



Planning & Development Services

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Memorandum

Planning Commission Public Hearing

Supplemental 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: October 24, 2021, in advance of the October 26, 2021 meeting

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 20 cubic feet per second or greater, 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 was 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.

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](#). 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.

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.

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.

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 did 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, pursuant to WAC 173-26-100. Written public comments were 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 did not act on this proposal during the public comment period. Written comments regarding this Determination of Nonsignificance were 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 and the Planning Commission held a public hearing on May 11, 2021 at 6:00 p.m. virtually, pursuant to WAC 173-26-100. Those wanting to testify at the public hearing signed up and registered 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 accepted 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.

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:

- 25% to 50% buffer reduction with administrative variance and Ecology approval
- >50% buffer reduction with Hearing Examiner variance and 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 in 2016. We received additional comments from Lake Cavanaugh residents on the current April 22, 2021 public release draft SMP document, which have been considered and responded to as part of the review process. We also received feedback from Ecology.

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.

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.

Proposed Amendments – consideration of public comments

The following is a list of changes that the Department recommends be made to the April 22, 2021 SMP final draft based on comments received during the comment period and the public hearing.

Administrative Shoreline Variance. As noted in Planning Commission meetings following the release of the public review draft, the intent of the Administrative Shoreline Variance in SMP Section 14.26.735 was to apply in situations where an applicant was reducing 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. Conversely, buffer reductions of up to 25% could be allowed administratively without a variance.

The Department recommends revising the SMP in Section 14.26.310, Dimensional Standards and in the development standards section of the Fish and Wildlife Habitat Conservation Areas, Section 14.26.574 to specifically allow such administrative reductions with mitigation sequencing and an evaluation of no net loss.

The Department also recommends revising Section 14.26.735 to apply an administrative variance only to buffer reductions between 25% and 50% of the standard buffer.

Net pen Finfish Aquaculture. New commercial net pens are not currently proposed as prohibited. Rather, applications for new net pens would go through a Shoreline Conditional Use permit review per the Uses and Modifications Matrix in SMP Section 14.26.405 and comply with specific application requirements per SMP Section 14.26.415 which includes a requirement that the applicant demonstrate “that the native fish and wildlife resources will not be significantly impacted.”

Upon further evaluation, the Department recommends adjusting the provisions related to net pen finfish aquaculture and prohibit all nonnative finfish net pen aquaculture.

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.

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.

Lighting. SMP Section 14.26.320 General Provisions Applicable Upland of the OHWM states: (8) Lighting. Interior and exterior lighting must be designed and operated to avoid illuminating nearby properties or public areas; prevent glare on adjacent properties, public areas, or roadways to avoid infringing on the use and enjoyment of such areas; and to prevent hazards. Methods of controlling spillover light include, but are not limited to, limits on height of structure, limits on light levels of fixtures, light shields, setbacks, buffer areas and screening. Lighting must be directed away from critical areas, unless necessary for public health and safety.

The Department recommends adding the following to SMP Section 14.26.360 Outdoor Advertising and Signs, (4)(d) Lighting, to read in total: Directional sign lighting must be directed away from critical areas, unless necessary for public health and safety. Outdoor advertising may not move or fluctuate in lighting or position in any manner.

Public Access. A necessary component of the SMP is a Public Access Plan. The Skagit County UGA Open Space Concept Plan is referenced in the public access provisions of the SMP public review draft 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. The SMP update simply encourages that public access be consistent with these two documents. Based on public comment and Planning Commission discussion, the Department proposed clarifying language below.

The Department proposes the following language in SMP Section 14.26.370 Public Access, (4) to read in total and to explicitly identify the Countywide UGA Open Space Concept Plan as a voluntary plan.

(a) The Skagit Countywide UGA Open Space Concept Plan is a voluntary plan. The UGA Open Space Concept Plan and the Skagit County 2020 Comprehensive Parks and Recreation Plan provide for a connected network of parks, open space, and trails, and together constitute 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.

