



Memorandum

DATE: June 29, 2021
TO: The Honorable County Council
FROM: Cliff Strong, Senior Planner
THROUGH: Mark Personius, Director
RE: Review of Shoreline Management Program Periodic Update 2020

Meeting Goal

On July 13th staff will present to the Committee of the Whole an overview of the SMP Periodic Update. We know your packet contains a lot of material and do not expect you to have read everything by then, nor even formulated questions or discussion points. Our aim for this meeting is to orient you to the materials so that you can be as productive in your review as possible.

What to Expect in the Next Few Months

Though the Planning Commission has concluded its review (see Planning Commission Review, below), the Department of Ecology is currently performing its formal review of the draft documents and we've been told that we cannot start the Council's formal review until we receive their comments. We expect those within the next few weeks (maybe even before 7/13), but will need to address any comments prior to bringing it to you. We expect that we can start Council workshops in August to discuss the amendments in more detail. We are supposed to have the update finalized by June 30, 2021¹. However, Ecology understands that we lost time due to the pandemic and there will be no penalty for adopting after that date as long as we are diligently progressing.

In the meantime, we recommend that the Council start reading the documents in preparation for your workshops. We would suggest starting with the staff report to the Planning Commission, as it outlines the proposed policy changes.

Purpose of the Periodic Update

Whatcom County (County) is undertaking a periodic review of its Shoreline Management Plan (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.

This periodic update will focus on reviewing relevant legislative updates since 2007 and incorporating any applicable amendments; ensuring consistency with regulations for critical areas and flood hazard areas; and improving the overall functionality of the SMP for use by applicants and staff.

Update Parameters

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.

¹ June 30, 2020 by law, but obtaining the grant from DOE provided us an additional year.

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 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) and Title 21 (Land Use & Development).

Project Scope

In starting out this project, staff compiled ideas for amendments from various sources (see Public Outreach, below) and compiled them into a list that the Planning Commission and Council reviewed and adopted as the "Scoping Document." This set the "bookends" for what staff would work on (and by corollary, what we would not work on). It contains a list of 22 topic areas, with 68 specific issues to address. A link to that document can be found below under "Documents." Staff understands that through the review process other ideas may arise, but if they are big issues that need a lot of work to accomplish, we will not be able to take them on and meet our update deadline.

Public Outreach

The County has and will continue to provide multiple opportunities for public participation throughout the process using a variety of communication tools to inform the public and encourage participation. This includes our SMP Update website (<http://www.co.whatcom.wa.us/3097/Shoreline-Master-Program-Periodic-Update>), a list-serve, news releases, public notices, and open houses.

The early months of the project were used to gather input and outline the extent of the review; three public open houses were held in different parts of the County to illicit amendment ideas². The County Council then reviewed and adopted a final scope of potential amendments based on input from the public, local jurisdictions, tribes, other stakeholders, and staff.

Based on the scope, County staff and consultants drafted amendments to the County's SMP. These draft amendments were issued for two 30-day public review periods: the first from August 18 to September 18, 2020, and the second from March 12 to April 12, 2021.

Planning Commission Review

The County used the optional joint-review process for SMP amendments, which allows for a joint state-local comment period and public hearing (WAC 173-26-104). County staff coordinated with the Washington State Department of Ecology on public notification of the comment periods and hearing. Their staff also participated in the Planning Commission's hearing.

² Note: Though we had planned on holding three additional open houses to present the draft to the public, due to the COVID-19 pandemic we had to cancel those and rely on electronic review.

On March 13th, the Commission voted unanimously to recommend to the Council approval of the draft documents with the motion:

“After holding 11 work sessions and a joint public hearing with the Department of Ecology wherein the Planning Commission reviewed and amended the draft documents based on public comment, and based on the draft Finding of Facts and Conclusions included in the staff report, the Planning Commission recommends that the Council adopt the 2020 Shoreline Management Program Periodic Update, including exhibits:

