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**Mark Personius**  
Director

## Memorandum

DATE: November 30, 2020  
TO: Planning Commission  
FROM: Cliff Strong, Senior Planner  
THROUGH: Mark Personius, Director  
RE: Continued Review of Shoreline Management Program Periodic Update 2020

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### **Tonight's Goal**

At your November 12<sup>th</sup> meeting the Commission tentatively<sup>1</sup> approved Exhibit A (C/P Ch. 10 Environment). You also made great progress on reviewing Exhibit B (C/P Ch. 11 Shorelines) but did not make a motion to tentatively approve.

So on December 10<sup>th</sup> we will pick up where you left off and continue to review and talk about the proposed amendments to Exhibit B. Once that's completed, we'll review Exhibit C (C/P Ch. 8, Marine Resource Lands). Assuming there's time, we'll then move on to reviewing Exhibit D (Title 23, SMP Regulations).

The Commission should review and be prepared to comment on the proposed amendments to:

- Exhibit B – C/P Ch. 11 Shorelines
- Exhibit C – C/P Ch. 8 Marine Resource Lands
- Exhibit D – Title 23, SMP Regulations

*(Note: Except for Exhibit H (Table of Public Comments), new versions of the exhibits are not being distributed for tonight's meeting (though will be available to share via Zoom); please use those provided in your 10/22 packet. An updated version of Exhibit H that includes public comments received during P/C review is attached. Those new comments are labeled "P/C Draft 1" in the "Commenting on:" column, beginning on page 49.)*

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

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

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

### **Amendments to Exhibit A – C/P Ch. 10 Environment**

As directed by the Commission at your 11/12 meeting, staff has added "Policy 10D-11: Protect ecological functions and ecosystem-wide processes of Marine Resource Lands and critical areas in anticipation of climate change impacts, including sea level rise." Though we're not providing an updated version of this

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<sup>1</sup> Meaning the Commission moved to approve it for introduction at your eventual public hearing, though reserved the right to reconsider.

chapter at this time, you will see it when we distribute the final versions of the exhibits prior to your eventual hearing.

With the above addition, the Commission tentatively approved this Chapter; staff has no additional amendments to discuss regarding this exhibit.

### **Amendments to Exhibit B – C/P Ch. 11 Shorelines**

Staff has made all the changes agreed to by the Commission, including:

- Regarding Policy 11TT-1, moving subsections (a) and (b)(purpose statements) to the CPMA subsection of the Shoreline Environmental Designations section, and deleting subsection (e).
- Renumbering the 11TT (and subsequent) policies so that they're in numerical order.
- Rewriting Policy 11T-1 and breaking it into two policies, with the latter part regarding shoreline stabilization being moved into the Shoreline Stabilization section as Policy 11QQ-2.
- Changing "beach nourishment" to "beach enhancement" in policy 11PP-12 and throughout the document.
- Inserting "sustainable" after "flexible" in Policy 11QQ-12.
- Rewriting Policy 11AA-5 to read, "Whatcom County should monitor the impacts of climate change on Whatcom County's shorelands, the shoreline master program's ability to adapt to sea level rise and other aspects of climate change at least every periodic update, and revise the shoreline master program as needed. Whatcom County should periodically assess the best available sea level rise projections and other science related to climate change within shoreline jurisdiction and incorporate them into future program updates, as relevant."

Though we're not providing an updated version of this chapter at this time, you will see it when we distribute the final versions of the exhibits prior to your eventual hearing. And we'll be glad to show it to you via Zoom during your meeting if need be.

Staff has no additional amendments to discuss regarding this exhibit. However, if the Commission has anything else they would like to raise before tentatively approving it, now would be the time.

### **Additional Information on CoSMoS**

Also, we have reached out to the City of Bellingham to obtain additional information on the Puget Sound Coastal Storm Modeling System (PS-CoSMoS), the sea level/storm surge model they're working on with Eric Grossman (and partially funded by Whatcom County so that it covers our coast as well). Attached is a handout that explains what the model will do.

