



Planning & Development Services

1800 Continental Place ▪ Mount Vernon, Washington 98273
office 360-416-1320 ▪ pds@co.skagit.wa.us ▪ www.skagitcounty.net/planning

Memorandum

To: The Skagit County Board of County Commissioners
From: Hal Hart, Planning and Development Services Director
Date: December 14, 2021
Re: Transmittal of Planning Commission Recorded Motion on the Skagit County Shoreline Master Program Comprehensive and Periodic Updates

Summary

Planning and Development Services (PDS) is providing this memo in advance of the January [114](#), 2022 Board of County Commissioners (BOCC) meeting. The purpose of this memo is to transmit the Planning Commission recorded motion and associated Shoreline Master Program (SMP) documents. The following sections describe the regulatory background of the proposal; a summary of public comments and the Planning Commission's recommendation; and next steps in the local and state review process.

Background

The Revised Code of Washington (RCW) 90.58 (i.e. the Shoreline Management Act (SMA) of 1971), and WAC 173-26-010, requires jurisdictions that contain "Shorelines of the State" within their boundaries to periodically update their SMP as required with the regulatory agency, namely the Washington State Department of Ecology (Ecology). The SMA applies to marine waters, lakes greater than 20 acres, rivers and streams with average flows greater than 20 cubic feet per second, and upland areas within 200 feet of these water bodies, and portions of the floodplains and wetlands associated with these shorelines. Skagit County has not completed a thorough update to its Shoreline Master Program since its adoption in 1976. This SMP only applies to lands outside cities and towns, in unincorporated areas of the county.

The Shoreline Master Program is split into two principal sections:

Goals, objectives, and policies, which fit into the Skagit County Comprehensive Plan as Chapter 6, and guide the creation of development regulations.

Development regulations, which are specific rules and criteria for development, and which fit into Skagit County Code as Chapter 14.26. The chapter is divided into eight parts.

Skagit County is completing the Comprehensive SMP Update and Periodic Review, under authorities from RCW 90.58.080, WAC 173-26-090 and WAC 173-26-100 (SMA and Guidelines), RCW 36.70A.480 (GMA), RCW 43.21C and WAC 197-11(SEPA) and Skagit County Code 14.26 and 16.12.

SMP Update Process 2010 -2021

Skagit County began work on the SMP in 2010, preparing and executing a contract with Ecology and hiring a consultant to assist with the work. In the spring of 2011, the Board of County Commissioners issued an invitation for applicants to serve on the Shoreline Advisory Committee (SAC). Several letters of interest were received, and the Board appointed 17 people to the SAC, which was tasked with reviewing and providing input on technical documents created to support development of the SMP as well as on draft SMP policies and regulations. SAC meetings were held regularly in 2011 and 2012 with some additional work in 2013. SAC members attended public visioning meetings, open houses, and several Planning Commission meetings. A joint meeting between the SAC and the Planning Commission was held on May 22, 2012.

The Planning Commission review process began with a first-round rough draft document at the May 27, 2012 meeting. They were involved in the review and rewrite process, which was something different than the usual legislative project review process. After several work sessions, rewrites, and edits, we developed a plan that we believe met our reading of the state guidelines and also provided some language reflective of unique circumstances in Skagit County.

Comments were solicited and received both during an early public comment opportunity on the initial rough draft presented to the Planning Commission and during the formal public comment and public hearing process. The 263 pages of comments are available at www.skagitcounty.net/smp. The Planning Commission completed its work on the Comprehensive Shoreline Master Program Update on August 17, 2016, by issuing a recommendation in the form of a recorded motion, which is available at www.skagitcounty.net/smp. The project was put on hold in Fall of 2016, so final local adoption of the SMP Comprehensive Update did not occur.

In October 2020, Skagit County, in partnership with the Towns of Lyman and Hamilton, received grants from Ecology to complete the Periodic Review of the SMP. The County hired a consultant to assist us with the work necessary to complete the Periodic Review of the SMP. In addition, the County and the Towns are including the Comprehensive SMP Update as part of the review and adoption process.

