



Planning & Development Services

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Memorandum

Planning Commission Public Hearing

Staff report concerning the Comprehensive Update and the Periodic Review of the Shoreline Master Program

To: Skagit County Planning Commissioners

From: Betsy Stevenson, AICP, Senior Planner, Team Supervisor and Project Manager

Re: Shoreline Master Program Comprehensive and Periodic Update

Date: May 5, 2021, in advance of the May 11, 2021 public hearing

Summary

Skagit County is proposing a Comprehensive Update to the County's Shoreline Master Program ("SMP"), which has not been comprehensively updated since its adoption in 1976. Skagit County, along with all other local governments containing shorelines of the state is required to update the SMP. The SMP is a combined planning and regulatory document that contains policies, goals, and specific land-use regulations for shorelines, and shoreline environment designation maps. It is intended to balance development, public access, and protection of natural resource and shoreline areas.

SMPs are required by the state Shoreline Management Act ("SMA") (RCW 90.58), which was approved by Washington voters in a 1972 referendum. The SMP is intended to be a cooperative program between local government and the state (Washington State Department of Ecology). The Skagit County Shoreline Master Program jurisdiction includes all marine waters, rivers with a flow greater than 20 cubic feet per second, lakes 20 acres or larger, upland areas within 200 feet of these water bodies and portions of the floodplains and wetlands associated with these shorelines. It only applies to lands outside cities and towns, in unincorporated areas of the county.

Subsequent periodic review of the SMP is required by the Department of Ecology ("Ecology") every eight years. The first periodic review of Skagit County's comprehensive SMP update is due June 30, 2021. The purpose and scope of the 2020-2021 periodic review is to keep the SMP current with amendments to state law, changes in local plans and regulations, and new or improved data and information.

Skagit County, in partnership with the Towns of Lyman and Hamilton, is updating its Shoreline Master Program (SMP) in accordance with the State Shoreline Management Act. This SMP update is intended to satisfy the statutory requirements of RCW 90.58.080(2)(a)(iv) to comprehensively update the County's SMP and the statutory requirements of RCW 90.58.080(4)(b)(ii) to take action to review and,

if necessary, revise the County's SMP.

SMP Update Process 2010 -2021

The Shoreline Management Act (SMA) was approved by the Legislature in 1971 and overwhelmingly approved by public initiative in 1972, creating a unique partnership between local governments and the Department of Ecology as co-regulators of Washington's shorelines. More than 260 Washington towns, cities, and counties have marine, lake, and stream shorelines that fall under SMA jurisdiction. In 2003, Ecology adopted new guidelines for updating SMPs and the State Legislature set up a timetable for all 262 local governments to update their shoreline programs. The shoreline guidelines outline the elements that new SMPs must include to:

- Address current shoreline conditions
- Apply new scientific information about managing and protecting our shorelines.
- Accommodate future development while protecting the ecological functions of our shorelines.
- Align better with current environmental and land use laws, such as salmon recovery and watershed management plans, state Growth Management Act ("GMA") and critical areas ordinances, port development plans, public access locations, etc,

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. For a list of the public meetings held on the SMP, please see Attachment A to this staff report.

The Planning Commission review process began with a first round rough draft document at that 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, March 23, 2021 and April 27, 2021. More information on the Planning Commission meetings can be found at [Skagit County Planning Commission](#). The second and final draft SMP was made available on the County SMP webpage on April 13, 2021. The public comment period runs from April 22, 2021 through June 22, 2021 at 4:30 p.m.

The Planning and Development Services staff and consultant team is holding monthly public meetings. The meetings are offered virtually, and have been held on January 21, 2021, February 11, 2021, March 11, 2021, and April 8, 2021. Another monthly public SMP meeting is scheduled for May 13, 2021. Turnout has been excellent, between 30 and 40 participants, with meaningful discussion and question and answer sessions.