- A – CompPlan Ch. 10 Environment
- B – CompPlan Ch. 11 Shorelines
- C – CompPlan Ch. 8 Marine Resource Lands
- D – WCC Title 23 Shoreline Regulations
- E – WCC Title 22 Shoreline Permitting
- F – WCC 16.16 Critical Areas Regulations
- G – Shoreline Map
- I – No Net Loss Addendum
- J – Shoreline Restoration Addendum

This also includes Council’s docketed items:

- 1) PLN2019-00011, a directive to amend the CompPlan and codes to allow the seasonal extraction of sand and gravel from dry upland areas under certain conditions, which both the Mineral Resources Advisory Board and the Commission have been found to be unnecessary as such use is already allowed under current code; and,
- 2) PLN2018-00010, the addition of Policy 10L-19 supporting the establishment of a Sustainable Salmon Harvest Goal to CompPlan Ch. 10.”

Documents

To Review (provided in your packet):

- Staff Report to the Planning Commission
- Exhibit A – CompPlan Ch. 10 Environment
- Exhibit B – CompPlan Ch. 11 Shorelines
- Exhibit C – CompPlan Ch. 8 Marine Resource Lands
- Exhibit D – WCC Title 23 Shoreline Regulations
- Exhibit E – WCC Title 22 Shoreline Permitting
- Exhibit F – WCC 16.16 Critical Areas Regulations
- Exhibit G – Shoreline Map
- Exhibit H – Table of public comments on the 1st draft, with staff responses
- Exhibit I – No Net Loss Addendum
- Exhibit J – Shoreline Restoration Addendum

Background Documents (online at <http://www.co.whatcom.wa.us/3119/SMP-Update-2020-Documents>):

It’s not necessary to read these, but if you’re interested,

- 2020 SMP Update Scoping Document
- Materials from the 2007 Comprehensive Update:
 - Vol. 1 - Inventory and Characterization Report
 - Vol. II - Scientific Literature Review
 - Vol. III - Restoration Plan

- Vol. IV - Cumulative Effects Analysis

All documents are available on PDS's SMP Update webpage

(<http://www.co.whatcom.wa.us/3097/Shoreline-Master-Program-Periodic-Update>) and at our office.

How to Review the Documents

Before reading the edited documents, please note the following:

- This is a very complicated set of amendments. Staff has been tracking at least three other code amendment proposals, some of which have been decided on by Council prior to your review of this update but some have not been (e.g., the Cherry Point Fossil Fuel amendments). Each has the potential to change what needs to be shown as existing language in this set of amendments and staff will continue to merge upcoming actions into these documents as they occur.
- At first glance it sure looks like we're proposing to change a lot. And we are; however, as explained in more detail below, the majority of the strikeout/underlining is due to reorganizing, moving, or streamlining the text.
- The Department of Ecology is currently performing their "formal" review of the draft documents, after which they will send comments. Some of these comments may be recommendations, but others may be required. We anticipate that they will send us these comments sometime in July, after which we may need to make additional changes.
- We have tried to flag all bigger policy changes with "Policy Change" shown in the comment bubbles, with an explanation for the change or a reference to the item number from the Scoping Document.
- In some instances where text was moved from one section to another, Word's review function marked the text with double strikeout/underline. However, in other instances it marked it with single strikeout/underline, usually indicating deleted/new text. Unfortunately this is an automatic function in Word and we have no control over how it operates. However, we've tried to flag where text was only moved.
- There are some comment bubbles that start "To do:" These have to do with checking cross-references or text that may change due to other code amendments in the process of being acted upon by the Council. These "to do" comments can be ignored for now, as these are reminders to us staff regarding items that may still need to be changed once (and if) the other amendments are adopted.
- If you have comments, please provide the section and subsection number so we know which section you're commenting on. Page and line numbers will change as the documents are amended by Council, so citing them doesn't always work.

Overview of Proposed Amendments

The various amendments are found in different parts of the Whatcom County Comprehensive Plan and Code. These include:

Whatcom County Comprehensive Plan (Shoreline Policies) (Exhibits A & B)

One of the biggest changes was to reorganize the SMP to shorten it and make it easier to use. One of the ways we're doing this is to move the SMP policies into the Comprehensive Plan. The SMP was already adopted by reference as part of the CompPlan; it just wasn't contained in it. However, in modern code construction, code normally doesn't contain policies (or appendices) as our current Title 23 does. Staff has now created a new Chapter 11 of the CompPlan entitled "Shorelines." We have

moved all the SMP policies from Title 23 as well as related policies from Chapter 10, Environment, to this chapter, putting all the shoreline policies into one place.

