

**DRAFT Thursday, November 18, 2021**

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

Proposal publication date:	April 22, 2021
Proposal name:	Skagit County Shoreline Master Program Comprehensive Update and Periodic Review
Documents available at:	<a href="http://www.skagitcounty.net/smp">www.skagitcounty.net/smp</a>
Public hearing body:	Skagit County Planning Commission
Public hearing date:	Tuesday, May 11, 2021, at 6 p.m.
Written comment deadline:	Tuesday, June 22, 2021, at 4:30 p.m.
PC deliberations:	October 12, 2021; October 26, 2021; November 9, 2021; November 23, 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.
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 in 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 [closing date](#) 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. [Notice was also sent to the Department of Ecology.](#)
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~~ [Supplemental Staff Reports](#) ~~was~~ [were](#) provided to the Planning Commission on October ~~24~~<sup>5</sup>, 2021, [and November 4, 2021](#).
32. Planning Commission deliberations were held on October 12, 2021, October 26, 2021, November 9, 2021, [and November 23, 2021](#).
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. Amend SMP Section 14.26.370(4) to remove the Countywide UGA Open Space Concept Plan.
  - (a) ~~The Skagit Countywide UGA Open Space Concept Plan and the Skagit County 2020 Comprehensive Parks and Recreation Plan provide~~s for a connected network of parks, open space, and trails, and ~~together~~ constitutes 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.

*PDS information from supplemental staff report for November 9 PC meeting:*

Staff information: We received several comments with various viewpoints regarding public access. We spent a considerable amount of time with the Planning Commission leading up to the 2016 Planning Commission recommendation, coming up with policies and regulations that meet the state laws and guidelines but provide flexibility for development applicants.

Two legal standards also have to be met – nexus and proportionality. When requiring public access as part of a project approval, we have the burden of showing that there is a nexus between the impacts of the proposed project on public access and an increased demand for public access that is created by the project. Consideration also has to be given to the scale of the proposed project and the scale of the identified impacts to public access from the project. A requirement for public access needs to be proportional to the demand for public access created by the proposal.

Ecology SMP Handbook: For the shoreline inventory and characterization report, local governments should identify both existing physical and visual access to a jurisdiction's shorelines, including public rights of way and utility corridors, and potential opportunities for enhancing public access [WAC 173-26- 201(3)(c)(vi)]. Public access sites should be shown on inventory maps, preferably for each shoreline reach. Existing plans that address public access should be summarized in the report. For example, a parks plan may call for a new trail to the water or kayak launching beach or marina.

The department recommends that 14.26.370 (4) be retained as written.

2. 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 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).”

*PDS information from supplemental staff report for November 9 PC meeting:*

Staff information: The proposed language recommended by the Planning Commission, although meant to clarify, makes it confusing and less clear. 14.26.415 (2) is titled **When shoreline review is required**. (b) is titled Existing aquaculture. If the section is read sequentially, it makes sense and is clear. The shellfish aquaculture section of the new SMP took several months to come to some agreement on language (through the aquaculture subcommittee) between the Skagit River System Cooperative representative to the Shoreline Advisory Committee (SAC) and the shellfish growers representative to the SAC. The department recommends we retain the original language, as agreed to by the parties.

**(2) When shoreline review is required.**

(a) New aquaculture. Shoreline review is required for the initial siting, construction, planting, or stocking of a facility or farm.

(b) Existing aquaculture.

(i) Determination of existing aquaculture area.

(A) Determination of the existing aquaculture area is made by the Administrative Official.

(B) The Administrative Official may determine that an area that was previously cultivated has been abandoned and no longer constitutes “existing aquaculture.” In its determination, the Administrative Official must consult with the aquaculture operator and may consider such factors as whether the property was acquired under the Bush or Callow Acts of 1895, the use of crop rotation and fallowing, state or federal permit requirements, pest infestations, seed or juvenile availability, market fluctuations, and pollution of the farm site from other uses or developments.

(ii) Ongoing maintenance, harvest, replanting, changing culture techniques or species does not require shoreline review unless cultivating a new species or using a new culture technique that has significant adverse environmental impacts (if not allowed by an existing shoreline permit).