Proposal Description

Skagit County's Proposed Comprehensive SMP Update and Periodic Review

Skagit County is in the process of completing both the Comprehensive Update and Periodic Review of its SMP. State law considers the goals and policies of an SMP an element of the county comprehensive plan, and the SMP use regulations are considered a part of the county's development regulations.

The proposed comprehensive update is a complete rewrite of the current SMP 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 Code.

Skagit County has combined the completion of the Comprehensive Update and the Periodic Review into the current SMP document. Changes in the Draft SMP since August 2016 are noted within the margin of the document.

Authority

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.

SEPA Threshold Determination

Skagit County has determined that this proposal does not have a probable significant adverse impact on the environment. An environmental impact statement is not required under the State Environmental Policy Act, RCW 43.21C.030 (2) (C). This determination was made after review of a completed environmental checklist and other information on file with the lead agency and is available upon request.

This determination was issued on April 22, 2021, pursuant to WAC 197-11-340(2). Skagit County will

not act on this proposal during the public comment period. Pursuant to SCC 16.12.210, no administrative appeal process is available for this legislative action.

The Determination of Nonsignificance and SEPA checklist was:

Filed with the Washington State Department of Ecology [SEPA Register](#).

Distributed (via email) to agencies with jurisdiction, the Department of Ecology, and affected tribes on the County's SEPA distribution list, and to each local agency or political subdivision whose public services would be changed due to the implementation of the proposal.

Notices and Public Comment Period

A Notice of Availability was issued for the Comprehensive SMP Update and Periodic Review on April 22, 2021. Written public comments are being accepted from April 22, 2021 through June 22, 2021 at 4:30 p.m.

The SEPA Threshold Determination was issued on April 22, 2021, pursuant to WAC 197-11-340(2). Skagit County will not act on this proposal during the public comment period. Written comments regarding this Determination of Nonsignificance are being accepted from April 22, 2021 through June 22, 2021 at 4:30 p.m.

The notice of public hearing was issued on April 22, 2021. The Planning Commission will hold a public hearing on May 11, 2021 at 6:00 p.m. virtually. Those wanting to testify at the public hearing need to sign up and register at [Skagit County Shoreline Master Program Update \(skagitsmpopenhouse.com\)](#).

Notification methods included

1. Publication in the local newspaper of general circulation (April 22, 2021)
2. Electronic mail to 75 recipients (April 22, 2021)
3. Electronic mail to PDS email subscription list (April 22, 2021)
4. Electronic email to Skagit County Planning Commission (April 22, 2021)
5. Electronic email to Agricultural Advisory Board members (April 22, 2021)
6. Electronic email to Forest Advisory Board members (April 22, 2021)
7. Electronic mail to Shoreline Advisory Committee members (April 23, 2021)
8. Electronic mail to Skagit Marine Resources Committee members (April 22, 2021)
9. Posted on the project webpage (April 22, 2021)
10. Press release (April 22, 2021)
11. Social media (April 22, 2021)
12. Post card mailer sent to shoreline landowners in unincorporated Skagit County

A request for an extension of the public comment period was requested, from 45 days to 60 days. The County extended the comment period from June 7 to June 22, 2021.

Notification methods for the extension included

1. Publication in the local newspaper of general circulation (April 29, 2021)
2. Electronic mail to 75 recipients (April 28, 2021)
3. Electronic mail to PDS email subscription list (April 27, 2021)
4. Posted on the project webpage (April 27, 2021)
5. Electronic email to Skagit County Planning Commission (4/27/2021)

6. Press release (May 4, 2021)
7. Social media (May 4, 2021)

Notice of Intent to Adopt was sent via Plan View to Washington State Department of Commerce. It was also sent to the Department of Ecology.

Skagit County is accepting comments on the SMP Comprehensive Update and Periodic Review, proposed under 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.

