



Memorandum

DATE: September 16, 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

Today's Goals

On September 28th the Council will continue its review of the SMP Update.

Attachments

- **Exhibit E** – WCC Title 22
- **Exhibit G** –Shoreline Management Program Map.

All documents are available in pdf and Word versions on PDS's SMP Update webpage:
<https://www.whatcomcounty.us/3119/SMP-Update-2020-Documents>.

Amendments to Exhibit E (Title 22, Land Use & Development)

(Note: Topic #s refer to the topic number assigned in the Scoping Report)

#9, Layout and Structure of the SMP

- a) **Reorganize the SMP, putting the background information, discussions, and goals and policies into the Comprehensive Plan as a chapter**

One of the organizational changes is to move all permitting regulations to WCC Title 22. Title 22 was created a few years ago to eventually contain all of the County's procedures for land use permitting and code administration. However, moving sections to this Title is continuing to occur as we progress through various code amendments (e.g., the annual code scrub, upcoming code enforcement amendments, this SMP update, etc.).

#1, Consistency with State law (required amendments)

- a) **Revise language to cite updated substantial development cost threshold or to rely solely on reference to WAC 173-27-040 for exemptions to substantial development permitting.**

The Office of Financial Management (OFM) recalculates the dollar threshold for projects qualifying as exempt from having to obtain a substantial development permit process every 5 years. Staff considered deleting the dollar amount in §22.07.020(B)(1) and just referring to the most recent OFM updated amount, but felt it might be difficult for the public to track it down. Instead, the amount shown in the code has been updated to the most recent (2017) OFM calculation of \$7,047. Note, though, that PDS updates its permit application, website, and handouts to reflect OFM's newest threshold amount whenever it's published.

- c) Add reference to statutory exceptions to local review to the SMP. Revise or remove existing references to remedial actions and projects certified pursuant to RCW 80.50 to clarify their status as exceptions to local review under the SMA.**

The requisite language has been added (and revised) to §22.07.010(G) to clarify the referenced project types' status as exceptions to local review under the SMA, and deleted from (old) §23.50.060 (Exhibit D).

- d) Revise language to include shoreline permit exemption for retrofitting existing structures to comply with the ADA or to rely solely on reference to WAC 173-27-040 for exemptions to substantial development permitting.**

The requisite language has been added as §22.07.020(B)(17) (Exhibit E).

- e) Revise language in the SMP to cite the updated cost thresholds for dock construction or to rely solely on reference to WAC 173-27-040 for exemptions to substantial development permitting.**

§22.07.020(B)(8) has been revised to meet the statutory requirements and the cost threshold has been deleted from e definition of "substantial development" in §23.60.190 (Exhibit D).

#2, Consistency with State law

- a) Revise the SMP for consistency with Ecology's updated permit filing procedures.**

The requirements for filing permits with DOE have been updated in §22.07.060 (Filing Shoreline Permits with the Department of Ecology).

- e) Define special procedures for WSDOT projects per WAC 173-27-125.**

Subsection (1)(c) has been added to §22.05.130 (Permit Review Time Frames) to define special procedures for WSDOT projects. (Exhibit E)

#4, Consistency with Land Use procedures (Title 22)

- a) Update SMP to align with recently adopted Title 22 permit procedures.**

All permitting procedures formerly in Title 23 (Exhibit D) have been moved to Title 22. Where processes overlap with PDS's other project permit types, we refer to and rely on (slightly modified) existing language (Ch. 22.05). However, shoreline permits also have requirements unique to them, so have supplemented the processing rules with a new Ch. 22.07 (Additional Requirements for Shoreline Permits and Exemptions).

#5, Consistency with Shoreline Management Act (RCW 90.58) and 2003 SMP Update Guidelines (WAC 173-26)

- c) Align appeal procedures with State statutes.**

Subsection (3) has been added to §22.05.160 (Appeals) to align the County's shoreline permit appeals process with the state statutes.

- d) Shoreline permit review (Exemption, Substantial, Conditional Use, or Variance) should reflect State statutes and level of review required.**

The rules for shoreline permit review have been updated to meet state standards in Ch. 22.07.

f) Incorporate improved permit streamlining for priority salmon recovery projects

§22.07.020 (Exemptions from Shoreline Substantial Development Permits) subsection (B)(16) already exempts projects whose primary purpose is to improve fish or wildlife habitat or fish passage.

#17, Shoreline Uses

a) Revise as necessary any SMP policies or regulations pertaining to the Cherry Point area as directed by Council.

In 2018 the Council started a process of amending the policies and regulations related to fossil fuel facilities in the Cherry Point Management Area. They hired consultants specifically for this task, which was principally administered under a separate process. Under that separate process, the Council has already reviewed the amendments to C/P Ch. 2 (Land Use) and WCC Ch. 16.08 (SEPA) and none of those amendments affects the documents the Council is reviewing as part of this SMP Update. The Council's amendments to Title 22, however, have been incorporated into Exhibit E, and are being shown as existing as they have already been through that separate process.

Official Shoreline Environment Designation Map

Staff has updated the Shoreline Environment Designation Map as follows:

- UGA and City boundaries have been updated.
- On the Lummi Nation, parcels that have been put under Tribal jurisdiction since the last update were updated with the "Tribal" shoreline designation.
- Designations were adjusted, where necessary, to match the updated and spatially corrected parcel boundaries. This was just a housekeeping task and no designations were changed.
- Shoreline jurisdiction was expanded to rightly include all areas of the floodway and floodplain, as per code. This primarily expanded the Resource designation on the Nooksack from Ferndale to Lynden and portions of the South Fork of the Nooksack. Floodway and Floodplain are differentiated in the database.
- The complex of beaver ponds north and south of H Street Road between Sunrise and Markwork Roads (NE of Lynden) were added to the Conservancy designation. These ponds have grown in size and now surpass the 20-acre threshold for being a Water of the State. Since these ponds were identified and characterized in the 2007 Characterization report, we do not need to update that report; the data is still valid.
- Shoreline designation breaks (thick black bars) have been removed from the map as they made it difficult to read.
- At the request of the owners of APN 390302-428076-0000, 390302-485039-0000, and 390302-440200-0000 we have removed the Resource environment designation from a mining pond located to the NW of the intersection of E. Pole x Everson-Goshen Roads, just southeast of Everson. This designation was applied during the last SMP update, but has been determined to have been an error. Though it is a waterbody greater than 20 acres, it is a mineral extraction pond and DOE guidance is that such ponds do not qualify as a Water of the State until mineral extraction is complete and the restoration plan is realized. Once that happens, it automatically is designated as Conservancy under state law and our SMP. The County would then have 3 years to amend the map and finalize its designation.