3. Revise proposed SCC 14.26.415(2)(b)(iii) to require “shoreline review,” not necessarily a “shoreline permit.”

*PDS information from supplemental staff report for November 9 PC meeting:  
Staff information: 14.26.415(2)(b)(iii) reads:*

*(iii) Expansion of existing aquaculture.*

*(A) For aquaculture without an existing shoreline permit, a shoreline permit is required for any expansion.*

*(B) For aquaculture permitted under this SMP, a shoreline permit is required when the activity expands beyond the permitted area.*

*(C) For aquaculture permit under a previous version of this SMP, a shoreline permit is required when the activity expands more than 10% or one acre, whichever is less, beyond the area cultivated on the effective date of this SMP, or when the expansion creates unmitigated impacts to native plant and animal populations.*

*(A) is the section identified to change shoreline permit to shoreline review. If there is a shellfish aquaculture farm operating without an existing shoreline permit, any expansion requires a shoreline permit. They are allowed to continue to operate as they existed prior to the SMP being in effect in 1976, but any expansion would require that they acquire a shoreline permit. The State guidelines recognize that this type of operation is a nonconforming use. No expansion of a nonconforming use or structure is allowed, which is why we have made accommodation for that scenario here by requiring a shoreline permit. The department does not want to regulate for the type of aquaculture that falls under (A) as a nonconforming use under Part VI Legally Established Pre-existing Uses and Structures, so we chose to write it this way to be straight forward and more defensible.*

*Please remember that we are also changing the shoreline substantial development permit to an administrative process (Level 1), which does not require a public hearing before the Hearing Examiner (14.26.710(2)(b)). And again, this language was agreed upon by the aquaculture*

*subcommittee of the SAC, after several months of thoughtful and diverse debate. The department recommends we retain the original language, as agreed to by the parties.*

4. 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.

*Staff information: This amendment was recommended by the department in 2016, when there were concerns about varying standards between the local and state requirements for docks. Washington Department of Fish and Wildlife (WDFW) had recently updated its requirements for docks. The PC and department recommended replacing this table, 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 HPA, and all freshwater docks to comply with WAC 220-660-140 or the conditions of HPA. And the PC and department also recommended that we move numeric limits on number of boat lifts and canopies into the development standards section.*

*The department realized that tying our requirements to those of WDFW could create more issues than it resolved, so reinserted Table 14.26.420-1. Tables like these are extremely useful for both applicants and implementing County staff. Consistency with HPA requirements is a benefit in this case. Most of the width standards are in line with the state standards. This recommendation is no longer relevant and the department suggests that it be deleted as a recommendation in the DRAFT recorded motion.*

5. 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.
6. Remove requirement in Table 14.26.420-1 for Watercraft lift canopies to be constructed of light permeable fabric.

**A requirement for light impermeability defeats the purpose of a lift canopy, which is to protect the watercraft from ultraviolet light**

*Staff information: Found in the comment response matrix as item 1.a. and the department response is:*

*Overwater cover provided by in and above-water structures such as docks and boatlift canopies shades the aquatic area, providing potential habitat for predators of juvenile salmon as well as inhibiting growth of aquatic plants. Requiring boat lift canopies to be of light permeable fabric is known to minimize the impact of solid structures similar to the use of grated decking on docks. The department recommends that we retain the language in the new SMP and not make the change.*

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

Properly designed and built access roads will minimize yarding distances and impact during the logging process. Access should not be more burdensome than the logging itself in the permitting process.

*Staff information:* The state guidelines changed in 2017 (WAC 173-26-241 Shoreline Uses, (3)(e) and clarified that forest practices only involving timber cutting are not considered development under the Shoreline Management Act and do not require shoreline review.

**(3)(e) Forest practices.** Local master programs should rely on the Forest Practices Act and rules implementing the act and the Forest and Fish Report as adequate management of commercial forest uses within shoreline jurisdiction. A forest practice that only involves timber cutting is not a development under the act and does not require a shoreline substantial development permit or a shoreline exemption. **A forest practice that includes activities other than timber cutting may be a development under the act and may require a substantial development permit.** In addition, local governments shall, where applicable, apply this chapter to Class IV-General forest practices where shorelines are being converted or are expected to be converted to nonforest uses.

