

**ATTACHMENT A: FINDINGS AND CONCLUSIONS  
FOR PROPOSED LIMITED AMENDMENT TO THE WHATCOM COUNTY  
SHORELINE MASTER PROGRAM**

SMP Submittal Accepted – November 3, 2016, Resolution No. 2016-039<sup>1</sup>

**Brief Description of Proposed Amendments:** Whatcom County (County) has submitted to Ecology for review, a limited amendment to its Shoreline Master Program (SMP). The County Council adopted the amendment (Resolution No. 2016-039) on October 25, 2016. The purpose of the limited amendment is to address the use of single-family residences and accessory dwellings for use as short-term vacation rentals. The County has proposed new zoning provisions to regulate short term rentals and the SMP changes are necessary so that the SMP is consistent with the zoning amendments.

Regional staff recommends approval of the proposed limited amendment subject to four (4) recommended changes (Attachment B – Ecology Recommended Changes).

**FINDINGS OF FACT**

**Need for Amendment:** The proposed SMP amendments, in conjunction with the County’s proposed zoning changes, are intended to address the increasing use of single-family residences and/or their permitted accessory dwellings as short-term vacation rentals.

**SMP provisions to be changed by the amendment as proposed:** The current SMP places all forms of transient housing as a commercial use with the requirement to obtain a shoreline conditional use permit within select shoreline environment designations. The proposed amendments would allow short-term rentals of single-family residences and/or accessory dwelling units as a form of residential use; a permitted use in all upland shoreline areas. More specifically, the following changes to the existing County SMP are proposed:

Shoreline Jurisdiction and Area Designations

*WCC 23.30.055.B – The SMP amendment removes the term “bed and breakfasts” as a commercial use within the urban conservancy shoreline designation, thus a shoreline conditional use permit would not be required for future bed and breakfast uses within this designation under the approved amendment.*

*WCC 23.30.095.B – The SMP amendment removes the term “bed and breakfasts” as a commercial use within the conservancy shoreline designation, thus a shoreline conditional use*

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<sup>1</sup> Ecology’s review also included a response to comments from Whatcom County received on August 27, 2017 and additional suggested changes provided by the county on December 11, 2017.

*permit would not be required for future bed and breakfast uses within this designation under the approved amendment*

### Commercial Use Policies and Regulations

*WCC 23.100.050.C.3 – Removes the term “bed and breakfasts” as a commercial use requiring a shoreline conditional use permit within the urban conservancy shoreline designation.*

*WCC 23.100.050.C.7 – Removes the term “bed and breakfasts” as a commercial use requiring a shoreline conditional use permit within the conservancy shoreline designation.*

### Definitions

*WCC 23.110.020.B.4 – Adds a new definition of “Bed and Breakfast” as a single-family residence that is the primary residence(s) of the owner in which, for compensation, one to five rooms are used as sleeping units to house or lodge individuals or families for periods of less than 30-days as transient visitors with or without food service.*

*WCC 23.110.030.C.6 – Modifies the definition of “Commercial development” to exclude bed and breakfast establishments and reinforces that bed and breakfasts and vacation rental units are not commercial.*

*WCC 23.110.180.R.7 – Modifies the definition of “Residential development” to include bed and breakfasts and vacation rental units.*

*WCC 23.110.220.V.1 – Adds a new definition of “Vacation Rental Unit” as a dwelling unit where the owner is not present on site during the rental period, which, for compensation, is used to lodge individuals or families for a period of less than 30 days.*

**Amendment History, Review Process:** The County indicates that the SMP amendments, along with the proposed amendments to the Whatcom County Zoning Ordinance (Title 20), originated from a local planning process that began in 2014 in response to increasing citizen concerns over use of single-family residences as short term vacation rentals primarily on Lake Whatcom. The County Planning Commission held a work session on the issue in December 2014 and held a public hearing on January 2015. The County Council Planning and Development Committee held a series of four work sessions on the issue between January 2015 and June 2016. As a result of these work sessions, a revised proposal was presented back to the Planning Commission in a public hearing in June 2016. On October 15, 2016, the Whatcom County Council adopted Resolution 2016-039 approving the proposed SMP amendments and authorizing planning staff to forward the amendments to Ecology for final review. According to the county, once the SMP amendments are approved by Ecology, the county will adopt the proposed Title 20 and SMP amendments by ordinance, so that the regulations become effective both within and outside of shoreline jurisdiction simultaneously.

