



# Skagit County Planning & Development Services

DALE PERNULA, AICP Director

JACK MOORE, CBCO Building Official

## Supplemental Staff Report #1

To: Planning Commission  
From: Betsy Stevenson, AICP, Senior Planner, Team Supervisor, Project Manager  
Re: Shoreline Master Program Update – Comprehensive Plan Policies, Development Regulations and Shoreline Environment Designation Maps  
Date: April 15, 2016

This memo prepares for the Planning Commission deliberations on the SMP starting April 19 and addresses public comments received during the written comment period between February 4 and April 4, 2016, and testimony received at the public hearing on March 15, 2016.

### The Proposal

Now that the comment period has concluded, the Planning Commission is charged with generating a recommendation on the proposal, i.e.:

- The proposed Comprehensive Plan policies
- The proposed development regulations (shoreline development regulations SCC 14.26 and supplemental changes to SCC 14.04, 14.06, 14.24)
- The proposed Shoreline Environment Designation maps

The Planning Commission's recommendation takes the form of a Recorded Motion, including findings of fact, reasons for action, and recommendations. Planning Commissioners who are unfamiliar with the recorded motion format may wish to review the Planning Commission's recent Recorded Motions on [marijuana](#) and [stormwater](#).

### Deliberations Process

As we discussed at your January 5 meeting, the Planning Commission will follow a structured deliberation protocol on both the SMP Update and the Comprehensive Plan Update.

1. **Ask questions.** Although we've already had several opportunities for Planning Commissioners to ask questions, members are encouraged to first take the opportunity to get any last minute questions answered before they begin.
2. **Lay it out.** Planning Commissioners should each identify the issues they want to address in their recorded motion. *It would be helpful if members have their issue lists prepared in advance.* As each PC member speaks, staff will type the issue list on screen.
3. **Set the scope and sequence of the discussion.** Staff will help the PC organize the list of issues into an outline for discussion. The PC should then informally adopt the outline as a rule for proceeding with the discussion.

4. **Take each concept one at a time.** The chair should require discussion to follow the outline and, on his or her own, rule out of order any member who strays from the topic on the floor. If the chair does not interrupt a member who strays from the topic, any planning commissioner can call for a point of order.
5. **Focus on the content of the recorded motion.** The PC's objective is to generate a Recorded Motion that captures their recommendation and reasons for it. Staff has prepared a draft Recorded Motion to work from. As the discussion proceeds and coalesces into specific points, PC members should make motions using the following process:
  - a. Articulate, in general terms, and as many words as you need, what finding/reason or recommendation you want included in the Recorded Motion.
  - b. Staff will type that into a concise statement in Track Changes on the screen.
  - c. Say, "I move that we add the [statement on the screen] to the Recorded Motion."
  - d. If the motion is seconded, discuss *only* the motion, and then take a voice vote.
  - e. Move to the next recommendation or finding.

The Planning Commission should not walk through the entire SMP Update section by section, as it did when providing initial feedback on the policies and regulations. That is not an efficient use of the Commission's time. The Planning Commission's recommendations should be relatively high level, and should not attempt to wordsmith or rewrite the document.

## Responses to Comments

Staff has organized the public comments into the following issue groups for the purpose of responses:

- Sea level rise
- Guemes Island
- Public access
- No net loss of ecological functions
- Aquaculture
- Lake Cavanaugh
- Dikes (maintenance/reconstruction, OHWM/jurisdiction, public access)
- Buffers
- Docks (dimensional standards)
- Shoreline Environment Designation Map changes (other than Guemes)
- Comments on Other Specific Code Sections
- Miscellaneous

This is only staff's best attempt at grouping the issues. This list does not need to be how the Planning Commission organizes its deliberations, nor does the Planning Commission have to address all the topics on this list, nor is the Planning Commission constrained to the topics on this list. The Department also is working on a list of the other changes to the proposal that the Planning Commission has already discussed, but did not make it into the final draft (e.g., the 1:1 ratio on dock

slips to residential units, definitions of “environment designations”) which we will bring to you at a later meeting. Finally, the Department proposes to review Ecology’s comments line-by-line near the end of the Planning Commission’s deliberations after all other issues have been considered.

## Responses to Public Comments, Part 1

Because of the number of comments, staff has included responses to the first four topics in this memo, and will respond to other topics in later memos. The Department suggests that if the Planning Commission includes these topics in its deliberations outline, it takes these issues up first.

Public comments are in bold marked with 🗨️ and followed by the Department response. Where the Department agrees with a particular change, we have marked proposed language for the Planning Commission recommendation with “RC-#” in the margin.

### Guemes Island

The County received substantive comments on Guemes-specific issues from Nancy Fox, Joan Palmer, Hal Rooks, and Patty Rose. Note that Joe Geivett (Lake Cavanaugh) also briefly commented on the administrative variance provision.

