required.

**Commented [PjG28]:** Matrix issue #16(e.)



~~29.30.~~ The critical areas section (SCC 14.26.515) already includes 300 feet as a review distance, consistent with the largest possible wetland buffer. Therefore, amend subsection (4) to adjust the Administrative Official's review distance from 200 feet to 300 feet.

~~30.31.~~ A partial change recommended to 14.26.515 Standard Critical Areas Review and Site Assessment Procedures.

- a. (4)(b) The site assessment shall use scientifically valid methods and studies, using best available science and best management practices, in the analysis of critical areas data and field reconnaissance and reference the source of science used.

~~31.32.~~ Fish and wildlife habitat conservation area protection standards. Amend 14.26.573 (1)(a) Intent of Riparian Buffers to recognize two additional functions of microclimate and nutrient inputs. This adds language as subsections vi and vii:

"a. The intent of riparian buffers is to protect the following ~~5-7~~ basic riparian forest functions that influence in-stream and near- stream habitat quality:

vi. Microclimate. Riparian vegetation creates small-scale microclimates upon which plants, fish, and wildlife depend.

vii. Nutrient inputs. Riparian vegetation supports substantial populations of insects, which are important for the diet of marine fishes like juvenile salmon."

**Commented [PjG29]:** Matrix Issue #6; Kyle Loring Table Page 57.

**Commented [PjG30]:** Kyle Loring Table Page 61.

**This recorded motion approved :**

<b>Commission Vote</b>	<b>Support</b>	<b>Oppose</b>	<b>Absent</b>	<b>Abstain</b>
<b>Tim Raschko, Chair</b>				
<b>Tammy Candler, Vice Chair</b>				
<b>Kathy Mitchell</b>				
<b>Vincent Henley</b>				
<b>Mark Knutzen</b>				
<b>Amy Hughes</b>				
<b>Martha Rose</b>				
<b>Joe Woodmansee</b>				
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

SKAGIT COUNTY PLANNING COMMISSION  
 SKAGIT COUNTY, WASHINGTON

\_\_\_\_\_  
 Tim Raschko, Chair

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 Date

\_\_\_\_\_  
 Hal Hart, Secretary

\_\_\_\_\_  
 Date