The proposed SMP amendments were received by Ecology for state review on November 2, 2016 and were verified as complete on November 3, 2016. Notice of the state comment period was distributed to state task force members and interested parties identified by the County on December 22, 2016, in compliance with the requirements of WAC 173-26-120, and as follows: The state comment period began on January 3, 2017 and continued through February 2, 2017. A press release was issued on December 29, 2016 to area news media. A notice was also placed on Ecology's website.

Fifteen individuals submitted comments on the proposed amendments, which Ecology forwarded to the County for response on February 7, 2017. The County submitted to Ecology its responses to issues raised during the state comment period on August 24, 2017. A copy of the County's response along with Ecology's response to the public comments is included as Attachment C – Responsiveness Summary.

**Summary of Issues Raised During The Public Review Process:** Fifteen individuals submitted comments on the proposed amendments, which Ecology forwarded to the County for response on February 7, 2017. The County submitted to Ecology its responses to issues raised during the state comment period on August 24, 2017.

In general, comments received were not in favor of the SMP amendments and/or the performance standards being added to the county's zoning ordinance. Many believe that use of existing homes for monetary gain is a commercial use and should be regulated as such. Commenters cited concerns regarding overuse of homes for parties or large events, degradation of existing neighborhoods due to transient use, inadequate parking requirements, increased risk of introduction or spread of aquatic invasive species, and potential water quality issues due to overloaded on-site septic systems as well as an increase recreational use of the lake by people (boating, swimming, etc.). Even though the proposed zoning performance standards address most or all of these concerns, many expressed a lack of confidence that the new rules would be enforced by the county.

Concerns were also raised regarding the lack of a permit process to authorize use of existing single-family residences as vacation rentals, resulting in a lack of public input and due process. Issues related to the SMP amendment process were also raised, related to incomplete use of Ecology's submittal checklist and lack of a cumulative impacts analysis for what many consider to be an increase in use intensity over existing conditions.

Ecology considered these comments, but finds the use of residential structures, both short and long-term, as proposed by the County, remains consistent with a residential shoreline use as provided by WAC 173-26-241(3)(j). Ecology concurs with Whatcom County's responses and finds that it is within the County's discretion to categorize vacation rentals as a residential use. Ecology also finds that the County has placed sufficient zoning provisions, including restrictions and performance standards, to adequately regulate residential short term vacation rentals

consistent the RCW 90.58.020 (SMA Policy goal regarding the control of pollution and prevention of damage to the natural environment).

Furthermore, the use of existing docks and boat launches were described by some commenters as a “recreational use,” however, according to the SMP guidelines (WAC 173-26-241(3)(i)) recreational uses are defined as commercial and public facilities. Docks, boat launches, and swimming floats are considered water-dependent accessory uses when associated with residential development.

All residential developments and accessory developments are subject to the specific bulk, dimensional, and performance standards outlined in the County’s SMP. Any new development proposed will be reviewed through either a Shoreline Substantial Development Permit or Statement of Exemption, as appropriate. Allowing residential use, even as a vacation rental, of an existing improved residential property, does not constitute development under the SMA.

A copy of the County’s response along with Ecology’s response to the public comments is included as Attachment C – Responsiveness Summary.

**Summary of Issues Identified by Ecology as Relevant to Its Decision:** Pursuant to WAC 173-26-171(3)(a) and WAC 173-26-186(9), the SMP guidelines allow local governments substantial discretion to adopt master programs reflecting changing local circumstances. The county has initiated this planning process specifically to address the increased use of single-family residential structures as short-term rentals. The SMA, along with its implementing rules and guidelines, do not provide specific direction on this type of use. Absent any guidance under the SMA, the county has appropriately chosen to address the use through new zoning restrictions and performance standards as follows:

- *Vacation rental units in the Lake Whatcom Watershed Overlay Zone are subject to a zoning conditional use permit per WCC 20.51.070 and WCC 20.84. A conditional use permit may set standards that are more restrictive than the standards in this section.*
- *There shall be no more than one vacation rental unit per lot.*
- *Each vacation rental unit must be currently registered in the department’s Vacation Rental Registry. The department may revoke registration of a vacation rental unit if the department has cited the owner for two or more code violations within a 12-month period. The department shall issue a registration number for each vacation rental unit and the owner shall include the registration number in all advertising for the unit. The registration shall apply to the owner and not run with the land. Information provided at the time of registration shall include, at a minimum:*
  1. *Name and telephone number of the owner or an authorized agent who is available on a 24-hour basis to resolve problems associated with the unit,*

2. *A copy of the sign posted on the front exterior of the unit giving the 24-hour contact information for the owner or authorized agent, and a description of the specific posting location,*
  3. *A checklist of safety features required by the Building Official and Fire Marshal that the owner certifies are present in the unit,*
  4. *A statement that by signing the registration/permit application the owner or agent authorizes department staff to inspect the property, and agrees to engage in dispute resolution and act in good faith to resolve disputes with neighbors arising from the use of a dwelling as a vacation rental.*
  5. *A copy of the notice posted inside the unit providing guests with 24-hour contact information, safety information and rules of conduct, and*
  6. *A copy of the current State of Washington business license, including the Unified Business Identifier (UBI) number*
- *The maximum number of persons permitted to stay in a vacation rental unit shall not exceed two per the number of legally permitted bedrooms being rented, plus two additional persons. The owner shall not advertise occupancy higher than the maximum number permitted by this subsection or by a conditional use permit.*
  - *There shall be no outdoor signage or any other visible feature that would distinguish the unit from surrounding residential units, other than notices required by this section.*
  - *The vacation rental shall be operated in a way that will prevent unreasonable disturbances to nearby residents, per WCC Chapter 9.40.*
  - *Off-street parking shall be provided per WCC 20.80.580(50).*
  - *The owner of the vacation rental unit shall post notice to renters regarding rules of conduct and their responsibility not to trespass on private property or create disturbances.*

Regardless of who resides within a structure, a single-family residence and/or its associated appurtenant and accessory developments are still residential in nature and consistent with SMA when developed in a manner consistent with the control of pollution and prevention of damage to the natural environment. The SMP amendments do not alter the boundaries of shoreline designation regulating residential developments or any of the existing development standards regarding new or expanded residential development (i.e. setbacks, buffers, mitigation standards, etc.). Therefore, the conclusions from the County's original cumulative impact analysis assessing potential impacts from residential development on the County's shorelines, still apply and do not warrant additional analysis. Further, the residential zoning amendments

adopted by the County clarify the extent of vacation rental activity allowed as part of a residential use.

Ecology's recommended changes outlined in Attachment B were suggested by the County and provided to Ecology on December 11, 2017. The most significant change is due to comments received during the state comment period related to the proposed definition of Vacation Rental Unit. The original definition included the term "dwelling" which, while not defined in the SMP, the County's zoning ordinance uses the term to define many forms of housing, many of which are commercial in nature (day care centers/homes, duplex and multifamily housing). The County has suggested revisions to the proposed definition of Vacation Rental Unit to clarify the specific housing forms allowed for use as a vacation rental, consistent with the intent of the revised zoning ordinance. The remaining requested changes from the County consist of minor clarifications as well as a scrivener's error correction.

**Consistency with SMP Amendment Criteria:** The proposed amendment has also been reviewed for compliance with WAC 173-26-201(1)(c) of the SMP Guidelines. According to WAC 173-26-201(1)(c) Master program amendments may be approved if Ecology determines that:

1. The proposed amendment will not foster uncoordinated and piecemeal development of the state's shorelines;
2. The amendment is consistent with all applicable policies and standards of the SMA;
3. All procedural rule requirements for public notice and consultations have been satisfied;
4. Master program analytical requirements and substantive standards have been satisfied, where they reasonably apply to the amendment. All master program amendments must demonstrate that the amendment will not result in a net loss of shoreline ecological functions.

