

# CITY OF BELLINGHAM PLANNING STAFF REPORT

<b>Agenda Topic:</b>	<b>Introduction to the City's Shoreline Master Program and the planned SMP update during the remainder of 2021 as required by the Department of Ecology.</b>
<b>For:</b>	<b>Planning Commission Work Session</b>
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## **I. SUMMARY**

The Planning and Community Development Department intends to introduce the Planning Commissioners to the City's update of its Shoreline Master Program. (SMP) An update is more commonly referred to as a "periodic review." The SMP is codified in our Municipal Code in Title 22, Shorelines. This introduction also includes a "short-course" on the SMP itself to ensure that the commissioners understand:

- ✓ What shorelines are;
- ✓ Where they are located;
- ✓ How they became "shorelines";
- ✓ What is the purpose of the SMP;
- ✓ How is the SMP organized;
- ✓ What are its basic concepts and objectives; and
- ✓ How it is implemented

This introduction is necessary because the PCDD intends to perform its required update to the Shoreline Master Program during the remainder of 2021. This will include work-sessions and public hearings before the Planning Commission and the City Council. The Planning Commissioners will benefit from a baseline understanding of the SMP before reviewing proposed revisions to it.

Please note that the Washington State Department of Ecology is the responsible state agency for reviewing and issuing the FINAL approval of updates to local SMPs. The Department of Ecology requires all city and county municipalities to update their SMPs on a rotating schedule, approximately every eight years. The City performed a comprehensive amendment from 2007-2009. The Department of Ecology approved our current version of the SMP in February 2013.

## **II. PLANNING COMMISSION ROLE**

Prior to the introductory work-session the Planning Commission should review the following materials:

- ✓ This staff report;
- ✓ The power point presentation; and
- ✓ Chapter 2 from the DOE SMP Handbook titled "Shoreline Management Overview."

The overview provides an excellent executive summary of the Shoreline Management Act and its relationship to local SMPs. It also includes details on other elements such as the shoreline guidelines, relationship to the Growth Management Act and critical areas AND the required components of an SMP and how those are applied to shoreline developments.

Staff recommends that while reading the “Overview” the commissioners open up BMC Title 22, Shorelines which can be found here: [Title 22 Shoreline Master Program | Bellingham Municipal Code](#)

The overview will include notations (in red lettering) that reference the reader to the chapter and subsection where a concept in the handbook can be found in the City’s SMP. This will help the commissioners understand the organization of the SMP and how the elements of the Shoreline Management Act are implemented in Bellingham’s SMP.

### **III. BACKGROUND**

The Department of Ecology approved the City’s comprehensive amendment in 2013. This was an intensive process that included a shoreline characterization and inventory, consultation with local, state and federal agencies and Lummi Nation, 17 meetings with the Planning Commission and 17 meetings with the City Council. Extensive public comment was submitted during this process and both bodies worked through every single one of them via a “public comment tracker.” Review and coordination with the Department of Ecology took nearly 3 years and included additional back and forth with the City Council and the Port of Bellingham up to its approval and adoption.

Comprehensive amendments were required by Department of Ecology for ALL municipalities in order to implement the “Shoreline Guidelines” which were revised and then codified in WAC 173-26 in 2004. Essentially, the Guidelines required several key elements:

Conduct a shoreline characterization and inventory. This paved the way for establishing goals, policies and regulations that addressed future development within individual stretches or ‘reaches’ of shoreline based largely upon their physical and ecological characteristics. These reaches of shoreline were categorized into “shoreline designations” which function similar to how zoning works across the city. Within a shoreline designation, allowed uses are specified and they have associated set of development regulations.

Implement the “no net loss of existing shoreline ecological function” standard. Local governments were required to develop regulations and assign mitigation to shoreline designations and the specific uses that are allowed within them.

Develop a “restoration plan.” The purpose of the restoration plan is to provide a resource that identifies areas where shoreline ecological function is lacking and establish goals, priorities and objectives that could applied to such areas.

Perform a “cumulative impacts analysis.” The purpose of the CIA was for the PCDD to demonstrate – via an analysis of the proposed amended SMP – that implementation of it would result in no net loss of existing shoreline ecological function over time.

The Department of Ecology reviewed these required elements in the City’s SMP as part of their approval process in 2013.

An UPDATE is different from a comprehensive amendment. An update is not required to perform the activities specified above.

An update is intended to achieve several key objectives:

- ✓ Incorporate amendments to state and local laws since a local comprehensive update;
- ✓ Address emerging issues such as sea level rise and coastal storm surges;

- ✓ Incorporate updates to best available science;
- ✓ Develop new goals, policies, objectives and regulations where appropriate;
- ✓ Clarify and revise existing goals, policies, objectives and regulations;
- ✓ Fix minor errors, labelling, inconsistencies, incorrect and outdated cross references.

