



# Skagit County MAAM Program Three-Year Review Summary Report

**SKAGIT COUNTY CRITICAL AREAS MONITORING AND ADAPTIVE MANAGEMENT PROGRAM**

**To:** Skagit County Commissioners

**CC:** Gary Rowe, County Administrator  
Gary Sorensen, Public Works Water Resources Section Manager  
Ric Boge, Public Works Surface Water Programs Section Manager  
Betsy Stevenson, Planning and Development Services Critical Areas Team Supervisor  
Will Honea, Chief Civil Deputy Prosecuting Attorney

**From:** Ryan Walters, Special Deputy Prosecuting Attorney

**Date:** December 28, 2007

## I. Introduction

Skagit County's Salmon Policy Resolution, signed on October 8, 2007, instructed Skagit County Public Works to conduct the scheduled three-year review of the Skagit County Critical Areas Monitoring and Adaptive Management ("MAAM") Program with some modifications from the original 2004 directive, and to provide the Board of County Commissioners with this summary of the three-year review process by December 31, 2007. Public Works has since conducted the three-year review and received several comments from interested parties and the public, which are summarized in Part IV of this document. The comments received from such contrasting groups as the Skagit County Cattlemen and the Swinomish Tribe reveal a significant amount of common ground between the two typically divergent interests.

An electronic version of this document with hyperlinks to related documents is available on the Skagit County Salmon Strategy website at [www.skagitcounty.net/SalmonStrategy/](http://www.skagitcounty.net/SalmonStrategy/).

## II. MAAM Program Background

Counties and cities are required by the Washington State Growth Management Act to designate and protect critical areas—wetlands, aquifer recharge areas, fish and wildlife habitat conservation areas, frequently-flooded areas, and geologically hazardous areas. Fish and wildlife habitat areas and wetlands are especially important to healthy salmon populations, including the threatened Puget Sound Chinook and Steelhead species.

Many jurisdictions have chosen to protect critical areas using mandatory buffers—strips of land bordering the critical area where development is not allowed. These buffers can impose a heavy burden on landowners, especially if required for resource-based industries like agriculture. That's why, in places where ongoing agricultural activity is conducted, Skagit County instead uses an alternative approach. Our "Monitoring and Adaptive Management" program is intended to monitor critical areas, determine where on-going agriculture is causing harm to critical areas, and then define steps to manage the land use activity to prevent that harm from occurring.

Skagit County's MAAM program, defined in [Resolution R20040211](#), consists of two sub-programs:

- the [Water Quality Monitoring Program](#), intended to determine water quality conditions and trends in agricultural-area streams; and
- the [Salmon Habitat Monitoring Program](#), intended to measure physical stream conditions important to salmon habitat.

Both sub-programs have accumulated years of data and issued annual reports that are available from the Skagit County Salmon Strategy website.

In 2005, the Western Washington Growth Management Hearings Board found that Skagit County's MAAM program was not compliant with the Growth Management Act.<sup>1</sup> The Washington State Supreme Court upheld that determination in September 2007.<sup>2</sup> As a result, Skagit County remains non-compliant with the Growth Management Act. Although the Growth Board has stayed the current case against the County, that stay will expire on July 1, 2010, and the county must comply by December 28, 2010.<sup>3</sup>

The Board noted five principal problems with the county's MAAM program:<sup>4</sup>

1. The program lacks benchmarks (baseline values) from which to determine if harm is occurring
2. The program lacks triggers for protective action
3. The program lacks ability to detect the cause of deterioration of existing functions and values of fish and wildlife habitat critical areas in a timely way so that protective measures can be adjusted to provide adequate protection of fish habitat
4. The program lacks clarity about whether the county would actually enforce the requirements of its limited water course protective measures
5. The program is unable to ensure protective measures are actually working

With passage of [Substitute Senate Bill 5248](#) earlier this year, the Legislature imposed a three-year timeout on changes to Critical Areas Ordinances related to agricultural activities. Skagit County is therefore unable to update our CAO relating to ongoing agriculture until the end of the timeout in 2010. We are, however, able to evaluate the effectiveness of our MAAM program's current monitoring strategy and conduct other associated research aimed at developing a better program to enact at the end of the timeout.

### III. Three-Year Review Process

#### A. Background

[Resolution R20040211](#) section 3(c) committed the County to review the MAAM program at least once every three years, starting in 2007:

##### Section 3(c). 3 year Evaluation of the Regulatory and Monitoring Program

At least every three years Skagit County will provide an opportunity for the public to review, comment on, and propose changes to Skagit County Code 14.24 Critical Areas Ordinance, based on information contained in the water quality and salmon habitat survey reports described in this resolution. The review will include a public hearing consistent with the public participation requirements of the RCW 36.70A (State Growth Management Act) and SCC 14.08 (Legislative Actions) and will result in public comment and a planning agency report will include an analysis and discussion of public and resource agencies, comments and data obtained by the County's own monitoring efforts. The Board of Skagit County Commissioners shall take legislative action to review and take action on any proposal, and if needed, revise the SCC and/or the associated monitoring programs described in this resolution, based on the information contained in the annual reports to ensure the No Harm or Degradation Standard is being met. This legislative action may be appealed pursuant to the provisions of RCW 36.70A. 130(1)(a).

