

15 February 2011

Betsy Stevenson, AICP  
Senior Planner, Team Supervisor  
Skagit County Planning and Development Services  
1800 Continental Place  
Mount Vernon, WA 98273

**Re: Proposed Skagit County Shoreline Jurisdiction - PRELIMINARY**

Dear Betsy:

The Watershed Company (TWC), in collaboration with Skagit County (County) staff, has developed a set of preliminary maps showing the proposed shoreline jurisdiction as part of the Shoreline Master Program (SMP) update for Skagit County and its partner jurisdictions, Towns of Lyman and Hamilton. [Enclosed]

The proposed shoreline jurisdiction shown in these maps is determined based upon the State Shoreline Management Act (SMA) and current Washington Department of Ecology (Ecology) rules and guidance documents. Under the SMA, all of the following areas are regulated as “Shorelines of the State” under the SMP:

- Streams and Rivers with over 20 cubic feet per second (cfs) mean annual flow; their floodway and contiguous floodplain areas extending 200 feet from the floodway;
- Lakes 20 acres or greater in size, measured from Ordinary High Water Mark (OHWM);
- Shorelands 200 feet landward from the OHWM of all marine waters, jurisdictional streams, rivers, and lakes; and
- Associated wetlands that are hydrologically connected to any of the shorelines described above, located within 200 feet of a jurisdictional waterbody, or are entirely/partly located within the waterbody’s 100-year floodplain.

Our first step in updating the shoreline jurisdiction was to review the precise shoreline boundaries and associated wetlands definitions found in the WAC and in Ecology’s SMP guidance documents. The best available geographical data from Ecology, Washington Department of Natural Resources (DNR), Federal Emergency Management Agency (FEMA), and Skagit County’s GIS Department were reviewed collectively in determining the most accurate shoreline boundary. While the jurisdiction boundary is built on the most current data,

the level of accuracy remains limited and might require ground-truthing at the time of a development action review. Particularly in areas with dynamic estuarine and marine influences, such as Skagit Bay, Padilla Bay, and Samish Bay, site-specific analysis of the OHWM, wetland boundary and connectivity will be needed. Each jurisdiction map therefore will include the following disclaimer, derived from Ecology's recommendation:

"Shoreline jurisdiction boundaries depicted on this map are approximate. They have not been formally delineated or surveyed and are intended for planning purposes only. Additional site-specific evaluation at the project level may be needed to confirm/verify information shown on this map."

### **Marine Waters**

Marine shorelines and the area 200 feet landward of the OHWM are included under the County's proposed shoreline jurisdiction, except for marine shorelines encompassed by the Swinomish Indian Reservation and the City of La Conner. The approximated extreme high water mark identified in DNR's Intertidal Habitat Inventory of 1996<sup>1</sup> was used as the marine shoreline boundary (OHWM) surrounding Bellingham Channel, Samish Bay, Padilla Bay, Guemes Channel, Fidalgo Bay, Swinomish Channel, Burrows Bay, Deception Pass, Similk Bay, and Skagit Bay. Due to maritime influence and continual river deposition processes at Skagit Delta/Fir Island, the 1996 DNR inventory was considered inaccurate for this area. Ecology's Marine Shorelines of 2001<sup>2</sup> was deemed more accurate and was used to delineate the portion of marine OHWM between the North and South Fork of the Skagit River instead.

All areas waterward of the extreme low tide throughout Puget Sound are also considered Shorelines of Statewide Significance. Additionally, Skagit Bay and adjacent area from Brown Point to Yokeko Point along with Padilla Bay, from March Point to William Point, are also identified as a specific estuarine areas and are considered Shorelines of Statewide Significance waterward from the ordinary high water mark and all associated shorelands.

### **Streams/Rivers**

The upstream limit of shoreline jurisdiction for streams and rivers is that point where the mean annual flow shifts from greater than 20 cubic feet per second (cfs) to less than 20 cfs. Washington Department of Ecology's Digital Atlas was consulted to verify the upstream limits of stream and river shoreline jurisdiction based on USGS's 1998 study of the 20 cfs cut-off (Kresch 1998<sup>3</sup>). For purposes of this preliminary map set, shoreline jurisdiction is shown extending up to the USGS points as directed by Department of Ecology. Because of the presence of tidegate facilities, Joe Leary Slough would not be regulated as a Shoreline.