#### 🗨️ **Several proposed Shoreline Environment Designation map changes.**

Staff met with the commenter prior to submission of the comment letter, worked through each of the requested changes, and asked her to submit the requests in writing. The Department supports each of the proposed Shoreline Environment Designation map changes requested in Nancy Fox’s March 15 comment letter except redesignation of the Guemes ferry dock area from Shoreline Residential to High Intensity. Ferry terminals get the same review (conditional use) in Shoreline Residential as High Intensity. We don’t see the need to carve out a small slice for High Intensity, and foresee possible negative consequences, such as allowing other, unexpected new uses.

*RC-1. Change the Shoreline Environment Designation map as requested in Nancy Fox’s March 15 comment letter except do not change the ferry dock area.*

If the Planning Commission recommends changes from Rural Conservancy to Natural, we will send notifications to the affected property owners before the opening of the next comment period on the proposal.

#### 🗨️ **Require accessory buildings to be located landward of principal structures.**

The Department believes that adding such a requirement could be easily implemented, although it is probably only appropriate for *residential* accessory structures.

*RC-2. Require accessory residential structures to be located landward of residences.*

#### 🗨️ **Skagit County needs a strong tree-cutting and clearing ordinance.**

The Department agrees that we need more review before clearing occurs, especially to facilitate the County’s obligation under our municipal stormwater (NPDES) permit and the National Flood Insurance Program. The Department plans to work on this issue in the latter half of 2016.

🔊 **Reduce the administrative variance for shoreline setbacks to 25%.**

The County's existing critical areas ordinance allows 50% admin variances, if the application meets the criteria in SCC 14.24.140. The Department believes the current code is working well, and does not support changing it.

🔊 **Require notification to neighboring properties for shoreline setback variances.**

Under the proposal, an administrative shoreline variance would be a Level 1 application under SCC 14.06, which requires public notice, including mailing to neighbors within 300 feet.

🔊 **Prohibit (1) piers and docks, (2) mining, and (3) commercial aquaculture on the Guemes shoreline, consistent with Guemes Subarea Plan.**

The Department is not aware of any piers or docks (other than the ferry terminal) on Guemes Island today, but a Guemes-specific prohibition could be added to the SMP.

Because there is no mineral resource overlay on Guemes shorelines, mining is already prohibited under the zoning code. The Department would prefer to continue to rely on that rather than carve out another exception in the SMP.

Commercial aquaculture is a preferred use under the Shoreline Management Act. In order to prohibit it, the County would have to demonstrate why either the area isn't suitable for it, or that it is so sensitive that prohibition is necessary to protect the shoreline.

## Sea Level Rise

The County received substantive comments on sea level rise from Scott Andrews (Swinomish), Perry/Manns (Skagit Audubon), Tim Trohimovich (Futurewise), and Tim Hyatt (SRSC).

🔊 **The SMP must address sea level rise.**

While the Department agrees that sea level rise is occurring, we believe the proposal adequately avoids impacts from sea level rise in almost all cases through application of shoreline buffers.

🔊 **Locate residential development to avoid the need for shoreline stabilization within the expected lifetime of the structure, taking into account sea level rise.**

The Department agrees that future sea level rise should be considered in this scenario.

*RC-3. Amend 14.26.470(4)(b) to consider sea level rise over the lifetime of the structure.*

🔊 **Add a new section requiring structures within the Sea Level Rise Risk Zone to be able to withstand storm surge.**

We do not propose a Sea Level Rise Risk Zone.

🔊 **Consider future sea level rise in calculating "no net loss" from shoreline stabilization structures.**

The Department believes net loss must be calculated based on a comparison of present conditions to past conditions, and cannot be reasonably calculated based on *future* conditions.

🗨️ **Consider erosion due to sea level rise in calculating sufficient setbacks from the top of marine bluffs.**

The Department agrees that future sea level rise should be considered in this scenario.

*RC-4. Modify policy and regulations to address effects of sea level rise on erosion rates when establishing minimum setbacks from the tops of marine bluffs.*

🗨️ **Require new buildings be located, and new lots be drawn so buildable area is outside the area likely to be inundated by sea level rise in 2100 and outside areas where wetlands are likely to migrate.**

Although few new shoreline lots are likely to be created, the Department agrees that these would be useful code additions.

*RC-5. Add new sections to SCC 14.24.350(4) to locate new lots and new structures and buildings outside areas expected to be inundated by sea level rise by the year 2100, and outside areas where wetlands are likely to migrate by then.*

## **Public Access**

The County received substantive comments on public access issues from Randy and Aileen Good, Ellen Bynum (FOSC), Perry/Manns (Skagit Audubon), Daryl Hamburg, and Roger Mitchell.

