

WHATCOM COUNTY
Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-778-5900, TTY 800-833-6384
360-778-5901 Fax



Mark Personius
Director

Memorandum

DATE: October 23, 2020
TO: Planning Commission
FROM: Cliff Strong, Senior Planner
THROUGH: Mark Personius, Director
RE: Continued Review of Shoreline Management Program Periodic Update 2020

Tonight's Goal

On November 12th we will review and talk about the proposed amendments to the Comprehensive Plan (C/P) for the SMP Periodic Update. The Commission should review and be prepared to comment on the amendments to:

- Exhibit A – C/P Ch. 10 Environment
- Exhibit B – C/P Ch. 11 Shorelines
- Exhibit C – C/P Ch. 8 Marine Resource Lands

(Note: Revised versions marked "P/C Review Version 2" have been provided for tonight's meeting.)

The Commission might also want to have handy Exhibit H (Table of public comments on the 1st draft, with staff responses), as we point to a few of those comments in this memo.

All documents are available on PDS's SMP Update webpage:

<http://www.co.whatcom.wa.us/3097/Shoreline-Master-Program-Periodic-Update>.

Proposed Amendments

Scoped Amendments (Note: Topic #s and letters refer to the number assigned in the Scoping Report)

Topic #6, Climate Change/Sea Level Rise

- a) Develop and/or strengthen policies regarding climate change/sea level rise, including the incorporation and use of new data (as it becomes available), to review and revise, if warranted, shoreline use regulations.*

Chapter 10 of the CompPlan (Exhibit A) already contains a section on Climate Change (starting on page 10-8), including Goal 10D and Policies 10D-1 through 10D-10. However, these are aimed at how the County should respond overall and are not specific to the shoreline itself.

Council's direction through the Scoping Document—recommended for approval by the Planning Commission—was to "develop and/or strengthen policies..." not regulations. Thus, staff has developed seven new policies specific to our management of the shoreline in light of anticipated impacts due to climate change (Exhibit B, C/P Ch. 11, Policies 11AA-1 – 11AA-7), including proposed Policy 11AA-5, which reads:

“Whatcom County should periodically assess the best available sea level rise projections and incorporate them into future program updates, as relevant”

This policy specifically addresses *“the incorporation and use of new data (as it becomes available), to review and revise, if warranted, shoreline use regulations.”*

We understand that some folks would like to see more directive policies¹, as well as actual regulations²; however, before adopting (and then implementing) something along those lines, we’d need to know the details of likely sea level rise (location, elevation, magnitude, etc.). As we mentioned when the Commission and Council were scoping this project, staff anticipates the development of the CoSMoS model on which the City of Bellingham and Whatcom County Public Works are working, which should provide the Best Available Science to Whatcom County. The policies being introduced would set us up for developing regulations once this model is completed.

It should also be noted that in reviewing development proposals, Planning and Development Services already requires structures to be built above the anticipated flood/sea level rise stage through the County’s critical area (i.e., geohazard/tsunami) and flood regulations.

Nonetheless, this is a policy decision and all comments are being forwarded to the Planning Commission and Council for their consideration.

Topic #8, Habitat

a) Reference WDFW and DNR’s Shore Friendly Program

We have amended C/P Policy 11I-2 (Exhibit B, page 11-11) to reference this program as an example of “voluntary and incentive-based public and private programs.”

c) Consider ways to improve protections for salmon and forage fish habitat

Policy 11LL-4 in C/P Ch. 11 (Exhibit B, page 11-43) is proposed to be amended as one of the ways to support this directive by adding additional critical saltwater habitats to the list of where moorage structures ought to be avoided. Other amendments in support of this are included in the regulations, which the Commission will review at a future meeting.

Topic #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. Simplify the language as much as possible and remove redundancies.

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 is proposing to create a new Chapter 11 of the CompPlan entitled “Shorelines” (Exhibit B). We have moved all the SMP policies from Title 23 (Exhibit D) as well as related policies from Chapter 10, Environment (Exhibit A), 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.

Most of the changes shown in C/P Ch. 11 (Exhibit B) are also in support of this effort. We have moved everything from Title 23 that appeared to be policy (rather than regulation) into this chapter. We’ve also

¹ See Exhibit H, Public Comments FW/WEC01, FW/WEC02, WCPW07, WCPW08, & RES03

² See Exhibit H, Public Comments FW/WEC12, FW/WEC21, WCPW08, WCPW09, WCPW10, & RES03.

put it in the same format as other chapters of the CompPlan, struck redundancies, and corrected grammar and tenses. There are, however a few proposed new policies and/or amendments that we discuss below.

