

# SHORELINE MANAGEMENT PROGRAM PERIODIC UPDATE WHATCOM COUNTY

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Prepared for:



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# 1. Introduction

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## 1.1 Background

Whatcom County (County) is undertaking a periodic review of its Shoreline Management Program (SMP), as required by the Washington State Shoreline Management Act, RCW 90.58.080(4). The Shoreline Management Act (SMA) requires each SMP be reviewed, and revised if needed, on an eight-year schedule established by the state Legislature. The review ensures the SMP stays current with changes in laws and rules, remains consistent with other County plans and regulations, and is responsive to changed circumstances, new information and improved data.

The County adopted its current SMP in 2007 (Ordinance No. 2007-017; approved by Ecology in 2008) through a comprehensive update process, which included an inventory and characterization of shoreline land use and ecological conditions (otherwise known as the “baseline condition”), a shoreline restoration plan, and an evaluation of cumulative impacts to ensure implementation of the SMP would result in no net loss of shoreline ecological functions.

Since then, the Council has amended the SMP numerous times, though those amendments were fairly minor in nature, addressing specific issues. The SMP was most recently amended in 2019 to adopt by reference the 2017 Critical Areas Ordinance (CAO).

## 1.2 Periodic Update Requirements

This periodic update is not required to: re-evaluate the ecological baseline that was established as part of the 2007 comprehensive update; extensively assess no net loss criteria other than to ensure that proposed amendments do not result in degradation of the baseline condition; or change shoreline jurisdiction or environment designations, unless deemed appropriate and necessary by the County.

The primary requirement of the periodic update process is to ensure that the SMP remains consistent with updates to the legislative requirements of the SMA. The Washington State Department of Ecology (Ecology) provides a list of legislative amendments which have taken effect between 2007 and 2017 as a Periodic Review Checklist. In general, mandatory changes to the draft SMP are minor in nature. The majority of them address revised rules with regard to SMP applicability, including updated exemption thresholds and definitions.

The periodic update process also provides an opportunity to review the SMP for consistency with the County’s Comprehensive Plan and development regulations, including critical areas regulations. The County’s current SMP regulates critical areas in the shoreline jurisdiction by

adopting by reference as part of the SMP the County's CAO as adopted in 2017 (Ordinance No. 2017-077) and codified in Chapter 16.16 of the WCC.

The County's Comprehensive Plan and other development regulations were reviewed for consistency with the SMP. No required changes were identified, though there are some recommended amendments.

The periodic review process also represents an opportunity to revise and improve the overall functionality, clarity, and usability of the SMP, for both the public and County staff. This includes clarifying permit processes and requirements, improving the overall organization and clarity of the document, and ensuring consistency with Title 20 (zoning). County staff has reviewed the SMP and noted several areas in need of amendment. These areas are noted in Section 2.

### 1.3 Scoping Document Framework

This scoping document is intended to provide the Whatcom County Council (Council) with an overview of **required** amendments of the SMP Periodic Update, **recommended** actions to improve consistency with state law and other County policies and codes, and other optional items that the County may wish to address. The discussions included in the body of this report are intended to assist the Council with decisions about the scope of the County's SMP update. A complete list of all public comments received at the open houses and through email (through 7/12/19) is included in Appendix A for reference.

Where potential revision actions are identified, they are classified as follows:

- **"Required"** indicates amendments that are required for consistency with state laws.
- **"Recommended"** indicates amendments that are not strictly required but would improve consistency with state laws or local regulations, or would improve organization, functionality, and overall consistency and understanding of the SMP.
- **"Not recommended"** indicates where the County's SMP is already consistent with state laws, the specific revision is not applicable to the County, or implementation would be inconsistent with the Shoreline Management Act.

## 2. Required & Recommended Amendments

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The following table shows those issues staff recommends for inclusion in the scope of this Shoreline Management Plan Periodic Update.

Required changes to the draft SMP are minor in nature. The majority of them address revised rules with regard to SMP applicability, including updated exemption thresholds and definitions, as required through recent amendments to state laws.