🗨️ **Referencing rights of the public under the Public Trust Doctrine (p 36) and the Skagit County Urban Growth Area Open Space Concept Plan is appreciated.**

🗨️ **Public access regulations need enforcement provisions to ensure public access areas are properly maintained once established.**

The Planning Commission could consider recommending some monitoring or maintenance requirements in SCC 14.36.370. If monitoring/maintenance were a requirement, failure to follow these requirements would be enforceable under the general enforcement rules in SCC 14.44. The Department does not necessarily recommend adding monitoring/maintenance requirements, because the type of public access will depend on the situation, as well as who is responsible for the public access area. These concerns could be addressed as part of the individual permitting process.

🗨️ **Suggest adding legal markers on public access points so that sheriff and first responders may track instances of criminal activity.**

The Planning Commission could consider recommending an additional standard under 14.36.370(3)(b) that would require some type of identification, signage or marker, however the Department would not necessarily recommend this without further research. Both the type of public access and who is providing such public access will depend on the situation. As part of the permitting process for the individual project, the County could consider the value of requiring such a marker and make signage/identification a condition of the permit. SCC 15.24 regulates addressing requirements, establishing that “[a]ll principal dwellings, business establishments, meeting halls, occupied recreational lots, stand alone utility sites or peripheral outbuildings” require addresses. SCC 15.24.010(1). Public access and open space areas are not included.

🗨️ **SMP must be clear that most existing levees are on private lands and the access easements are for flood risk management only—not public access.**

There are no public access requirements imposed on existing dikes and levees in the proposed SMP update. The only public access requirement for dikes and levees is for *new* dikes and levees, and is only required if access rights are secured and access is feasible. The standard is taken directly from the WAC 173-26-221(3)(c)(iv). See SCC 14.26.370(1)(a)(viii), “New public structural flood hazard reduction measures, such as new dikes and levees, where access rights can be secured.” The Department does not think additional language is needed to make this more clear.

🗨️ **Public access requirements are untenable and inconsistent with private property rights.**

The public access provisions were carefully crafted to ensure that they adhere to constitutional principles and do not result in regulatory or actual takings of private property. In the limited instances where public access is required for private development, the SMP requires a nexus and proportionality review (with supporting findings) which is the test to determine whether a proposed regulation or exaction is constitutional. See SCC 14.26.370(2)(a).

🗨️ **Open Space Plan is not binding and should not be referenced in the public access section.**

The Skagit County UGA Open Space Concept Plan is referenced in the public access provisions of the SMP update but is not binding. Together with the Comprehensive Parks and Recreation Plan, it provides guidance for where public access may be most beneficial to the public and the SMP update simply encourages that public access be consistent with these two documents.

## **No Net Loss**

The County received substantive comments on “no net loss” issues from Gary Hagland, Roger Mitchell, Ellen Bynum (FOSC), and Perry/Manns (Skagit Audubon).

🗨️ **What is “no net loss of ecological functions” and how is that determination made?**

WAC 173-26-186(8)(b) requires that “[l]ocal master programs shall include policies and regulations designed to achieve no net loss of ...ecological functions.” “Ecological function” is defined in WAC 173-26-020 and in the SMP Update (proposed SCC 14.26.820, Definitions) as “the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline’s natural ecosystem.” Net loss is measured from the baseline conditions as established in the Shoreline Analysis Report prepared in 2011.

The proposed SMP Update also includes a “no net loss” standard for individual project proposals (SCC 14.26.305), to be achieved by following the standards in the SMP, as well as requiring mitigation where necessary to address adverse impacts.

**💡 There is no baseline condition established to determine “no net loss of ecological functions.” How does County verify accuracy of baseline and enforce the “no net loss” principle?**

A No Net Loss Report was prepared to demonstrate how the proposed SMP policies, regulations, and supporting documents, if implemented, achieve this goal. The Shoreline Analysis Report provides a shoreline inventory and documents the baseline conditions by which the no net loss determination must be made. The Shoreline Analysis Report also made recommendations for how the SMP proposal could achieve “no net loss.” A Cumulative Impacts Analysis then evaluated what impact foreseeable development consistent with the proposed SMP would look like, in conjunction with proposed shoreline restoration as outlined in the Shoreline Restoration Plan. The Cumulative Impacts Analysis and No Net Loss Report concluded that the proposed SMP, if implemented, would achieve “no net loss” because it would maintain existing shoreline functions within the county while accommodating reasonably foreseeable future shoreline development. The Shoreline Restoration Plan further identified opportunities for restoration efforts that provide potential for ecological lift, or improvement.

**💡 We appreciate the emphasis throughout the draft Shoreline Master Program on no net loss of shoreline ecological functions and the encouragement for restoration of these important habitats.**