Forest practice conversions and other Class IV-General forest practices where there is a likelihood of conversion to nonforest uses, shall assure no net loss of shoreline ecological functions and shall maintain the ecological quality of the watershed's hydrologic system. Master programs shall establish provisions to ensure that all such practices are conducted in a manner consistent with the master program environment designation provisions and the provisions of this chapter. Applicable shoreline master programs should contain provisions to ensure that when forest lands are converted to another use, there will be no net loss of shoreline ecological functions or significant adverse impacts to other shoreline uses, resources and values provided for in RCW **90.58.020** such as navigation, recreation and public access.

Master programs shall implement the provisions of RCW **90.58.150** regarding selective removal of timber harvest on shorelines of statewide significance. Exceptions to this standard shall be by conditional use permit only.

Lands designated as "forest lands" pursuant to RCW **36.70A.170** shall be designated consistent with either the "natural," "rural conservancy," environment designation.

Where forest practices fall within the applicability of the Forest Practices Act, local governments should consult with the department of natural resources, other applicable agencies, and local timber owners and operators.

14.26.445 has been rewritten (from the February 2, 2021 version to the April 22, 2021 public release draft) to reflect changes to state requirements (as part of the periodic review process). State rules require that we follow these standards, which necessitated some changes to our new SMP. The language that is currently included as 14.26.445 closely follows the state rules and have been preliminarily approved by Ecology.

I met with the Forest Advisory Board and went over the proposed changes to the SMP with them. Most of the members were aware of the state changes and understood what it means for them (and have been working in jurisdictions where these requirements are already in place). What I was able to share with them was that we are changing our process for shoreline substantial development permits, so they will become an administrative permit review process under Part VII and will not require a public hearing before the Hearing Examiner. The administrative review process would also cost less without the need for a public hearing and will be processed timelier than under our current process. So, if and when forest practice activities constitute development under the Shoreline Management Act, and are not specifically identified as a conditional use, the permitting process is administrative, won't take as long as the process in place now which requires a public hearing for shoreline substantial development permits.

*The department is not thrilled with the new requirements, but we have devised code language which meets the requirement of the state rules, but still provides some flexibility by being less specific. The department recommends that we retain the language in the new SMP and not make the recommended change in order to be compliant with the state guidelines.*

#### 14.26.445 Forest Practices

##### (1) Applicability.

(a) Forest practices governed under Chapter 76.09 RCW are subject to the provisions of this SMP as follows:

(i) All Class IV-General forest practices that propose conversion to a use other than commercial timber production shall be subject to all of the provisions of this SMP.

(ii) Any request for County approval of a Conversion Option Harvest Plan (COHP) shall be subject to all of the provisions of this SMP.

(iii) The County shall coordinate the review of forest practice applications within the urban growth areas (UGAs) of incorporated cities and towns through interlocal agreements; provided, that the County shall continue to condition forest practices within all UGAs to the full extent of this Part until such time as its jurisdictional responsibility is amended by interlocal agreements.

(b) This section applies to “forest practices,” meaning any activity conducted on or directly pertaining to forestland and relating to growing, harvesting or processing timber.

(c) This section does not apply to:

(i) preparatory work such as tree marking, surveying, and removal of incidental vegetation such as berries, greenery, or other natural products whose removal cannot normally be expected to result in damage to shoreline natural features, which is not regulated by this SMP;

(ii) log storage away from forestlands, which is regulated by SCC 14.26.450 Industrial Development.

(iii) Clear cutting of timber that is solely incidental to the preparation of land for other uses is not considered a forest practice and is permitted subject to the use standards applicable to the proposed new use and development.

(d) A forest practice that only involves timber cutting is not a development under the SMA and this SMP and does not require a shoreline substantial development permit or a shoreline exemption.

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

he has given up some control and exclusive use of his property. He/she should not be further burdened with the financial responsibility of

*Staff information:* We received several comments with various viewpoints regarding public access. Our attorney spent considerable time on the research to create a defensible public access section. We spent a considerable amount of time with the Planning Commission leading up to the 2016 Planning Commission recommendation, coming up with policies and regulations that meet the state laws and guidelines but provide flexibility for development applicants.