Another major organizational change is to move all permitting regulations to WCC Title 22 (Exhibit E). 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.).

Similarly, since WCC Chapter 16.16 (Exhibit F, Critical Areas) is adopted as part of the SMP, they are to be read together, and where there are redundancies between Ch. 16.16 and Title 23, we are proposing to delete those redundancies in Title 23.

We won't get into the details of proposed amendments to Title 22 or Ch. 16.16 tonight, but will address them in more detail at one of your next meetings.

Topic #17, Shoreline Uses

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

As the Commission is well aware, in 2018 the Council started a process of amending the policies and regulations related to fossil fuel facilities in the Cherry Point Management Area. The Council hired consultants specifically for this task and it is principally being administered under a separate process. Their amendments affecting C/P Ch. 2 (Land Use), WCC Ch. 16.08 (SEPA), WCC Title 20 (Zoning), and WCC Title 22 (Land Use & Development) have already been reviewed by the Commission. None of the Council's amendments to C/P Ch. 2, WCC Ch. 16.08, or WCC Title 20 affects the documents you're reviewing as part of this SMP Update.

Their amendments to Title 22, however, have been incorporated into Exhibit E, and are being show as new as they are not yet adopted. We have also incorporated the Commission's recommended changes to this specific language, also flagged by comments in the document.

Their amendments also affect WCC Title 23 (Exhibit D) and (by way of this update) C/P Ch. 11 (Exhibit B), and the Commission has not yet reviewed these as they are being processed through this update. As we are proposing to do with the rest of the SMP policies, we're moving the Cherry Point Management Area policies from Title 23 to C/P Ch. 11 (page 11-38). As such, they're not shown as new policies (i.e., no underline) in Exhibit B, but Council's proposed amendments to them are being show in ~~strikeout/~~underline. The Commission should review them in preparation for tonight.

Other changes to Title 23 regarding this topic are flagged as Council-proposed language and the Commission should review it, but we'll get into those details when we review that title.

- j) *Add standards for live-aboards in marinas.*

Though standards are proposed to be added to Title 23, staff is also proposing to add Policy 11DD-13 to CompPlan Ch. 11 (Exhibit B, page 11-35) to support their additions. (We'll review the standards when we get to Title 23 amendments.)

Topic #17, Shoreline Uses

- f) *Update Memorandum of Understanding with Department of Archaeology and Historic Preservation*

Through this update process, staff was not able to actually update the MOU with DAHP and Lummi Nation, as that will take some time and involve many others. But based on the language in it, we are proposing some new policies to the cultural resources sections of both the Overall SMP Goals and Objectives (Exhibit B, page 11-9) and the General Policies (page 11-27) sections (see policies 11G-3, 11G-4, & 11X-9). We are also proposing to revise the regulations, but we'll look at those when we review Title 23. None of these amendments change the way we currently do things, they just clarify our current practices.

Topic #19, Water Quality

- a) *Include language/policies about the importance of Lake Whatcom as the source of drinking water for most of the County and the water quality improvement plan (TMDL).*

After reviewing the existing CompPlan, staff believes that it already addresses this issue sufficiently. In Chapter 10, under *Water Resources* (Exhibit A, page 10-11), subsection *Lake Whatcom Watershed Management* (pages 10-22 – 10-25) there are four pages of text describing Lake Whatcom's importance as a source of drinking water and the efforts the County (and City of Bellingham) are under taking to protect it. Under Goal 10-J alone there are 14 specific policies (Policies 10J-1 - 10J-14) regarding protecting Lake Whatcom, and there are numerous other, more generic goals and policies that deal with water quality protection more generically.

Topic #21, Marine Resource Lands

- a) *Consider adding a Marine Resource Lands policy section as developed by the Marine Resources Committee*

When the Council amended the CompPlan in 2016 they included a new section entitled "Marine Resource Lands" that contained one goal and one policy that directed staff to assist in developing the section more thoroughly:

Goal 8T: Conserve and enhance Whatcom County's marine land base for the long-term and sustainable production of commercial and recreational economic activities.

Policy 8T-1: Whatcom County will work with committees including but not limited to the Marine Resource Committee, the Shellfish Protection Advisory Committee, and other local marine land experts to create a new section of this chapter to support Goal 8T to be docketed and processed for consideration no later than 2017.