In addition to the required amendments, the County may elect to make other substantive amendments. Staff has compiled a list of recommended amendments based on public comments, suggestions from other County departments, and interactions with permit applicants over the past several years.

# Table 1: Issues Recommended to Be Included in Scope

#	Topic	Recommended Action	Originator
1	Consistency with State law (required amendments)	<ul style="list-style-type: none"> <li>• Revise language to cite updated substantial development cost threshold or to rely solely on reference to WAC 173-27-040 for exemptions to substantial development permitting.</li> <li>• Revise the definition of “Development” to clarify that development does not include dismantling or removing structures. Example language from Ecology is available.</li> <li>• Add reference to statutory exceptions to local review to the SMP. Revise or remove existing references to remedial actions and projects certified pursuant to RCW 80.50 to clarify their status as exceptions to local review under the SMA.</li> <li>• Revise language to include shoreline permit exemption for retrofitting existing structures to comply with the ADA or to rely solely on reference to WAC 173-27-040 for exemptions to substantial development permitting.</li> <li>• Revise language in the SMP to cite the updated cost thresholds for dock construction or to rely solely on reference to WAC 173-27-040 for exemptions to substantial development permitting.</li> <li>• Revise the SMP Aquaculture provisions for consistency with WAC 173-26-241(3)(b).</li> <li>• Revise the SMP to clarify that the effective date of SMP amendments is 14 days from notice of final approval by Ecology.</li> <li>• Review the SMP for consistency with 2003 SMP Guidelines and make any necessary changes</li> </ul>	State
2	Consistency with State law	<ul style="list-style-type: none"> <li>• Revise the SMP for consistency with Ecology’s updated permit filing procedures.</li> <li>• Revise language to clarify that forest practices that involve only timber cutting are not SMA “developments” and do not require Shoreline Substantial Development Permits.</li> <li>• Revise language in Section 23.50.040 to clarify that the SMA does not apply to lands under exclusive federal jurisdiction. Example language from Ecology is available.</li> <li>• Update definitions to include distinct definitions for “nonconforming use,” “nonconforming structure,” and “nonconforming development” in accordance with WAC 173-27-080.</li> <li>• Define special procedures for WSDOT projects per WAC 173-27-125.</li> <li>• Incorporate reference to WAC 173-27-215 for criteria and procedures for instances in</li> </ul>	State

#	Topic	Recommended Action	Originator
		<p>which a shoreline restoration project creates a shift in OHWM.</p> <ul style="list-style-type: none"> <li>• Revise definition of “Floodway” for complete consistency with Ecology’s recommended language.</li> <li>• Update list and maps of streams and lakes that are in shoreline jurisdiction as necessary.</li> <li>• Revise the SMP to include the required provisions in WAC 173-26-221(2)(c)(ii)(B), (C), and (D).</li> </ul>	
3	Consistency with CAO (WCC 16.16)	<ul style="list-style-type: none"> <li>• Ensure Council changes regarding standards for view preservation in the CAO are reflected in the SMP.</li> </ul>	Public
4	Consistency with Land Use procedures (Title 22)	<ul style="list-style-type: none"> <li>• Update SMP to align with recently adopted Title 22 permit procedures.</li> </ul>	WC PDS
5	Consistency with Shoreline Management Act (RCW 90.58) and 2003 SMP Update Guidelines (WAC 173-26)	<ul style="list-style-type: none"> <li>• Clarify permit review no net loss analysis</li> <li>• Clarify development mitigation requirements.</li> <li>• Align appeal procedures with State statutes.</li> <li>• Shoreline permit review (Exemption, Substantial, Conditional Use, or Variance) should reflect State statutes and level of review required.</li> <li>• Align Use standards with State statutes.</li> </ul>	WC PDS
6	Climate Change/Sea Level Rise	<ul style="list-style-type: none"> <li>• Develop and/or strengthen policies regarding climate change/sea level rise, including the incorporation and use of new data (as it becomes available), to review and revise, if warranted, shoreline use regulations.</li> </ul>	Climate Impact Advisory Committee & Public
7	Definitions	<ul style="list-style-type: none"> <li>• Add definitions for common words with a specific meaning in the SMP.</li> <li>• Add definitions for regional, local, and accessory utilities. Ensure consistency with Zoning.</li> <li>• Define a single use dock and joint use dock.</li> </ul>	WC PDS



