



Memorandum

DATE: November 24, 2021
TO: The Honorable County Council
FROM: Cliff Strong, Senior Planner
THROUGH: Mark Personius, Director
RE: Continued Review of Shoreline Management Program (SMP) Periodic Update 2020

Tonight's Goal

On November 23rd the Council held a public hearing on the SMP Update and made three amendments. Based on legal counsel's recommendation, the amended exhibits were introduced that night with the Council's amendments and a second public hearing was scheduled for tonight (12/7/21) to allow the public an opportunity to comment on those amendments. Upon completion of the public hearing, staff requests that Council adopt the resolution approving the SMP Update and authorizing Planning and Development Services to forward it to the Department of Ecology for final review and approval. Once that is done staff will return in early 2022 with an ordinance for Council to adopt, effecting the amendments.

Council's Amendments

Council made three amendments to the Planning Commission's recommendation. These are:

1. **Amend Exhibit F (WCC Ch. 16.16) §16.16.612 (Exceptions to Regulation), subsection (A)(1)(d) (pg. 66) to read:**

"Do not score 6 or more points for habitat function..." (Changing what was shown as "5" to "6.")

Staff Comment: Staff supports this amendment.

In July 2018 the Washington Department of Ecology (DOE) modified the habitat score ranges and recommended buffer widths in their wetland buffer tables in the DOE guidance, with some minor text changes to ensure consistency. Through this SMP update staff proposed to amend §16.16.630, Table 1, and §16.16.612 to reflect this guidance. The revised habitat function scores and buffer widths in Table 1 comes from guidance updated in 2018. The revised language of §16.16.612 is from their *Wetland Guidance for CAO Updates, Western Washington Version, 2016*. However, staff was unaware and just this past week found out that Ecology also updated their language in the 2016 guidance through an addendum issued in 2018. Though the majority of the language remained the same, the one change was to change the "5" to a "6," meant to reflect their newer habitat function scores in determining which wetlands might be exempt from regulation.

The 2016 guidance can be found at <https://apps.ecology.wa.gov/publications/documents/1606001.pdf> and the 2018 errata sheet can be found at <https://apps.ecology.wa.gov/publications/parts/1606001part1.pdf> for those wishing to compare.

2. **Amend Exhibit F (WCC Ch. 16.16) §16.16.900 (Definitions), definition of "Qualified professional" or "qualified consultant," subsection (1) (pg. 128) to read:**

"Is listed on a roster of qualified professionals or qualified consultants prepared by the Director and made available to the public."

Staff Comment: Staff supports this amendment as the list is already made publicly available.

3. Amend Exhibit F (WCC Ch. 16.16) §16.16.900 (Definitions), definition of “Qualified professional” or “qualified consultant,” subsection (7) (pg. 128) to read:

“Anyone who’s professional license is currently revoked or has had two (2) or more reports denied by the Hearing Examiner within a 12-month period does not meet the definition of a qualified professional or qualified consultant.”

Staff Comment: Staff recommends that Council revert the language of subsection (7) to its existing language to read:

“Anyone who has had their professional licensure or certification revoked for violations of the provisions of their profession does not meet the definition of a qualified professional or qualified consultant.”

Though at the 11/23/21 hearing staff indicated they were satisfied with the language as amended by Council, upon further consultation with legal counsel and other staff following the meeting, PDS has reconsidered our recommendation. The Hearing Examiner has no role in approving or denying critical area assessment reports: That role is solely the Director’s pursuant to 16.16.250 (Critical Areas Review Process) and 16.16.255 (Critical Areas Assessment Reports). Additionally, it is unlikely that any one consultant would be before the Hearing Examiner in any 12-month period, as most projects are decided upon administratively, so this rule would rarely be usable. And as a note, all decisions of the Director are appealable to the Hearing Examiner pursuant to WCC 22.05.160, though the Hearing Examiner would only rule on whether code was interpreted correctly, not on whether a report is sufficient or meets professional standards.

As for process, legal counsel agrees that Council can revert the language by motion on 12/7 without a need for an additional hearing since this is existing language and a hearing was held on 11/23 (as well as tonight).

Additional Staff Recommendations

At your 11/23 meeting staff recommended two additional edits, though in reviewing the Action Summary for that meeting we don’t see that they were included in the motion to introduce.

- 4. Amend Exhibit D (WCC Title 23), §23.60.190, by deleting subsection 17, definition of “short-term rental.”**
- 5. Amend Exhibit D (WCC Title 23), §23.60.030 to replace the term “short-term rental” with “vacation rental.”**

Staff Comment: Staff recommends both of these amendments. In trying to include Council’s previous action in Resolution 2016-039 we inadvertently used the wrong terms. The Council approved definition of “vacation rental unit” from that resolution is already included §23.60.220(1).

Attachments

- Resolution to Approve and forward to Ecology
- Exhibit A – CompPlan Ch. 10 Environment (P/C Approved)
- Exhibit B – CompPlan Ch. 11 Shorelines (P/C Approved)
- Exhibit C – CompPlan Ch. 8 Marine Resource Lands (P/C Approved)
- Exhibit D – WCC Title 23 Shoreline Regulations (P/C Approved with DOE and Council Edits)
- Exhibit E – WCC Title 22 Land Use & Development (P/C Approved)

- Exhibit F – WCC 16.16 Critical Areas Regulations
- Exhibit G – Shoreline Map (P/C Approved)
- Exhibit I – No Net Loss Addendum (P/C Approved)
- Exhibit J – Shoreline Restoration Addendum (P/C Approved)

All documents are available in pdf and Word versions on PDS's SMP Update webpage:

<https://www.whatcomcounty.us/3119/SMP-Update-2020-Documents>.