The project was docketed as (PLN2017-00005), and staff worked with these groups to help develop some language, goals, and policies for this section, which is shown as Exhibit C (C/P Ch. 8). However, there was mixed recommendations from the groups who reviewed the language.

- The **Marine Resources Committee** reviewed the proposal at their June 7, 2018, meeting, and after adding Policy 8V-4 (addressing educational efforts and programs) they recommended that the County Council adopt the proposed language.
- The **Birch Bay Watershed and Aquatic Resources Management Committee (BBWARM)** reviewed the proposal at their June 20, 2018, meeting. They recommended that the Council *not* adopt the proposed language. They felt that the new Marine Resource Lands section of the CompPlan was already covered by the existing Shoreline Management Program and that including it would add unnecessary complication/duplication. They recommended that the Council postpone any action on the Marine Resource Lands amendment until the SMP update commenced.

- The **Portage/Drayton Shellfish Protection Districts** reviewed the proposal at their July 25, 2018, meeting. However, they did not have a quorum and could not act.
- The **Planning Commission** held a workshop on June 14 and a public hearing on June 28, 2018. They recommended that the Council *not* adopt the Marine Resource Lands proposal. There was concern amongst some of the Commissioners that regulations adopted subsequent to these policies could affect farmers, even though staff explained that it was not our nor CM Weimer's intent to address agricultural runoff. They also thought it would be better to consider this during our SMP update, perhaps incorporating some of the goals and policies into that rather than having a separate section.

When staff brought the project forward to Council's Planning & Development Committee for review they decided to consider it with the (then) upcoming SMP update, which is why it's before you now, again.

Out of Scope Amendments

Sustainable Salmon Harvest Goal

There is a new Policy 10L-19 proposed to be added to Chapter 10 regarding a sustainable salmon harvest goal (Exhibit A, page 11-47). Adding this policy is not a part of the SMP Update *per se*, and in fact was not part of the scope. 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, staff is proposing to add it while we're already amending the CompPlan for the SMP Update. We should note, however, that through the Salmon Recovery Staff Team the fisheries co-managers (WDFW, Lummi Nation, and Nooksack Tribe) are reviewing this draft language and may propose some additional amendment(s) to it. If so, we will inform the Planning Commission later in your review.

Additional Issues to Discuss

After we sent you the first version of Ch. 11 we discovered a few other issues that we'd like to discuss with the Commission:

1. Under Industrial and Port Development, Policies 11II1 & 2 read like they were intended to apply in the CPMA, as they talk about deepwater sites, which are only found in Cherry Point. Also, it sounds like the policies were intended to preserve the Cherry Point area for uses requiring deepwater ports. Should they moved to that section, or should we amend the "outside of CPMA" text to apply to all areas, including CPMA? Staff is hesitant to amend anything having to do with Cherry Point given Council's parallel process.
2. Under Cherry Point Management Area, Polices 11TT-1(a) & (b), which speak to the purpose of this environment designation, really ought to be moved to the Shoreline Environment Designations, CPMA section. Each of the other designations has their purposes stated therein.
3. Under Cherry Point Management Area, Policy 11TT-1(e) reads (cross references updated):

All development that is to be located within the Cherry Point Management Area, as identified in WCC 23.20.020(E), shall be subject to the policies in this subsection and the regulations found in WCC 23.40.125. Development that is to be located within the Cherry Point Management Area shall not be subject to: the General Policies of this chapter; the Shoreline Use and Modification Policies of this chapter, except for those in the Cherry Point Management Area subsection; and the regulations found in Chapter 23.30 WCC and WCC Chapter 23.40, except 23.40.125, unless

otherwise referenced in this subsection. The policies found in this subsection are applicable only within the geographic boundaries of the Cherry Point management area and do not apply elsewhere in the County. In the event that the provisions of this subsection conflict with other applicable referenced provisions of the SMP, the policies and regulations that are most protective of shoreline resources shall prevail.

This policy makes no sense. Other than updating the references, we have not changed it. It basically says that any development in the CPMA only has to comply with the policies in this section of Ch. 11 and the regulations of WCC 23.40.125, and specifically says such development doesn't have to comply with any other policies or regulations. But there are many other policies and regulations that should apply, such as ecological protection, cultural resources, vegetation management, moorage facilities, etc. Staff believes this policy ought to be deleted.