

PROPOSED BY: _____

INTRODUCTION DATE: _____

ORDINANCE NO. 2024-___

AN ORDINANCE ADOPTING THE 2020 SHORELINE MANAGEMENT PROGRAM, INCLUDING AMENDMENTS TO THE WHATCOM COUNTY COMPREHENSIVE PLAN (CHAPTERS 8 (RESOURCE LANDS), 10 (ENVIRONMENT), AND 11 (SHORELINES)) AND WCC TITLES 22 (LAND USE & DEVELOPMENT) AND 23 (SHORELINE MANAGEMENT REGULATIONS), AND WCC CHAPTER 16.16 (CRITICAL AREAS)

WHEREAS, the Shoreline Management Act (SMA) requires Whatcom County to develop and administer a Shoreline Master Program (SMP); and,

WHEREAS, Whatcom County is subject to the requirements of the Washington State Growth Management Act (GMA), RCW 36.70A.480 'Shorelines of the State;' and,

WHEREAS, on February 27, 2007 (Ordinance # 2007-017), Whatcom County adopted a comprehensive update to the SMP as required by law. This comprehensive SMP update review included but was not limited to assessment of ecological functions, baseline conditions, and SMP environmental designations. This local adoption was approved by the Washington State Department of Ecology (Ecology); and,

WHEREAS, the Washington State Shoreline Management Act (SMA), RCW 90.58.080 (4)(a)(ii), mandates Whatcom County shall periodically review its SMP every 8-years. This periodic update was due June 30, 2021. The purpose of this periodic review is to update the local SMP to reflect changes to state law and associated rules and guidance, ensure internal consistency with the Whatcom County Comprehensive Plan and associated development regulations, as well as provide an opportunity to improve usability and predictability of the SMP; and,

WHEREAS, the GMA, RCW 36.70A.130(1), also mandates that Whatcom County's Comprehensive Plan and development regulations are subject to continuing review and evaluation; and,

WHEREAS, the review process is intended to bring the SMP into compliance with requirements of the act or state rules that have been added or changed since the last SMP amendment, ensure the SMP remains consistent with amended comprehensive plans and regulations, and incorporate amendments deemed necessary to reflect changed circumstances, new information, or improved data; and,

WHEREAS, Whatcom County Planning and Development Services (PDS) applied to make various amendments to Whatcom County's Shoreline Management Program (PLN2020-00006); and,

WHEREAS, on May 21, 2019, and in accordance with WAC 173-26-090(3)(a), Whatcom County developed a public participation program for this periodic review in to inform, involve, and encourage participation of interested persons and private entities, tribes, and applicable agencies having interests and responsibilities relating to shorelines, which was submitted to Ecology; and,

WHEREAS, Whatcom County has followed its adopted public participation program, including:

- a. A dedicated project webpage;

- b. Legal notices published in the official newspaper of record for Whatcom County;
- c. Electronic announcements and notifications to:
 - Subscribers of relevant lists in the Kitsap County Electronic Notification System;
 - Relevant County advisory groups; and
 - Relevant local, state and federal agencies, and community groups;
 - Federally recognized tribes with usual and accustomed areas in Whatcom County and relevant tribal organizations;
- d. Three public open houses;
- e. Meetings with citizen advisory groups and various interested parties;
- f. Two 30-day public review periods of the amendments, one prior to the Planning Commission review workshops (August – September 2020) and a joint public comment period with the Department of Ecology prior to their joint public hearing (March – April 2021).
- g. Eleven public workshops and a joint public hearing with the Planning Commission and Department of Ecology; and
- h. Ten public workshops and public hearings with each of the Planning Commission and County Council; and,

WHEREAS, Whatcom County used Ecology’s checklist of legislative and rule amendments to review amendments to chapter 90.58 RCW and department guidelines that have occurred since the master program was last amended, and determine if local amendments are needed to maintain compliance in accordance with WAC 173-26-090(3)(b)(i); and,