#### Examples:

- ✓ The Department of Ecology clarified several of its rules in WAC 173-27 that the City will incorporate into its updated SMP;
- ✓ The City may add sea level rise and coastal storm surges and flooding topical fields to the existing shoreline characterization and inventory and add associated goals / policies and objectives;
- ✓ The 2014 wetland rating system (for wetlands within shorelines) will replace the 2004 rating system;
- ✓ The City will maintain the “no net loss” standard; and
- ✓ Intends on updating the existing restoration plan to incorporate the most recent science, specific restoration projects, plans and objectives and a perform an update to the existing list of specific restoration projects.

The previous SMP was adopted in 1989 and was largely similar to the original 1974 edition. The result of the 1989 SMP was a significant amount of development within approximately 25-feet of a shoreline. This is most recognizable along Whatcom Creek downstream of I-5 and around Lake Whatcom. Please note that the current SMP cannot be retroactively applied.

Hence, the current SMP was developed to maintain shoreline ecological function via redevelopment and improve shoreline ecological function via restoration actions while continuing to preserve areas for water-dependent uses and improving public access opportunities as appropriate.

#### **IV. ISSUES**

Planning staff anticipates several issues that will emerge as the SMP update proceeds through the public process.

1. Buffer widths should be increased. The existing SMP is protective of shoreline ecological function. The Department of Ecology would not have approved our SMP in 2013 if they concluded that the SMP did not meet the “no net loss” standard. Planning staff does not intend to propose increases to any of the existing buffer widths. The following current buffer widths, described generally, are provided below and at the time they were established. These were based upon best available science and the ecological characteristics of each reach or ‘segment’ of shoreline.

##### LAKE WHATCOM:

- 100’ buffer along the shoreline developed with single-family residences; and
- 200’ buffer along Scudder’s Pond, Bloedel Donovan Park and Old Mill Village

##### LAKE PADDEN:

- 200’ buffer along entire the shoreline

1 BELLINGHAM BAY:

- 2
- 3
- 4 • 200' buffer along Chuckanut Bay and Clarks Point;
  - 5 • 100-150' buffers along the shoreline of Edgemoor neighborhood, Marine Park
  - 6 and the 3 pocket estuaries along the BNSF railroad, Padden Lagoon and along
  - 7 shoreline between Taylor Dock and the Cornwall Avenue Landfill;
  - 8 • 25' buffers along Cornwall Avenue landfill (future park site);
  - 9 • 45' buffer around Bellwether Peninsula; and
  - 10 • Zero-foot buffers along working waterfront areas of Waterfront District, Squalicum
  - 11 Harbor and Marina and the Fairhaven Marine Industrial Park.

12 CHUCKANUT CREEK:

- 13
- 14 • 100' buffers from the mouth to the southerly City limits.

15 PADDEN CREEK:

- 16
- 17 • 100' buffers from the mouth at Harris Avenue upstream to McKenzie Avenue
  - 18 (behind the Bellingham Tennis Club). This is the portion of the creek that is tidally
  - 19 influenced. The rest of Padden Creek (upstream to the outlet of the Lake) is
  - 20 regulated by the Critical Areas Ordinance.
  - 21

22 WHATCOM CREEK:

- 23
- 24 • 50' buffers at the mouth – which is located between Holly Street and Roeder
  - 25 Avenue and along the Boardwalk between Holly Street and the Fish Hatchery;
  - 26 and
  - 27 • 100' buffers from the Dupont Street bridge upstream to Woburn Street. 100-150'
  - 28 buffers from Woburn Street upstream to Scudder's Pond
  - 29

30 SQUALICUM CREEK:

- 31
- 32 • 75' buffers from the mouth upstream to the Eldridge Avenue bridge;
  - 33 • 100' buffers from the Eldridge bridge upstream to Interstate-5 and from Hannegan
  - 34 Road to the northeastern City Limits; and
  - 35 • 150' buffers from I-5 upstream to Hannegan Road
  - 36

- 37 2. Nonconforming structures should be required or provided with incentives to relocate or
- 38 minimize their footprint in shoreline buffer areas. Structures and development footprints
- 39 that are now located in buffer areas (which were expanded as part of the 2013
- 40 comprehensive update) are now considered nonconforming.

41

42 The SMP specifies that the portions of a property where nonconformities exist may

43 continue to exist and can be repaired and maintained but not *expanded* within the

44 required buffer area. The majority of nonconforming structures are within the required

45 buffers of Whatcom Creek and along the single-family portions of Lake Whatcom.

46 (Buffers in along both shorelines are 100-feet in width.) Property owners hold on to their

47 nonconforming developments because they realize that if they choose to redevelop the

48 existing buffer standards would be applied. Planning staff does not intend to propose

49 any 'retroactive' requirements for relocating or minimizing development footprints within

50 existing buffers.