A new draft SMP document was made available on February 2, 2021 for preliminary review by the Planning Commission and the public. The Planning Commission held SMP work sessions on December 8, 2020, January 26, 2021, February 9, 2021, February 23, 2021, March 9, 2021, March 23, 2021 and April 27, 2021. More information on the Planning Commission meetings can be found at [Skagit County Planning Commission](http://www.skagitcounty.net/planning). The second and final draft SMP was made available on the County SMP webpage on April 13, 2021. The public comment period began on April 22, 2021 and was extended through June 22, 2021 at 4:30 p.m. This version of the proposed SMP is attached as **Attachment 1** and made available to the public on the webpage (www.skagitcounty.net/smp). This draft does not reflect changes due to department or Planning Commission recommendations. Supporting regulatory documents and maps are

included here as **Attachment 2**, Skagit SMP Appendix 1, List of Lakes, Streams and Rivers in Shoreline Jurisdiction and **Attachment 3**, Shoreline Master Program Environment Designation Map.

The Planning and Development Services staff and consultant team held monthly public meetings. The meetings were offered virtually, and held on January 21, 2021, February 11, 2021, March 11, 2021, April 8, 2021, May 13, 2021 and May 27, 2021. Turnout was excellent, averaging about 30 participants per meeting, with meaningful discussion and question and answer sessions.

Following the Public information meetings and Planning Commission Hearings, work session continued from June through September and focused on the public comments received. The Planning Commission deliberated October through November with five meetings, culminating in a recommendation on November 30, 2021.

Proposal Plan Updates - Highlights

Critical Areas integration. The state guidelines provide various options for implementing critical areas ordinances (CAO) within shoreline jurisdiction. We have been working with Ecology throughout the process and received comments and made edits based on those comments. We opted to integrate the applicable portions of the critical area regulations, and they are included as Part V of the SMP.

Buffer reductions and variance procedures. Based on our current regulations, all shoreline areas are, by definition, a critical area (fish and wildlife habitat conservation area) and are subject to the regulations of both the CAO and the SMP. Quite often landowners are faced with buffer and setback standards that require variances from both critical area buffer requirements and SMP shoreline setback requirements. The updated SMP contains language that will include variance procedures, which allows for varying buffer reductions:

- 25% to 50% buffer reduction with administrative variance with Ecology approval
- >50% buffer reduction with Hearing Examiner variance with Ecology approval

This adds a new suite of opportunities for landowners to address shoreline buffer requirements. Under current county and state requirements, any reduction in the shoreline setback requires a Hearing Examiner variance and approval by Ecology. Ecology seems amenable to the administrative variance process at the local level, but Ecology would still need to approve the 25% - 50% buffer reduction requests, along with the Hearing Examiner variance requests.

Dock standards. We received comments from Lake Cavanaugh residents on the dock standards in the original proposal released for public comment. We have received additional comments from them on the current public release draft SMP document, which will be considered and responded to as part of the review process. We also received feedback from Ecology. Any changes made since the 2016 Planning Commission recommendation will be noted in the margin of the SMP document.

Public access. 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 Planning Commission recommendation, coming up with policies and regulations that meet the state laws and guidelines, but provide flexibility for 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.

Non-Conforming Single Family Residences. Legally established structures are allowed to be repaired, maintained, and expanded, given the footprint of the expansion does not exceed 200 square feet. Impacts to shoreline or critical area ecological functions or processes from the expansion must be mitigated on site.

These changes are also to remain consistent with the Department of Ecology’s periodic review checklist, the Skagit County Comprehensive Plan and development regulations, and the latest Ecology guidance and science. A draft version of the proposed SMP is attached and made available to the public on the webpage (www.skagitcounty.net/smp) for comparison to the current SMP. This draft does not reflect changes due to department or Planning Commission recommendations.

For more information and additional changes that have been made to the SMP final draft public comment document, please refer to the Power Point Presentations for the Planning Commission meetings found on the County’s project webpage at [Shoreline Master Program Update \(skagitcounty.net\)](http://Shoreline Master Program Update (skagitcounty.net)).