#	Topic	Recommended Action	Originator
8	Habitat	<ul style="list-style-type: none"> <li>• Reference WDFW and DNR's Shore Friendly Program</li> <li>• Consider strengthening ecological connectivity and wildlife corridor requirements.</li> <li>• Consider ways to improve protections for salmon and forage fish habitat.</li> <li>• Clarify functional disconnect standards for protection of Fish &amp; Wildlife Habitat Conservation Areas</li> </ul>	Wildlife Advisory Committee & Public
9	Layout and Structure of the SMP	<ul style="list-style-type: none"> <li>• Reorganize the SMP, putting the background information, discussions, and goals and policies into the Comprehensive Plan as a chapter</li> <li>• Simplify the language as much as possible and remove redundancies</li> </ul>	WC PDS
10	Nonconforming	<ul style="list-style-type: none"> <li>• Ensure consistency with Zoning, CAO, and SMP regarding nonconforming uses and structures.</li> <li>• Add standards for nonconforming structures to meet current construction standards.</li> <li>• Address nonconforming expansion dimensional standards.</li> <li>• Clarify administratively approved single-family dimensional standards.</li> </ul>	WC PDS
11	Overwater Structures	<ul style="list-style-type: none"> <li>• Add dimensional standards for overall square footage.</li> <li>• Add shared moorage standards.</li> </ul>	WC PDS
12	Permitting	<ul style="list-style-type: none"> <li>• Consider simplifying utility repair and maintenance permitting.</li> </ul>	Public
13	Public Access	<ul style="list-style-type: none"> <li>• Clarify standards for construction in the aquatic designation (work occurring in the water)</li> <li>• Add ADA standards consistent with federal statutes</li> <li>• Consider revising dimensions for stairs and walkways located within the shoreline or critical area buffers to accommodate public trails.</li> <li>• Consider amending trail location standards to allow trails to be located closer than in the outer 50% of a critical area buffer.</li> </ul>	WC Parks
14	Shoreline Designations	<ul style="list-style-type: none"> <li>• Consider changing the shoreline designation for certain, more urban parks to an urban designation.</li> </ul>	WC Parks
15	Shoreline Jurisdiction and Environment Designation Maps	<ul style="list-style-type: none"> <li>• Revise the Shoreline Jurisdiction and Environment Designation maps to conform to the latest FEMA FIRM maps</li> </ul>	WC PDS

#	Topic	Recommended Action	Originator
16	Shoreline Modifications	<ul style="list-style-type: none"> <li>Review for consistency with the 2SHB 1579 regarding HPAs, and with State guidelines regarding prioritizing living shorelines over hardscape solutions.</li> <li>Consider allowing interpretive, wayfinding, safety, and park identification signs, based on park standards.</li> </ul>	Public WC Parks
17	Shoreline Uses	<ul style="list-style-type: none"> <li>Consider making manure holding facilities a shoreline conditional use, and that they be in the form of above-ground tanks or towers instead of earthen lagoons.</li> <li>Revise as necessary any SMP policies or regulations pertaining to the Cherry Point area as directed by Council.</li> <li>Revise as necessary any SMP policies or regulations pertaining to sand and gravel extraction as directed by Council.</li> <li>Ensure internal consistency with allowed uses in the code and the Use Table.</li> <li>Modify the accessory structure height standards.</li> <li>Add standards for retaining walls.</li> <li>Update Memorandum of Understanding with Department of Archaeology and Historic Preservation.</li> <li>Clarify Forest Practice standards.</li> <li>Add temporary use standards.</li> <li>Clarify utility standards for regional, local, and accessory.</li> <li>Add standards for live-aboards in marinas</li> </ul>	Public Council Council WC PDS WC PDS WC PDS WC PDS WC PDS WC PDS WC PDS WC PDS
18	Shoreline Setbacks/ Riparian Management	<ul style="list-style-type: none"> <li>Update vegetation conservation standards to prefer limbing over removal.</li> <li>Provide incentives to enhance Fish and Wildlife Habitat Conservation Areas (FWHCA).</li> <li>Clarify setback standards for protection of views to and from the water.</li> </ul>	WC Parks Public WC PDS
19	Water Quality	<ul style="list-style-type: none"> <li>Include language/policies about the importance of Lake Whatcom as the source of drinking water for most of the County and the water quality improvement plan (TMDL).</li> </ul>	Public
20	Wetland buffers	<ul style="list-style-type: none"> <li>PDS will conduct a parallel process, convening a group of local wetland consultants, to consider revisions to the CAO regulations regarding wetland habitat function score break points, buffer widths, reduction, averaging to meet DOE guidelines, and having buffers based on habitat performance instead of static/standard buffers. If they complete this work in time, it can be incorporated into this update; otherwise it can follow.</li> </ul>	State