What makes PS-CoSMoS unique relative to other sea level rise viewers (NOAA, Climate Central) and FEMA Base Flood Elevation Mapping is:

1. **Much higher resolution.** PS-CoSMoS resolves extreme still water level (what tide gages measure) associated with tides and coastal storms within 10 cm and wave heights within 10-50 cm at spatial scales across the landscape of 1m to inform engineering, planning, adaptation.
2. **Includes validation and error assessment.** All errors are quantified based on validation against measurements (including local conditions) and mapped for users to evaluate confidence in projections.
3. **Includes dynamic processes (waves, erosion) in addition to flooding.**
  - a. **Waves and wave setup/run-up contribute to flooding.** This is important because the frequency of disturbance events we observe today like the 10-yr flood are expected to

- become much more frequent relative to today as sea-level rise shifts the distribution of tides, king tides and high water up in elevation.
- b. **Waves cause additional impacts (erosion)** to shorelines, infrastructure, habitats, etc. and cause shear stresses on the seafloor that impact infrastructure (outfalls, pipelines, cables), mobilize and redistribute sediment (affecting fish habitat, navigation channels) and sediment-bound contaminants (water quality, environmental health and cleanup).
  4. **Includes projections of climate change not just sea-level rise.** PS-CoSMoS includes assessment of how winds that generate waves and rainfall patterns that influence stream flows are to change under a range of projected greenhouse gas emissions. Other tools are based on historical data (FEMA) and do not integrate expected changes in forcing of extreme events.
  5. **Includes additional extreme event recurrence events not just the 100-year event.** PS-CoSMoS provides information on the extent of impact of the annual, 20-yr and 100-yr extreme events that bracket the range of expected disturbance events generally used in planning across the US. PS-CoSMoS can also output the 10-yr, 50-yr, 500-yr or any event type of concern.

As you can see, this model should be able to provide us with very accurate information, enough on which to base regulations once it's done. This is why staff has suggested holding off on regulations until it's completed. According to the City of Bellingham staff, their contract runs through December 2021, though they believe the model may be completed and available by summer 2021.

## **Amendments to Exhibit C (C/P Ch. 8, Marine Resource Lands)**

### **Topic #21, Marine Resource Lands**

*(Note: The following information for this topic is the same as what was provided in Staff Memo 02 for your 11/12/20 meeting.)*

- 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.

If the Planning Commission votes to recommend that the Council adopt the Marine Resource Lands section you should also recommend deleting Policy 8T-1, as it only directs us to produce the MRL section and would no longer be needed. If you vote to not include this section, then the Commission should recommend that both Goal 8T and Policy 8T-1 be deleted.

## **Amendments to Exhibit D (Title 23, SMP Regulations)**

### **Topic #1, Consistency with State law (required amendments)**

- b) Revise the definition of "Development" to clarify that development does not include dismantling or removing structures.*

The definition of "development" (§23.60.040(6)) has been updated to meet DOE guidelines.

- f) Revise the SMP aquaculture provisions for consistency with WAC 173-26-241(3)(b).*

§23.40.050, in particular subsections (D)(1) and (G), has been revised to be consistent with WAC 173-26-241(3)(b) regarding commercial geoduck farming.

### **Topic #2, Consistency with State law**

- b) Revise language to clarify that forest practices that involve only timber cutting are not SMA "developments" and do not require Shoreline Substantial Development Permits.*

§23.40.110(A)(3) (Forest Practices) has been added to clarify that forest practices that involve only timber cutting are not SMA "developments" and do not require shoreline substantial development permits.

- c) Revise language in §23.50.040 to clarify that the SMA does not apply to lands under exclusive federal jurisdiction.*

Subsection (E)(1) has been added to §23.10.020 (Applicability, which used to be §23.50.040) to clarify that the SMA does not apply to lands under exclusive federal jurisdiction.

- d) *Update definitions to include distinct definitions for “nonconforming use,” “nonconforming structure,” and “nonconforming development” in accordance with WAC 173-27-080.*

To conform to WAC 173-27-080, the definitions of “nonconforming lot” (§23.60.140(5)) and “nonconforming use” (§23.60.140(7)) have been amended, and the definition of “nonconforming structure” (§23.60.140(6)) has been added.