Project Timeline

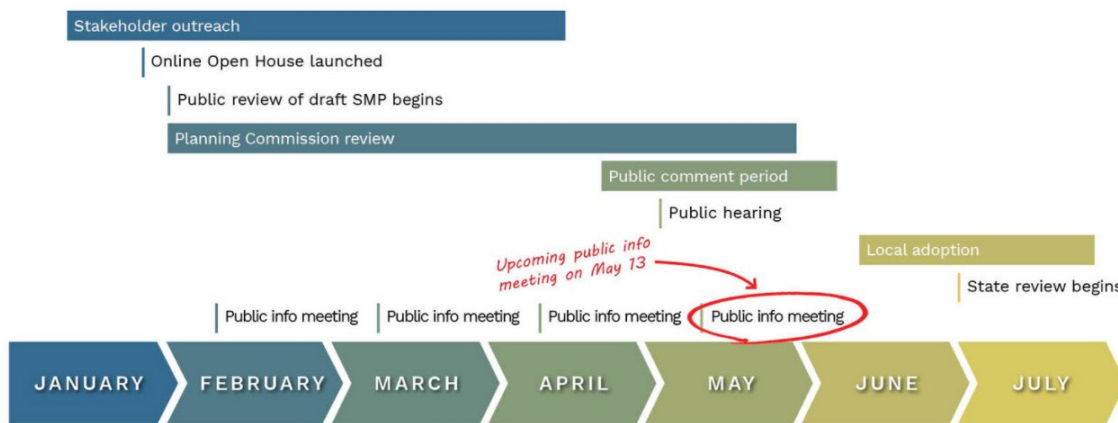


Figure 1. Shoreline Master Program Update: Estimated Timeline

Proposed Amendments – SMP 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:

- Up 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 0 - 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 2016 Planning Commission recommendation, coming up with policies and regulations that meet the state laws and guidelines, but provide flexibility for development applicants. Any changes we made since the 2016 Planning Commission recommendation will be noted in the margin of the SMP document.

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.

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://www.skagitcounty.net/updates/shoreline/).

Focus sheets for each of the Planning Commission meetings will also be posted to the SMP webpage, but can currently be found at [Skagit County Planning Commission](http://www.skagitcounty.net/planning/).

Next Steps

The Department will schedule further time to meet with the Planning Commission in work sessions and deliberations to review and consider the testimony, written comments and any questions they may have pertaining to the adoption of the Shoreline Master Program Comprehensive and Periodic Update proposal. Supplemental staff reports will be prepared by the Department in advance of the work sessions and deliberations. We will need to take some time to respond to the comments received and provide those to the Planning Commission and post them on the project webpage. We anticipate the need for various cleanup edits and changes as we work with the Planning Commission to formulate their recorded motion. The Department will then transmit the packet to the Board of County Commissioners for their consideration and action. Then, the Board can adopt a

resolution outlining the adoption process and attaching the SMP document the County intends to adopt, provided it is approved by Ecology.

The Department will provide information and answer questions during the local adoption of the SMP. Once we have a completed document, the Department, with the help of the consultants, will then complete the documents that become part of the submittal package to the Department of Ecology.

Department of Ecology Review

Ecology will then determine if the submittal is complete. Once complete, Ecology will hold their own review and approval process.

Prior to adoption Skagit County will consider the changes and the options moving forward and:

- Accept Department of Ecology SMP revisions by written notice; or
- Recommend changes to the Department of Ecology draft for consideration.

Notably, 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 and best available science. Therefore, we believe that Ecology recommendations will be fairly minor changes to the proposed shoreline development regulations and policies.

The Department will provide information and answer questions during the local adoption of the SMP. Once we have a completed document, we will complete the remainder of the submittal package that must accompany it to Ecology.