WHEREAS, with the assistance of a consultant and development of a consistency analysis, Whatcom County PDS proposed amendments to the Whatcom County Comprehensive Plan (Chapters 8 (Resource Lands), 10 (Environment), and 11 (Shorelines)) and WCC Titles 22 (Land Use & Development) and 23 (Shoreline Management Regulations), and WCC Chapter 16.16 (Critical Areas); and,

WHEREAS, following review and approval by the Whatcom County Council, a public participation plan, consistency analysis, and scoping document was developed to aid in developing the draft amendments; and,

WHEREAS, Whatcom County reviewed changes to the comprehensive plan and development regulations to determine if the shoreline master program policies and regulations remain consistent with them in accordance with WAC 173-26-090(3)(b)(ii); and,

WHEREAS, Whatcom County considered whether to incorporate any amendments needed to reflect changed circumstances, new information or improved data in accordance with WAC 173-26-090(3)(b)(iii); and,

WHEREAS, the Whatcom County Planning Commission and County Council held public hearings on July 25 and August 7, 2019 (respectively) to receive testimony on topics the public believed should be addressed during the periodic review; and,

WHEREAS, the Whatcom County Planning Commission completed a review of staff recommendations and prepared initial amendments; and,

WHEREAS, Whatcom County consulted with the Department of Ecology early and often during the drafting of the amendments. Whatcom County worked collaboratively with the Department of Ecology

to address local interests while ensuring proposed amendments are consistent with the policy of RCW 90.58.020 and applicable guidelines in accordance with WAC 173-26-104; and,

WHEREAS, a State Environmental Policy Act (SEPA) environmental checklist was prepared and the Whatcom County SEPA responsible official issued and circulated a copy of the checklist and a Determination of Non-Significance (DNS) on February 18, 2021; and,

WHEREAS, Whatcom County conducted a formal joint public comment period with the Department of Ecology in compliance with requirements of WAC 173-26-104; and,

WHEREAS, Whatcom County published a legal notice in the Bellingham Herald on April 17, 2021, for a public hearing on the proposed staff recommendations, including a statement that the hearings were intended to address the periodic review in accordance with WAC 173-26-090(3)(c)(ii); and,

WHEREAS, the Planning Commission took public testimony on the proposed staff recommendations at a public hearing on April 22, 2021; and,

WHEREAS, the Planning Commission reviewed the public testimony and written comments on the proposed SMP revisions, and suggested revisions to the proposed amendments; and,

WHEREAS, the Planning Commission recommended approval of the proposed amendments and forwarded it to the County Council for review and adoption on May 13, 2021; and,

WHEREAS, notice of the subject amendments was submitted to the Washington State Department of Commerce on March 12, 2021, for their 60-day review in accordance with WAC 173-26-100(5); and,

WHEREAS, the Council held six public workshops to review the Planning Commission's recommendations; and,

WHEREAS, a Council Public Hearing Notice was posted in the Bellingham Herald on November 14, 2021; and,

WHEREAS, the Council received public testimony at the public hearing of November 23, 2021, and reviewed said public testimony and written comments at a study session on December 7, 2021; and,

WHEREAS, after considering all public comments and evidence, the Council determined that the proposed amendments comply with all applicable laws and rules; and,

WHEREAS, as evidenced by the recommendation of the Surface Mining Advisory Committee, Title 23 already meets Council's intent to allow sand and gravel extraction within shoreline jurisdiction under certain circumstances as described in PLN2019-00011 and thus no amendments are proposed to achieve this; and,

WHEREAS, on June 25, 2024, the County received Ecology's conditional approval, requiring that three amendments be made, and which were incorporated into the attached exhibits; and,

WHEREAS, on September 24, 2024, the County Council held a duly noticed public hearing to receive comments on and consider Ecology's required three amendments; and,