Critical Saltwater Habitat. A definition of critical saltwater habitat should be included in the SMP. **The following definition from WAC 173-26-221(2)(c) is proposed by the Department for inclusion in 14.26.820 Definitions:**

Critical saltwater habitats include all kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as herring, smelt and sandlance; subsistence, commercial and recreational shellfish beds; mudflats, intertidal habitats with vascular plants, and areas with which priority species have a primary association.

Lot coverage. WAC 173-26-211(5)(b)(ii)(D) recognizes that scientific studies support a maximum lot coverage of 10 percent in the Rural Conservancy environment. However, this same subsection goes on to state, "Master programs may allow greater lot coverage to allow development of lots

legally created prior to the adoption of a master program prepared under these guidelines. In these instances, master programs shall include measures to assure protection of ecological functions to the extent feasible such as requiring that lot coverage is minimized and vegetation is conserved.” **The Department recommends adding 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.**

Archaeological resources. In areas where archaeological resources are likely to be found, early coordination is important. The Department supports this concept and will advise applicants of the need to contact the state and tribal authorities when a development or use is proposed in an area where cultural and archaeological resources are likely to exist.

The Department proposes a policy be added to 6H -Historic, Cultural, Scientific, and Educational: 6H-1.3 In order to avoid potential conflict or adverse impacts to archaeological, historic, or scientific resources, proponents of shoreline development or use near such areas should be advised to contact state and tribal authorities for early coordination.

Critical areas. SMP Section 14.26.515, Standard Critical Areas Review and Site Assessment Procedures, already includes 300 feet as a review distance. The Department has considered using 300-foot critical area review consistently across the board.

The Department recommends the review distance, to determine presence or absence of critical area indicators, should be adjusted to 300 feet throughout Part V.

Although best available science is mentioned in several places in the SMP, the Department is responding to a comment to specifically include a reference in the SMP section listed below to emphasize the importance of the use of best available science.

The Department recommends adding the following to SMP Section 14.26.515 Standard Critical Areas Review and Site Assessment Procedures, (4) Determination that Critical Areas are Present or Affected, (b) to read in total:

(b)The site assessment shall use scientifically valid methods and studies, using best available science and best management practices, in the analysis of critical areas data and field reconnaissance and reference the source of science used.

A detailed review of Best Available Science, including riparian areas, was completed as part of the County’s critical areas ordinance update. The County acknowledges that since that time, the Washington Department of Fish and Wildlife (WDFW) has issued new management recommendations for riparian management zones.

The Department recommends including the suggested additional language to SMP Section 14.26.573, Fish and wildlife habitat conservation area protection standards, (1)(a) Intent of Riparian Buffers, as subsections vi and vii:

vi. Microclimate. Riparian vegetation creates small-scale microclimates upon which plants, fish, and wildlife depend.

vii. Nutrient inputs. Riparian vegetation supports substantial populations of insects, which are important for the diet of marine fishes like juvenile salmon.

Applicability. The County recognizes dike and drainage districts and their responsibilities and

authority.

The Department recommends the following addition to 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.

We are in discussion with the Skagit Drainage and Irrigation District Consortium about their request for consideration of amendments to the Shoreline Environment Designation Map a., as depicted in their comment letter (#68), which can be found at [Shoreline Master Program Update \(skagitcounty.net\)](http://Shoreline Master Program Update (skagitcounty.net)).

For more information about the changes that are recommended to the SMP final draft public comment document, please refer to the Power Point Presentations and Focus Sheets 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)).

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. 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 SMP public comment review draft document, response to public comments, staff report and recommendations, along with the Planning Commission Recorded Motion to the Board of County Commissioners for their consideration and action. The Department will notify the Planning Commission of the date and time for the presentation of the SMP to the Board of County Commissioners. Work sessions may be requested by the Board of County Commissioners. Then, the Board may 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 consultant, will finalize 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, public process and approval. Skagit County is expected to respond to comments received during the Ecology comment period.

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 minor changes to the proposed shoreline development regulations and policies.

Adoption

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 its adoption process.