Two legal standards also have to be met – nexus and proportionality. When requiring public access as part of a project approval, we have the burden of showing that there is a nexus between the impacts of the proposed project on public access and an increased demand for public access that is created by the project. Consideration also has to be given to the scale of the proposed project and the scale of the identified impacts to public access from the project. A requirement for public access needs to be proportional to the demand for public access created by the proposal.

*Ecology SMP Handbook:* For the shoreline inventory and characterization report, local governments should identify both existing physical and visual access to a jurisdiction's shorelines, including public rights of way and utility corridors, and potential opportunities for enhancing public access [WAC 173-26- 201(3)(c)(vi)]. Public access sites should be shown on inventory maps, preferably for each shoreline reach. Existing plans that address public access should be summarized in the report. For example, a parks plan may call for a new trail to the water or kayak launching beach or marina.

In (1) Applicability, (a) This section applies to the following shoreline uses and activities, which are required to provide shoreline public access:

- (i) Water-enjoyment, water-related, and nonwater-dependent uses;
- (ii) Commercial and industrial development proposed on land in public ownership.
- (iii) Land divisions creating five or more lots;
- (iv) Development that involves five or more multi-unit residential dwelling units;
- (v) Development by public entities, including local governments, port districts, state agencies, and public utility districts;
- (vi) Marinas when water-enjoyment uses are associated with the marina;
- (vii) Recreation pursuant to SCC 14.26.470;
- (viii) New public structural flood hazard reduction measures, such as **new** dikes and levees, **where access rights can be secured.**

*Item (viii) specifically says where access rights can be secured. It also indicates new dikes and levees. This is clear and concise and would meet the intent of the PC recommendation to be sure all parties are agreeable (to public access and dikes).*

(b) Exceptions. This section does not apply to the following shorelines uses and activities, which are not required to provide public access:

- (i) agriculture;
- (ii) aquaculture;
- (iii) a use, activity, or development that involves four or fewer multi-unit residential dwelling units;
- (iv) a subdivision of land into four or fewer lots;

(v) a development that has previously provided public access through other permit processes.

(2) Types of public access.

(a) The Administrative Official must determine the nature of the public access required for a project. The public access required must be proportional to the demand and impacts created by the use. For a private development, the Administrative Official must make the following findings:

- (i) the proposed project will increase demand for public access to the shoreline (nexus);
- (ii) the public access to be provided is reasonably consistent with the nature and type of demand created (proportionality); and
- (iii) the public access to be provided is reasonably necessary at this location or an approved offsite location to mitigate the incremental demand created by the project.

(b) Order of preference. The types of public access are listed below in descending order of preference. The development must provide the most preferred type of public access that the Administrative Official determines is feasible.

- (i) physical access onsite;
- (ii) physical access offsite;
- (iii) physical access restricted to a community (available only for land divisions);
- (iv) visual access onsite;
- (v) visual access offsite.

(c) How to determine feasibility.

Public access is feasible unless the applicant demonstrates to the satisfaction of the Administrative Official that one or more of the following apply:

- (i) public access would result in unavoidable public health or safety hazards that cannot be prevented by any practical means;
- (ii) public access is not feasible due to inherent security requirements of the use that cannot be satisfied through the application of alternative design features or other solutions;
- (iii) public access is not feasible as part of an ecological restoration project such as a levee setback;
- (iv) public access would result in significant adverse environmental impacts that cannot be mitigated;
- (v) public access would result in significant undue and unavoidable conflict with proposed use or adjacent uses that cannot be mitigated;
- (vi) public access is not feasible because the subject site is separated from the shoreline water body by intervening public or private improvements such as highways, railroads, existing structures, or similar significant improvements;
- (vii) the cost of providing the public access is unreasonably disproportionate to the total long-term cost of the proposed development;
- (viii) public access is deemed detrimental to threatened or endangered species under the Endangered Species Act and the Administrative Official has consulted with governmental agencies or authorities with jurisdiction in making that determination.

(d) Public access must consist of a dedication of land or easement and a physical improvement in the form of a walkway, trail, bikeway, corridor, viewpoint, park, deck, observation tower, pier, boat launching ramp, dock or pier area, or other area serving as a means of view, or physical approach, or both to public waters and may include interpretive centers and displays.