Thus, the amendments to Chapter 10 are mostly showing the deletion of policies that are moving to Chapter 11. However, there is one additional policy proposed to be added to Chapter 10, Policy 10L-19. Adding this policy is not a part of the SMP Update per se. Rather, it is a policy the Council expressed in interest in adding in support of the fisheries co-manager's Sustainable Salmon Harvest Goal. Adding such a policy was placed on the docket by Council in 2018 (#PLN2018-00010). Rather than process its addition as a separate CompPlan amendment (which is a lengthy process), staff is proposing to add it while we're already amending the CompPlan for the SMP Update.

Whatcom County Comprehensive Plan (Marine Resource Lands) (Exhibit C)

A few years ago there was a proposal by the Marine Resources Committee to add to the CompPlan a section addressing marine resource lands. The Planning Commission actually held an earlier public hearing on the matter and recommended that Council adopt the amendments. However, when it got to Council, they chose not to adopt it at that time; rather, they directed staff to include consideration of the proposal in the SMP update. Thus, we are again including it for its consideration.

WCC Title 23, Shoreline Management Program (Shoreline Regulations) (Exhibit D)

This Title contains the bulk of the regulations pertaining to use, development, and modification of the shoreline. In general:

1. *Shoreline Policies* – We removed the shoreline policies and moved them to the Comprehensive Plan.
2. *Permitting Procedures* – We moved the permitting procedures from Title 23 to Title 22. Over the past few years numerous code amendments have done the same with other parts of the Whatcom County Code, and this is a continuation of that practice. Our goal is to have all the permitting requirements in one title, rather than spread throughout various titles and chapters. Additionally, the permitting procedures are not part of what the Department of Ecology has jurisdiction over, and having them in Title 22 makes that clearer. Additionally, our standard permitting procedures cover much of the shoreline permitting procedures, so we were able to reduce redundancies by referring to existing procedures. Some shoreline permitting procedures, however, are unique to those types of permits, so we've also created a new chapter of Title 22, Chapter 22.07, Additional Requirements for Shoreline Permits and Exemptions.
3. *Reorganization* – We reorganized the remaining regulations, removing redundant text, simplifying and consolidating language, removing appendices and incorporating any regulations contained therein, and replacing outdated staff titles with the official ones. And similar to other code amendments in the past few years we are also trying to consolidate all of our definitions, with the eventual goal of having all definitions in one chapter or title of the WCC and making sure they're consistent throughout.
4. *Regulatory Changes* – While there are some proposed substantive changes in the regulations, there are not as many as it would appear based on the amount of strikeout/underlining shown; most of that is due to the above actions. Where substantive regulatory changes are proposed, we have included "comment bubbles" indicating such, and why. In future staff memos we will map out where the potential amendments from the Council-approved scoping report can be found.

WCC Title 22, Land Use and Development (Permitting Requirements) (Exhibit E)

As mentioned above, we are proposing to move all the permitting requirements to WCC Title 22 (Land Use & Development). Where the permitting regulations are the same as for our non-shoreline project permit procedures, we have relied on and refer to existing language in Chapter 22.05 (Project Permits). However, there are some differences in some of the requirements, and have thus created a new chapter 22.07 (Additional Requirements for Shoreline Permits and Exemptions) to address those differences.

WCC Chapter 16.16, Critical Areas Regulations (Exhibit F)

Chapter 16.16 is considered part of the SMP, as it is adopted by reference therein. As such, it too must be consistent with the Shoreline Management Act in regards to regulating critical areas within the shoreline jurisdiction. Thus, we have reviewed it for consistency and are proposing some policy changes to ensure continued consistency. However, while we're amending it for this reason, staff is also taking the opportunity to propose other, non-SMP related amendments to address issues that have arisen since it was last updated. A list of these will be presented in a future staff memo.