Summary of Planning Commission’s Recorded Motion

The Planning Commission deliberated on the proposed SMP from October 12, 2021, to November 30, 2021. **Attachment 4** is the Recorded Motion from the Planning Commission recommending the BoCC adopt the proposed amendments. The motion carried 8-0-0 (one seat being vacant). This document serves as a formal transmittal of the Planning Commission recommendation within two weeks of signature.

The Planning Commission made recommendations on a variety of issues including the removal of the Countywide UGA Open Space Concept Plan reference, increasing dock widths to protect human safety, allowing temporary roads for timber harvest, removing the maintenance burden from property owners who have provided public access to the community, and allowing existing non-conforming structures to be maintained, repaired, or replaced.

Planning Commission recommended changes in response to public comments regarding:

- Boat lift canopies and dock widths
- Dike and drainage district authority
- Prohibition of nonnative finfish net pen aquaculture;
- Directing sign lighting away from critical areas
- Defining Critical Saltwater Habitat
- Minimizing lot coverage to 10 percent in the Rural Conservancy environment on new lots
- Early involvement of state and tribal authorities regarding archaeological resources
- Extending the review distance for critical area indicators

The draft SMP (**Attachment 1**) does not reflect changes due to Planning Commission recommendations at this time.

The previous staff reports, citizen comments, public noticing documents, and other supporting materials concerning this proposal are available at the following webpage: www.skagitcounty.net/SMP

Public Comments and Department Response

The Department received 98 public comments on the SMP update from April 22 to June 22, 2021. Due to the sheer number and length of the comments, staff responded to each comment by subject matter or issue. This document is referred to as the Public Comment and Response Matrix, attached here as **Attachment 5**. This document includes: public comments by subject area (organized into sixteen separate categories, and 75 subcategories), commenter, and the department response to each submission. The comments and responses were the topic of six work sessions with Planning Commission from early June through September.

The full record of public comments received during the open comment period and public hearing can be viewed at the following link:

https://www.skagitcounty.net/PlanningAndPermit/Documents/SMP/comments/Skagit%20SMP%20Public%20Comments_all%20comments%207-27-21.pdf

Planning and Development Services Department Recommendation

The Department staff provided recommendations in staff reports to the Planning Commission. These were provided in response to public comments received during the comment period. Generally the department recommendations are consistent with the Planning Commission recorded motion, with a couple of issues that may need clarification or adjustments due to the Shoreline Management Act or public comment.

A future memo will offer department recommendations and provide options for adoption by the Board.

Next Steps

The Department will schedule further time to meet with the Board to receive additional direction regarding preliminary adoption of the Shoreline Master Program Update proposal. We will then need to take some time to make the edits the Board authorizes (e.g., to implement the changes in the Planning Commission's recorded motion), and various cleanup edits. Then, the Board can adopt a resolution attaching the SMP documents the County intends to adopt, provided it is approved by Ecology. This resolution will accompany the remainder of the submittal package that is required by Ecology.

Ecology will then determine if the submittal is complete. Once complete, Ecology will provide notice of a comment period. At their discretion a public hearing could be held. We would provide response to the comments received, as requested by Ecology. Ecology will then issue a letter (usually a conditional approval letter), that will outline required and recommended changes to the SMP submittal packet.

Skagit County will consider the changes and the options moving forward and:

- Agree to the proposed Ecology changes by written notice; or
- Submit an alternate proposal to Ecology for consideration.

Upon completion of Ecology's review and adoption process, the County will receive any changes required by the Department of Ecology to approve our SMP. At that time, the County will determine what is necessary to complete the adoption process.

The Department has consulted with the Department of Ecology throughout the SMP update process, reviewing sections of the document in detail prior to the release of a public review draft to comply with State law.

ATTACHMENTS (Separate Cover):

1. Skagit County Shoreline Master Program Draft, April 12, 2021
2. Skagit SMP Appendix 1, List of Lakes, Streams and Rivers in Shoreline Jurisdiction
3. Shoreline Master Program Environment Designation Map
4. Planning Commission Recorded Motion, November 30, 2021
5. Shoreline Master Program Update - Public Comment and Response Matrix