### 3. Issues *Not* Recommended to Be Included in Scope

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The following table shows those issues staff recommends not be included in the scope of this Shoreline Management Plan Periodic Update.

There have been are several amendments to state law that either don't pertain to Whatcom County or that are adequately covered in the Washington Administrative Code. These are not proposed to be addressed.

Additionally, commenters have made several suggestions that staff does not believe are warranted or consistent with the Shoreline Management Act, that may be better addressed through other means, or are beyond the scope, budget, or timelines required of the update.

## Table 2: Issues Recommended to *Not* Be Included in Scope

#	Topic	Potential/Requested Action	Originator	Recommendation
21	Consistency with State law	Clarify the scope and process for conducting periodic reviews.	State	Not recommended; already in the WAC.
22	Consistency with State law	Include the optional SMP amendment process that allows for a shared local/ state public comment period.	State	Not recommended; already in the WAC.
23	Consistency with State law	Specify the submittal process of proposed SMP amendments to Ecology.	State	Not recommended; already in the WAC.
24	Consistency with State law	Add a new definition and policy for floating on-water residences legally established before 7/1/14.	State	Not recommended. The SMP prohibits new floating on-water residences and there are no legally existing floating homes in Whatcom County.
25	Consistency with State law	Classify existing legally established residential structures as conforming	State	Not recommended. Though a home may have been conforming when built, they may not be under today's rules.
26	Consistency with State law	Add moratoria authority and procedures	State	Not recommended; already in the WAC.
27	Ecological Function	<ul style="list-style-type: none"> <li>• Show how County is meeting NNL (more monitoring).</li> <li>• Consider a 'net ecological gain' policy instead.</li> <li>• Establish quantitative ways to evaluate development permits in terms of no net loss.</li> <li>• Consider requiring the restoration of native vegetation and vegetation conservation standards (lawns and turf are prohibited) for any new building permits, expansions or change of use in the following areas:</li> </ul>	Public	Not recommended. No net loss is the standard per the SMP Guidelines and a periodic update does not require a reassessment of no net loss or an evaluation of performance. This will need to be done during a comprehensive update. However, some of this may be addressed via the recommendations regarding Vegetation Management.

#	Topic	Potential/Requested Action	Originator	Recommendation
		<ul style="list-style-type: none"> <li>o Within 50' of the Ordinary High-Water Mark (OHWM) for Lake Whatcom</li> <li>o Within 50' of the OHWM for other water quality impaired waterbodies (via the Clean Water Act 303(d) list)</li> </ul>		
28	Permitting	Limit variance provisions.	Public	Not recommended; variances criteria and procedures are included in the WAC.
29	Permitting	<p>Incorporate improved permit streamlining for priority salmon recovery project into the updates SMP. Specifically, we would like to request the following for projects on WRIA 1's 4-Year Work Plan (see Chinook Priority Areas section):</p> <ul style="list-style-type: none"> <li>• Expedited processing: 45 days, instead of the 180 days current</li> <li>• Exemption from fees: we pay \$535 for SEPA fee and record/archiving, \$435 for Shoreline Fee and record/archiving.</li> <li>• Reduce permit contingencies, i.e., the need to wait for WDFW to issue the letter – being on WRIA 1 4 year work plan should be sufficient</li> <li>• Reduce redundant review and exempt projects from mitigation requirements – instead establish standard conditions, such as those identified for our Farmhouse Phase 3 project.</li> </ul>	Public	Not recommended. Per WCC 23.60.022, such permit processing is already limited to 45 days and there are no fees charged. Note: the County must wait for WDFW to make a determination as to whether a project qualifies.