The proposed amendment clarifies that short-term vacation rentals are a form of residential use, but doesn't not change where residential uses are allowed nor does it make any modifications to the bulk, dimensional, or performance standards for residential uses within the SMP; therefore this amendment will not result in any changes that could foster uncoordinated or piecemeal development.

The amendment is consistent with policy goals of RCW 90.58.020 and the residential use standards found within WAC 173-26-241(3)(j).

The record reflects that the amendment was processed consistent with the public notice and consultation standards of RCW 90.58.130, WAC 173-26-090, and WAC 173-26-100.

The amendment proposed does not require additional cumulative impacts analysis or No Net Loss reporting, because the authorization of short term vacation rentals within existing residential structures does not authorize any new development not already reviewed and considered in these documents as part of the County's Comprehensive SMP Update. These documents are still valid. Additionally, the County has established a licensing and zoning code

conditional use permit process to limit and minimize any use conflicts and avoid potential adverse impacts.

**Consistency with Chapter 90.58 RCW:** The proposed amendment has been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4) and (5). The County has also provided evidence of its compliance with SMA procedural requirements for amending their SMP contained in RCW 90.58.090(1) and (2).

**Consistency with “applicable guidelines” (Chapter 173-26 WAC, Part III):** The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program Guidelines (WAC 173-26-171 through 251 and 173-26-020 definitions).

**Consistency with SEPA Requirements:** The County submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance (DNS) for the proposed SMP amendments on May 27, 2016. Ecology did not comment on the DNS.

**Other Studies or Analyses supporting SMP limited amendment:** Ecology reviewed the following reports and data prepared by the County in support of the SMP amendment:

These supporting documents include:

- *Whatcom County Council Action Taken & Resolution #2016-270A, October 25, 2016*
- *Record of Proceedings and Recommendations of the Whatcom County Planning Commission, June 23, 2016*
- *Whatcom County PDS Staff Report – Vacation Rentals Shoreline Master Program Amendment, June 13, 2016*
- *Whatcom County PDS Memorandum – Vacation Rental Regulation – Title 20 and Title 23 Amendments, August 29, 2016*
- *SEPA Determination of Nonsignificance and SEPA Checklist, May 27, 2016*
- *Whatcom County Approved Proposed SMP Amendments text*
- *Whatcom County Agency and Public Notice Documents*
- *Public Comments received during Whatcom County’s review*
- *SMP Submittal Checklist, November 2, 2016*
- *Whatcom County Draft Zoning Amendments text regarding vacation rentals, March 23, 2016*

## **CONCLUSIONS OF LAW**

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the County’s SMP amendment is consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions). This includes a conclusion that the proposed SMP

amendment, contains sufficient policies and regulations to assure that no net loss of shoreline ecological functions will result from implementation of the new master program amendments (WAC 173-26-201(2)(c)).

Ecology also concludes that a separate set of recommended changes to the submittal (identified during the review process and itemized in Attachment B) would be consistent with SMA policy and the guidelines and would be beneficial to SMP implementation. These changes are not required, but can, if accepted by the County, be included in Ecology's approved SMP amendments.

Ecology concludes that the County has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the County has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 regarding public and agency involvement in the SMP amendment process.

Ecology concludes that the County has complied with the purpose and intent of the local amendment process requirements contained in WAC 173-26-100, including conducting public hearings, notices, consultation with parties of interest and solicitation of comments from tribes, adjacent local government agencies, state and federal agencies, and Ecology throughout the amendment process.

Ecology concludes that the County has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the County's SMP amendment submittal to Ecology was complete pursuant to the requirements of WAC 173-26-110 and WAC 173-26-201(3)(a).

Ecology concludes that the proposed amendments satisfy the criteria for approval of amendments found in WAC 173-26-201(1)(c).

Ecology concludes that it has complied with the procedural requirements for state review and approval of shoreline master program amendments as set forth in RCW 90.58.090 and WAC 173-26-120.

## **DECISION AND EFFECTIVE DATE**

Based on the preceding, Ecology has determined the proposed amendment is consistent with the policy of the Shoreline Management Act, the applicable guidelines and implementing rules. Ecology approval of the proposed amendment is effective 14 days from Ecology's final action approving the amendment.