WHEREAS, RCW 36.32.120(7) provides that the county legislative authorities shall make and enforce, by appropriate resolutions or ordinances, all such police and sanitary regulations as are not in conflict with state law; and,

WHEREAS, the amendments are consistent with the Shoreline Management Act, Growth Management Act, Whatcom County Comprehensive Plan, and other applicable requirements; and,

WHEREAS, the proposed amendments reflect current local circumstances and promote the general public health, safety, morals and welfare; and,

WHEREAS, on December 7, 2021, the County Council approved Resolution 2021-056, declaring the Council's approval and intention to adopt the proposed periodic update, and authorizing Planning and Development Services to forward the periodic review documents to the Department of Ecology for its review and approval; and,

WHEREAS, on May 10, 2022, the County Council, via Resolution 2022-027, amended Resolution 2021-056, to make further amendments, including a few errors, but primarily to comply with a settlement agreement with the Petitioners in Western Washington Growth Management Hearings Board Case No. 18-2-0001, in which the Council agreed to consider certain amendments to WCC Chapter 16.16; and,

WHEREAS, the Whatcom County Council held an additional duly noticed public hearing on May 24, 2022, to receive testimony on the proposed amendments; and,

WHEREAS, Resolution 2022-027 again authorized Planning and Development Services to forward the periodic review documents to the Department of Ecology for its review and approval; and,

WHEREAS, the Department of Ecology completed its review and on June 25, 2024, conditionally approved the proposed periodic update, requiring three amendments to Exhibits D and F; and,

WHEREAS, on September 17, 2024, the County Council held a public hearing to receive public testimony and consider these required amendments and agreed to make them, as shown in Exhibits D and F of this ordinance; and,

WHEREAS, this completes the County's required process for periodic review in accordance with RCW 90.58.080(4) and applicable state guidelines (WAC 173-26).

NOW, THEREFORE, BE IT ORDAINED BY THE WHATCOM COUNTY COUNCIL:

Section 1. Review and Evaluation. The Council hereby finds that the review and evaluation required by RCW 90.58.080(4) has occurred, as described in the recitals above.

Section 2. Revisions. The Whatcom County Comprehensive Plan, Chapters 8 (Exhibit C), 10 (Exhibit A), and 11 (Exhibit B); Whatcom County Code Titles 22 (Exhibit E) and 23 (Exhibit D) and Chapter 16.16 (Exhibit F); the Official Shoreline Map (Exhibit G); Whatcom County's No Net Loss Analysis (Exhibit I); and Whatcom County's Shoreline Restoration Plan (Exhibit J) are hereby amended to read as set forth in the exhibits, which are attached to this ordinance and incorporated herein by this reference. The remaining portions of the County's SMP shall remain unchanged.

Section 3. Adoption. The Council hereby finds the amended SMP consistent with the requirements of RCW 90.58 and WAC 173-26, as they apply to these amendments, and adopts of the above referenced exhibits attached to this ordinance.

Section 4. Effective Dates. The amendments shall become effective as follows:

- a) The amendments to Exhibits A, B, C, G, I, and J shall become effective 14 days from the Department of Ecology’s written notice of final action.
- b) The amendments to Exhibits D, E, and F become effective 14 days from the Department of Ecology’s written notice of final action or January 1, 2025, whichever is the latter so that Planning and Development Services can have time to advise the public, consultants, and staff on the changes to the code.

Section 5. Scrivener’s Errors. Staff is authorized to work with Code Publishing to correct and update any cross-references made ineffective by these amendments or other scrivener’s errors.

Section 6. Severability. Should any part of these regulations be held to be illegal, unconstitutional, or otherwise unenforceable, the remainder of the regulation shall still apply.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

Cathy Halka, Council Clerk

Barry Buchannan, Council Chair

APPROVED as to form:

() Approved () Denied

George Roche, Civil Deputy Prosecutor

Satpal Sidhu, Executive

Date: _____