#	Topic	Potential/Requested Action	Originator	Recommendation
30	Permitting	Revise exemption permitting so that an exempt project does not need a review or written exemption.	WC PW	Not recommended. Per the SMA, exempt projects need to be reviewed and a letter of exemption issued. Even if a project is exempt, it must be shown to meet the rules.
31	Shoreline Designations	Change all shoreline designations upstream of Everson to "Natural."	Public	Not recommended. Amending shoreline designations is not a requirement of a periodic update, and it would be costly.
32	Shoreline Uses	<ul style="list-style-type: none"> <li>• Prohibit new overwater structures, piers, docks, and wharfs over salmon and forage fish habitat.</li> <li>• Don't allow for variances.</li> <li>• Make a conditional use on Lake Whatcom.</li> </ul>	Public	Not recommended. The SMA requires that we balance ecological function with recreation and economic development goals and access.
33	Shoreline Uses	Prohibit dredging, new commercial development, new in-water structures, piers, floats, and pilings on Lake Whatcom.	Public	Not recommended. Dredging and new commercial development is already not allowed in Lake Whatcom, and the SMA requires that we balance ecological function with recreation goals and access.
34	Shoreline Uses	Prohibit fences in critical areas and their buffers.	Public	Not recommended. The CAO already regulates size and types of fences in critical areas and their buffers to ensure they are habitat friendly.
35	Shoreline Uses	Ag protection, with ecological requirements.	Public	Not recommended. Existing and ongoing agricultural uses are exempt from the SMP.
36	Shoreline Uses	Prohibit pesticides, herbicides, fungicides, fertilizers in shorelines and shoreline buffers.	Public	Not recommended. The SMP includes policies, and the CAO includes regulations that address such uses.
37	Shoreline Uses	Prohibit trails adjacent to creeks or shorelines; allow occasional cut-in areas to provide water views (see USDA recommendations)	Public	Not recommended. The SMP and CAO include policies and regulations for trails.
38	Shoreline Uses	Prohibit new residential development on shorelines.	Public	Not recommended. Per the SMA, SFR development is a preferred use in the shoreline.

#	Topic	Potential/Requested Action	Originator	Recommendation
39	Shoreline Uses	Prohibit all economic uses in the shorelines; it is not one of the three goals under SMA.	Public	Not recommended. Economic development, especially of SFRs and water-dependent uses, are preferred uses under the SMA.
40	Shoreline Uses	Prohibit any new oil or gas pipelines from crossing above or beneath rivers and lakes.	Public	Not recommended. Per the SMA, utilities are permissible in the shoreline jurisdiction.

## 4. Summary of Public Scoping Comments

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Public comments regarding scoping of this periodic update were collected during a series of three open houses held in June 2019 as well as via direct email submittal to the County. Comments received varied between those offering specific comments or concerns, most often with recommended actions for County consideration, and those comments with a question or indicating a need for more information. A number of public comments with specific recommendations are recommended to be included in the scope of this periodic update (Section 2).

The greatest numbers of comments received at the three open houses and from on-line comments were focused on:

- Buffers;
- Habitat;
- Appropriate use and activity in shorelines; and
- Climate change.

Specific suggestions were offered for:

- Use designations;
- Permitting changes;
- Mapping; and
- No net loss.

Several people expressed strong concerns regarding docks and compliance of existing shoreline rules. Site specific concerns and questions focused primarily on Birch Bay, Cherry Point, and Lake Whatcom.

The complete set of public comments from the open houses and direct email can be seen in Appendix A.



Appendix A

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## **PUBLIC COMMENTS RECEIVED**