Skagit County's outside counsel, Pete Buck, reiterated this promise to the Washington State Supreme Court during oral argument in *Swinomish Tribe v. Growth Management Hearings Board*. But because SSB 5248 limits the County's ability to

<sup>1</sup> *Swinomish Tribe, et al. v. Skagit County*, WWGMHB Case No. 02-2-0012c ([Compliance Order](#), Jan. 13, 2005), at 27.

<sup>2</sup> *Swinomish Tribe v. Western Washington Growth Management Hearings Board*, 161 Wash.2d 415, 166 P.3d 1198 (2007), at 33.

<sup>3</sup> *Swinomish Tribe, et al. v. Skagit County*, WWGMHB Case No. 02-2-0012c ([Order Granting a Stay](#), July 9, 2007).

<sup>4</sup> *Swinomish Tribe, et al. v. Skagit County*, WWGMHB Case No. 02-2-0012c ([Compliance Order](#), Jan. 13, 2005), at 26.

make changes to its CAO, the Board of County Commissioners redefined the scope of the three-year review in its Salmon Policy Resolution. That resolution, [R20070499](#), directed Skagit County Public Works to conduct the scheduled three-year review of the Skagit County Critical Areas Monitoring and Adaptive Management (“MAAM”) Program on a more limited basis:

Section 4. Skagit County Public Works shall:

(a) by December 31, 2007, in consultation with Planning and Development Services to ensure compliance with county GMA public participation procedures, conduct the R20040211 Section 3(c) review of the county's Monitoring and Adaptive Management program, within the constraints of SSB 5248, by soliciting comments from the public, holding a staff-led public hearing, and submitting a summary of comments and testimony received to the Board of County Commissioners;

## B. Public Process

Public Works, with the assistance of the Prosecutor’s Office, took the following steps to conduct the three-year review and involve the public in the process:

- established a webpage for the MAAM program on the [Skagit County Salmon Strategy website](#) describing the program, the sub-programs, and the three-year review process;
- established a comment period to conclude December 24;
- accepted comments in person, via mail, and via e-mail;
- mailed postcards to 273 people with identified salmon interests notifying them of the comment period and the workshop;
- e-mailed notification to the Skagit County press release mailing list;
- published a public notice in the Skagit Valley Herald; and
- hosted a two-hour public workshop with presentations by Public Works on the MAAM program, a response from Sally Lawrence of the Department of Ecology, and opportunity for public questions and comment.

The workshop was videotaped and the video and transcript will be published to the MAAM page on the [Skagit County Salmon Strategy website](#) as soon as it is available.

## C. Academic Review

As instructed by [R20070499](#) section 4(b), Public Works has retained Professor Mike Barber of the Washington State Water Research Center to conduct an independent scientific review of the Water Quality Monitoring Program.<sup>5</sup> Professor Barber’s report is expected by March 1, 2008. As part of that report, Professor Barber will respond generally to the public comments and testimony received during our internal three-year review.

## IV. Testimony & Comments

At the December 6 workshop, Skagit County took testimony from Jean Shea, Tarn Mower, and Glen Johnson. During the comment period, Skagit County received written comments from the Skagit County Cattlemen and the Swinomish Tribe. The Washington Department of Fish and Wildlife e-mailed to offer assistance developing our program, but did not comment.

Writing for the Skagit County Cattlemen, Randy Good and Jean Shea highlighted the current monitoring program’s failure to interpret the collected data and draw appropriate conclusions. Calling our current data analysis “ineffective,” the Cattlemen urged the County to use the timeout to “develop a statistically-valid data analysis program to complement the existing stream Monitoring Plan.” Their comments implore the County to “include steps that will indicate when enforcement

<sup>5</sup> Skagit County Contract C20070661 (Dec. 3, 2007).

actions are needed and when they are not.” They disagree that water quality trends can be detected over a few years of data, and argue that “trends are not indicative of a decline in fish habitat conditions caused by local activities.” They then make specific recommendations about which sampling sites to use for a baseline data set. The Cattlemen also included four additional documents—a summary by Pat Larson of the best available science literature on this topic and three articles by Larry Larson on river temperature response to agricultural land use, riparian shade and stream temperature, and data analysis. These documents will be reviewed in greater depth as the County continues research associated with revising the MAAM program.

Larry Wasserman, Environmental Policy Manager for the Swinomish Tribe, sent a letter indicating his regrets at being unable to attend the December 6 workshop. His letter observed that according to the County data, nearly every stream monitored by the MAAM program fails to meet state water quality standards for one or more parameters. Furthermore, he noted, “water quality is worse at sample sites adjacent to lands most impacted by agricultural uses as compared to upstream sites.” His comments also emphasized the need for the MAAM program to address cause and effect, and to be able to “assess the contribution of pollutants from individual farms.” The current program does not provide enough detail to develop specific CAO changes in response to water quality deficiencies, he argued.

While the comments summarized above have not yet been submitted to county MAAM program staff for response, nor evaluated for accuracy, they do reveal a significant amount of common ground between groups with such divergent interests. Skagit County staff will work with all parties going forward to propose MAAM program revisions consistent with those mutual objectives.