ATTACHMENT A
List of Shoreline Public Meetings

Date	Body	Purpose
September 8, 2011	Shoreline Advisory Committee	Meeting
October 13, 2011	Shoreline Advisory Committee	Meeting
November 10, 2011	Shoreline Advisory Committee	Meeting
December 8, 2011	Shoreline Advisory Committee	Meeting
January 12, 2012	Shoreline Advisory Committee	Meeting
February 9, 2012	Shoreline Advisory Committee	Meeting
March 8, 2012	Shoreline Advisory Committee	Meeting
April 12, 2012	Shoreline Advisory Committee	Meeting
April 24, 2012	Shoreline Advisory Committee	Meeting
May 8, 2012	Shoreline Advisory Committee	Meeting
June 14, 2012	Shoreline Advisory Committee	Meeting
March 1, 2011	Planning Commission	Meeting
December 6, 2011	Planning Commission	Meeting
February 7, 2012	Planning Commission	Meeting
March 6, 2012	Planning Commission	Meeting
May 22, 2012	Planning Commission	Meeting
June 5, 2012	Planning Commission	Meeting
June 19, 2012	Planning Commission	Meeting
July 10, 2012	Planning Commission	Meeting
July 24, 2012	Planning Commission	Meeting
September 11, 2012	Planning Commission	Meeting
November 13, 2012	Planning Commission	Meeting
December 4, 2012	Planning Commission	Meeting
March 5, 2013	Planning Commission	Meeting
May 7, 2013	Planning Commission	Meeting
July 2, 2013	Planning Commission	Meeting
January 7, 2014	Planning Commission	Meeting

Date	Body	Purpose
February 4, 2014	Planning Commission	Meeting
March 4, 2014	Planning Commission	Meeting
March 18, 2014	Planning Commission	Meeting
April 1, 2014	Planning Commission	Meeting
April 15, 2014	Planning Commission	Meeting
May 6, 2014	Planning Commission	Meeting
May 20, 2014	Planning Commission	Meeting
June 3, 2014	Planning Commission	Meeting
July 1, 2014	Planning Commission	Meeting
March 3, 2015	Planning Commission	Meeting
May 5, 2015	Planning Commission	Meeting
May 12, 2015	Planning Commission	Meeting
June 2, 2015	Planning Commission	Meeting
January 19, 2016	Planning Commission	Meeting
February 2, 2016	Planning Commission	Meeting
March 1, 2016	Planning Commission	Event
March 15, 2016	Planning Commission	Public Hearing
April 19, 2016	Planning Commission	Meeting
April 26, 2016	Planning Commission	Meeting
June 7, 2016	Planning Commission	Meeting
July 19, 2016	Planning Commission	Meeting
August 17, 2016	Planning Commission	Meeting
December 14, 2011	Ag Advisory Board	Meeting
April 11, 2012	Ag Advisory Board	Meeting
June 13, 2012	Ag Advisory Board	Meeting
March 13, 2013	Ag Advisory Board	Meeting
January 8, 2014	Ag Advisory Board	Meeting
April 9, 2014	Ag Advisory Board	Meeting

Date	Body	Purpose
August 20, 2014	Ag Advisory Board	Meeting
December 10, 2014	Ag Advisory Board	Meeting
June 10, 2015	Ag Advisory Board	Meeting
January 13, 2016	Ag Advisory Board	Meeting
February 10, 2016	Ag Advisory Board	Meeting
September 14, 2016	Ag Advisory Board	Meeting
September 14, 2010	BOCC	Meeting
March 15, 2011	BOCC	Meeting
June 21, 2011	BOCC	Meeting
September 27, 2011	BOCC	Meeting
May 20, 2013	BOCC	Meeting
December 10, 2013	BOCC	Meeting
February 11, 2014	BOCC	Meeting
February 9, 2016	BOCC	Meeting
August 2, 2016	BOCC	Meeting
May 2011	Public	Mailer
June 7, 2011	Public	Event
June 8, 2011	Public	Event
June 15, 2011	Public	Event
July 13, 2011	Public	Event
Summer 2013	Public	Event