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<sup>1</sup> DNR Intertidal Habitat Inventory 1996, Skagit County & Northern Whidbey Island, WA - Shoreline Characteristics [http://fortress.wa.gov/dnr/app1/dataweb/metadata/skagit\\_ihi\\_metadata.htm](http://fortress.wa.gov/dnr/app1/dataweb/metadata/skagit_ihi_metadata.htm)

<sup>2</sup> <http://www.ecy.wa.gov/services/gis/data/shore/shore.htm>

<sup>3</sup> [http://www.ecy.wa.gov/programs/sea/pubs/USGS\\_reports/WRIR%2098-4160.pdf](http://www.ecy.wa.gov/programs/sea/pubs/USGS_reports/WRIR%2098-4160.pdf)

FEMA has released the latest DFIRM flood data for Skagit County, and identified floodway in Sauk River, and a portion of the Skagit River between its confluence with Irene Creek and south of the City of Sedro-Woolley. All area within the floodway are included as part of Shoreline jurisdiction, as well as the area up to 200 feet of landward of the floodway where a contiguous floodplain is present.

All streams and rivers which have mean annual flow of 1,000 cfs or greater are considered Shorelines of Statewide Significance.

### **Lakes**

Within Skagit County, 26 lakes and reservoirs were previously listed as Shorelines of the State (larger than 20 acres). Of these, Lake Shannon is designated as Shoreline of Statewide Significance since it is greater than 1,000 acres in surface area. Further study has shown an additional 27 lakes are also considered Shorelines of the State based on the 20 acre criterion. However, with the exception of Tyee Lake, Caskey Lake, Bulter Pit Lake, Lake Challenge, and Summer Lake, all additional lakes are located within land owned by the National Forest Service (NFS) and National Park Service (NPS).

### **Associated Wetlands**

Associated wetlands are those that are “in proximity to and either influence or are influenced by ... a lake or stream subject to the Shoreline Management Act” and “[t]he entire wetland is associated if any part of it lies within the area 200 feet from either the ordinary high water mark or floodway” or “if any part is located within the 100 year floodplain of a shoreline”<sup>4</sup>.

Wetlands meeting the latter two criteria are mapped as “Potentially Associated Wetlands” in the attached map set. Location and boundary of these wetlands are drawn from GIS data of National Wetlands Inventory (NWI), Skagit County’s supplemental wetland inventory, and FEMA DFIRM data. Non-associated wetlands are intentionally omitted from this map set.

However, wetlands that are either outside of the floodplain or the 200-foot standard shorelands area may still be associated on the basis of a hydraulic connection to the shoreline. Wetlands that are separated by an obvious topographic break from the shoreline are not associated, provided they are outside the shoreland zone, and that the break is not an artificial feature such as a berm or road. These possible additional shoreline-associated wetlands can only be determined on a project-level basis at the time of permit application. Further, the NWI and County wetland data are not completely accurate and up-to-date. Therefore, actual wetland presence and boundaries must be verified at the project level.

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<sup>4</sup> [http://www.ecy.wa.gov/programs/sea/sma/st\\_guide/jurisdiction/Shorelands.html](http://www.ecy.wa.gov/programs/sea/sma/st_guide/jurisdiction/Shorelands.html)

### **Optional Shoreline Jurisdiction Boundaries**

The County has the option of expanding shoreline jurisdiction to include lands necessary for critical area buffers and/or the entire Special Flood Hazard Area (SFHA), also known as 100-year floodplain. The legislative intent for sole regulation under an updated SMP includes an important caveat. If a local government's SMP does not include "land necessary for buffers for critical areas," then its critical areas ordinance (CAO) will continue to regulate critical areas and floodplain that are partly within the normal SMA jurisdiction and their buffers. The SMP also will apply within shoreline jurisdiction, resulting in dual coverage by both the CAO and SMP.

The County can voluntarily extend shoreline jurisdiction to include critical area buffers and/or floodplain that are beyond the usual SMA jurisdiction. Extending SMA jurisdiction helps to reduce regulatory duplication in the future. This is a fundamental issue that should be carefully considered by the County. The attached maps currently do not include expanded shoreline jurisdiction to include critical area buffers and/or floodplain.

### **Federal & Tribal Land Ownership**

The Shoreline Management Act generally does not include federal and tribal lands in shoreline jurisdiction. As stated in RCW 90.58.280: "The provisions of this chapter shall be applicable to all agencies of state government, counties, and public and municipal corporations and to all shorelines of the state owned or administered by them." However, WAC 173-27-060 says that "lands subject to nonfederal ownership, lease or easement, even though such lands may fall within the external boundaries of a federal ownership" are subject to the SMA. Based on our discussion with the County, all federal lands, Indian Reservations, and tribal lands outside of the official reservation are included in the proposed jurisdiction boundary. Provisions can be included in the Shoreline Master Program addressing any future unanticipated nonfederal leases or easements on federal lands adjacent to shoreline waterbodies.

The proposed shoreline jurisdiction excludes areas within City of Anacortes, City of Mount Vernon, City of Burlington, City of Sedro-Woolley, and City of Concrete.

Please call if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dan Nickel", with a long horizontal flourish extending to the right.

Dan Nickel  
Environmental Engineer

Enclosures