(3) Public access design standards and other requirements.

(a) Public access must incorporate the following design features:

- (i) Access easements must be at least 10 feet wide, unless the Administrator determines that undue hardship would result. In such cases, easement widths may be reduced only to the extent necessary to relieve the demonstrated hardship.

- (ii) Where feasible, public access must be designed to connect to existing or future public access features on adjacent or abutting properties, or to existing public rights-of-way or access easements.
  - (iii) Trails and pathways must be located, designed, and constructed to protect bank stability.
  - (iv) Trails and public parks must be designed consistent with the County's Comprehensive Parks and Recreation Plan.
  - (v) Public access must define the separation between public and private space, e.g. with natural elements such as logs, vegetation, and elevation separations.
  - (vi) Minimize the removal of onsite native vegetation.
  - (vii) Minimize the impact on views of shoreline water bodies from public lands or substantial numbers of residences.
- (b) Public access must include:
- (i) materials appropriate to the urban or rural character of the property and vicinity and environmental condition;
  - (ii) barrier-free designs consistent with the Americans with Disabilities Act, wherever feasible;
  - (iii) auxiliary facilities such as parking and restrooms, if necessary based on expected demand;
  - (iv) trash and recycling receptacles and pet waste receptacles, to promote appropriate waste disposal and protect water quality, where applicable;
  - (v) signage with any appropriate agency logo and hours of access;
  - (vi) signage as necessary to assist first responders and police; and
  - (vii) landscaping using native vegetation
- (c) Availability, dedication, and maintenance.
- (i) Public access must be fully developed and available for public use at the time of occupancy of the use or activity or in accordance with other provisions for guaranteeing installation through a monetary performance assurance.
  - (ii) Public access must run with the land and be recorded via a legal instrument such as an easement, or as a dedication on the face of a plat. Such legal instruments must be recorded with the Auditor prior to the time of building permit approval or occupancy or with plat recording, whichever comes first.
  - (iii) Public access must be maintained over the life of the use or development. Future actions by successors in interest or other parties may not diminish the usefulness or value of required public access areas and associated improvements.
  - (iv) Maintenance of the public access facility must be the responsibility of the owner or homeowner's association, unless otherwise accepted by a public or non-profit agency through a formal agreement recorded with the Auditor.
- (d) Offsite public access:
- (i) must allow public access, in descending order of preference, at a site physically separated from, but capable of serving, the project area; or at a site on the same water body; or at a site within the same watershed;
  - (ii) may include, but is not limited to:
    - (A) enhancing an adjacent public property (e.g. existing public recreation site; existing public access; road, street or alley abutting a body of water);
    - (B) providing, improving, or enhancing public access on another property under the control of the applicant; or
    - (C) a similar measure approved by the Administrative Official.

*Staff took great care in writing this section, making it defensible and providing for as much*

*flexibility as possible for creative solutions to meet the intent of the public access requirements found in state laws and guidelines (RCW 90.58 and WAC 173-26-221). The department recommends the language in the SCC 14.26.370 should be retained as written.*

9. 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.

**There is a shortage of housing in Skagit County**

**No form of housing proposal should be denied without proper review of the proposal**

**There are presently floating housing developments in Washington with self contained systems for access, power, water and waste disposal**

*Staff information: Floating homes are addressed in WAC 173-26-241 Shoreline uses, (3)(j) Residential development. (iv) Over-water residences:*

*(A) New over-water residences, including floating homes, **are not a preferred use and should be prohibited**. It is recognized that certain existing communities of floating and/or over-water homes exist and should be reasonably accommodated to allow improvements associated with life safety matters and property rights to be addressed provided that any expansion of existing communities is the minimum necessary to assure consistency with constitutional and other legal limitations that protect private property.*

*WAC 173-26-020 Definitions includes:*

*(34) "Shall" means a mandate; the action must be done.*

*(37) "Should" means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this chapter, against taking the action.*

*The department doesn't believe that the PC recommendation meets the test in (37) to be in compliance with state rules and guidelines above. The department recommends that the proposed PC recommendation be deleted from the DRAFT recorded motion.*