51

1 Planning staff are likely to propose policy and regulatory language that would allow a  
2 property owner to add stories or height to a nonconforming structure provided it is within  
3 the existing building footprint. This would allow underutilized and/or underdeveloped  
4 properties to continue to develop and add capacity without encroaching further into  
5 buffer areas.  
6

- 7 3. Address sea level rise. Incorporate goals, policies and regulations that address sea level  
8 rise and coastal storm surges and coastal flooding. (SLR and CSSF) The City has  
9 developed a framework or, “guidebook” for conducting a future vulnerability assessment  
10 as it relates to SLR and CSSF. The City – in partnership with other local municipalities  
11 such as the Port of Bellingham and Whatcom County – have commissioned the United  
12 States Geological Survey agency to produce a model that can anticipate the frequency,  
13 depth and duration of upland flooding that occurs as a result of coastal storm surges and  
14 flooding in concert with SLR scenarios over time. The model will cover most of the  
15 marine shorelines in Whatcom County including all the marine shoreline within the City  
16 of Bellingham.  
17

18 A future vulnerability assessment will not be completed until approximately 2023. The  
19 coastal storm model may not be completed until later this year or, after the SMP update  
20 is finalized. The City cannot wait to finish or delay its update of the SMP in order to  
21 incorporate the results of the assessment and model. The City does intend on including  
22 broad goals and policies relating to these topics as part of the update.  
23

24 During development of the scope of work for the SMP update, the City has been clear  
25 with the Department of Ecology that Planning staff intend to complete the update – or as  
26 much of it as possible – by the end of 2021 . Planning staff specified that the City would  
27 undergo a “limited amendment” in order to incorporate the findings and results of the  
28 assessment and model – and any associated adaptation planning – into the SMP once  
29 those are known. This would include specific goals, policies and regulations that would  
30 facilitate and implement such an assessment and adaptation planning. The Department  
31 of Ecology concurs with this approach.  
32

33 A “limited amendment” is the mechanism that local governments may utilize to amend or  
34 revise very specific sections of its SMP. In this case, as it relates to SLR and CSSF the  
35 City would add shoreline goals, policies and regulations that implement the SLR and  
36 CSSF findings and results and could also facilitate specific actions relating to adaptation  
37 such as shoreline reinforcement, elevation of structures and relocation of buffer areas.  
38

## 39 **V. NEXT STEPS**

40

41 After this introductory work session, staff will utilize the Engage Bellingham “SMP Update” site  
42 to solicit interest from the general public and special interest groups on this process. PCDD staff  
43 have set up a “Quick Poll” and a “Guestbook” on the Engage page so staff can get a better  
44 understanding from the public about their expectations, issues and concerns regarding the  
45 update BEFORE staff present their proposed revisions. Staff would then have the ability to  
46 summarize those inputs and potentially, frame the proposed revisions in a manner that  
47 incorporates and/or addresses public comment.  
48

49 A document that achieves both objectives would be presented to the Planning Commission in a  
50 follow-up work-session in approximately mid-August. The proposed revisions would be  
51 presented in a ‘narrative’ type format where the revision is introduced, shown and then  
52 explained. For example:

1  
2 **1. Do not apply buffers across developed rights-of-way or established private**  
3 **roads.** BMC 22.08.010 B should be revised to include a new subsection 1. a, which  
4 should read:

5  
6 Buffers may not include areas that are functionally and effectively disconnected from  
7 the shoreline by an existing public or private road, as determined by the Director.  
8 Functionally and effectively disconnected means that the road blocks the protective  
9 measures provided by a buffer or it disrupts the life cycle of wildlife documented to  
10 be using the area.

11  
12 Rationale: The city's critical areas ordinance includes this provision as it relates to  
13 creek and wetland buffers and the CAO and SMP are meant to be synonymous with  
14 one another in terms of protection and regulation of habitats as well as application of  
15 buffer standards. In certain circumstances property owners have had to apply for  
16 variances for encroachment into "buffer areas" that are comprised of developed city  
17 rights-of-way.

18  
19 **2. Allow minor residential features / appurtenances in buffer areas** that have been  
20 previously developed such as sheds / garages / fences / arbors / decks / solar panel  
21 arrays, etc., as determined by the Director to be legally classified as "conforming"  
22 provided there is no net loss of existing shoreline ecological function.

23  
24 This proposed revision is required based upon state law in RCW 90.58.620  
25 established in 2011.

26 Planning staff believe that a "narrative" format which includes the intended revision and the  
27 rationale for it will make it easier for the commissioners to understand it and to formulate  
28 questions and discussion more effectively *rather than* trying to labor through a legislatively  
29 formatted draft ordinance.

30  
31 Specific dates for additional work sessions and public hearings should not be scheduled until  
32 the Planning Commission has worked through the narrative styled revisions and public input.  
33 When that work is complete it should lead to a recommendation for Planning staff to prepare a  
34 draft ordinance. This is when staff would show the proposed revisions in legislative format, i.e.,  
35 in ~~strike through~~ and underline and present those in a public hearing.

## 36 **VI. LIST OF ATTACHMENTS**

- 37  
38  
39 A Staff Report  
40 B Power-point presentation including notes sections  
41 C "Shoreline Management Overview"