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

**Private docks are used by families with small children or elderly persons for whom dock width is a safety concern**

*Staff information: The staff recommendation has been to revert back to Table 14.26.420-1 from the February 2, 2021 draft which had separate columns for Lakes With Anadromous Fish and Lakes Without Anadromous Fish. So, the lakes without anadromous fish would have a 6 foot maximum width for the pier/fixed piling portion, a 4 foot maximum width for the ramp, and an 8 foot width for the floating section.*

*The department believes that this change would address the PC concerns. According to information from a quick search of WDFW's website, Big Lake is the only lowland Skagit County lake within shoreline jurisdiction that may contain anadromous fish. The department recommends the insertion of the previous Table 14.26.420-1 to address the dock width issue.*

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

*Staff information: The averaging provision in the current SMP for residential development will no longer be feasible, since we are required to integrate our applicable critical areas regulations into the new SMP. There are buffers that will apply and averaging to determine a shoreline setback is no longer possible in the SMP Update and Periodic Review. The department recommends that this PC recommendation be deleted from the DRAFT recorded motion.*

12. 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.

*Staff information: The department provided language to insert to implement the shoreline buffer modification scenario.*

*14.26.574 Fish and wildlife habitat conservation area performance-based buffer alternatives and mitigation standards*

*Add (3) to read: Buffer Width Decreasing. Buffers may be reduced up to 25% when the applicant demonstrates to the Administrative Official that buffer reduction impacts are mitigated and result in no net loss of ecological functions. Prior to considering buffer reductions, the applicant shall demonstrate application of mitigation sequencing as required in SCC 14.26.305. In all circumstances where a substantial portion of the remaining buffer is degraded, the buffer reduction plan shall include replanting with native vegetation in the degraded portions of the remaining buffer area and shall include a 5-year monitoring and maintenance plan. Buffer reductions greater than 25% are only allowed with a shoreline variance per SCC 14.26.735.*

*Current language found in the DRAFT SMP document:*

#### 14.26.735 Shoreline Variance

(1) Purpose. The purpose of a variance is to grant relief from specific bulk, dimensional, or performance standards set forth in this SMP where there are extraordinary circumstances related to the property such that the strict implementation of this SMP would impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020. Variances from the use regulations of the SMP are prohibited.

(2) Types. There are two types of variances: administrative variances and Hearing Examiner variances.

(a) Administrative variance. An application to reduce a standard buffer width by 50% or less is an administrative variance.

(b) Hearing Examiner variance. Any other variance application, e.g., for relief from specific bulk, dimensional, or performance standards of this SMP, is a Hearing Examiner variance.

*Change (2)(a) to read:*

*(a) Administrative variance. An application to reduce a standard shoreline buffer width by ~~50%~~ or less more than 25% but no greater than 50% is an administrative variance.*

*The department recommends that the Planning Commission accept the edits outlined above and adds them to their recorded motion recommendations for clarity.*

13. 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.

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.

*Staff information: Staff recommends the following language for the recorded motion:*

*Add a new item to Table 14.26.405 Uses and Modifications Matrix - to differentiate net pens for native finfish propagation, which would retain the same permit classifications as the current net pen shoreline use, from net pens for propagation of nonnative finfish species which would be prohibited in all shoreline environment designations across the matrix.*

*In-water finfish aquaculture would require nets to contain the finfish. Such a net pen requires a Shoreline Conditional Use Permit per SMP Section 14.26.405. The text language does not reflect the matrix that a Conditional Use Permit is needed.*

*The Department proposes adding the following language in SMP Section 14.26.415 Aquaculture, (7), Net pens:*

*(b) A Conditional Use Permit is required for new commercial net pen aquaculture operations proposing to propagate a native finfish species.*

*Then change existing (b) to (c) and existing (c) to (d).*

*Add a new item to read: (e) New commercial net pen aquaculture operations proposing to propagate a nonnative finfish species are prohibited.*

14. 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.

This recorded motion approved

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

SKAGIT COUNTY PLANNING COMMISSION  
 SKAGIT COUNTY, WASHINGTON

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

\_\_\_\_\_  
 Date

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

\_\_\_\_\_  
 Date