- f) *Incorporate a reference to WAC 173-27-215 for criteria and procedures for instances in which a shoreline restoration project creates a shift in OHWM.*

A reference to WAC 173-27-215 for criteria and procedures for instances in which a shoreline restoration project creates a shift in OHWM has been added as §23.40.180(A)(3) (Restoration and Enhancement) .

- g) *Revise definition of “Floodway” for complete consistency with Ecology’s recommended language.*

The definition of “floodway” (§23.60.060(21)) has been amended to be consistent with DOE’s recommended language.

- h) *Update the list and maps of streams and lakes that are in shoreline jurisdiction as necessary.*

The list of waters that are in the shoreline jurisdiction has been revised in §23.20.010(B) (Shoreline Jurisdiction), using the language from the WAC 90.58.030 (2)(d).

- i) *Revise the SMP to include the required provisions of WAC 90.58.140(12).*

§23.40.080(B)(4)(b) (Dredging and Dredge Material Disposal) has been added to clarify that dredge material disposal at an open water disposal site approved through the Dredged Material Management Program (RCW 79.105.500) is allowed and shall not require a shoreline permit.

### **Topic #3, Consistency with WCC Ch. 16.16 (Critical Areas)**

- a) *Ensure Council changes regarding standards for view preservation in the CAO are reflected in the SMP.*

§16.16.235(5) (Activities Allowed with Notification) of the critical areas regulations (Exhibit F) allows (with certain restrictions) for view corridors to be created and maintained. §23.30.040(L) (Views and Aesthetics) of the SMP has been added that acknowledges and cross-references this allowance (except for in the Natural shoreline environment).

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

- a) *Clarify permit review no net loss analysis*

The primary regulations ensuring no net loss in Title 23 are:

- §23.10.040(A) (Code Interpretation) requires that the regulations be interpreted to allow development only when a proposal is “designed, constructed, and/or mitigated to provide no net loss of or a net lift to ecological functions and ecosystem wide processes.”
- §23.30.010(B) (Ecological Protection) requires that “any unavoidable impacts shall be mitigated to meet no net loss of ecological function and ecosystem-wide processes.”
- §23.60.140(4) (Definition) defines what no net loss means.

The term is also already used in numerous other sections as a reminder of this requirement.

Additionally, staff is proposing some amendments to Ch. 16.16 (Critical Areas) to further this goal, but the Commission will review those at a later meeting.

*e) Align Use standards with State statutes.*

Staff is proposing numerous amendments throughout Ch. 23.40 (Shoreline Use and Modification Regulations) that we believe better aligns them with State statutes, in most cases using the language from the WAC. Furthermore, in the existing code Table 23.100.010 is fairly meager and many use allowances or prohibitions are included only in the text of the various use and modification categories, making it difficult to find them all. We have updated that table as Table 1 Shoreline Use by Environment Designation and moved all allowances and prohibitions from the text to the table, hopefully making it easier to see what one can or can't do in the various environment designations.

### **Topic #7, Definitions**

*a) Add definitions for common words with a specific meaning in the SMP.*

In Ch. 23.600 staff has added many definitions of words that were undefined, amended others to meet current standards and/or to be consistent amongst Titles, and deleted those words already defined elsewhere but added the sentence to §23.60.005, "Any words not defined herein shall be defined pursuant to WWC Chapter 16.16 (Critical Areas) or Titles 20 (Zoning) or 22 (Land Use and Development), or their common meanings when not defined in code."

*b) Add definitions for regional, local, and accessory utilities and ensure consistency with Zoning.*

Said definitions have been added to §23.60.210(6).

*c) Define a single use dock and joint use dock.*

"Shared moorage" was already defined in §23.60.190. Additionally, definitions of all moorage types (from DOE guidance) have been added to §23.60.130(17) "Moorage Structure."

### **Topic #8, Habitat**

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

While the protection of fish and wildlife habitat is already required throughout various sections of Title 23, additional language has been added in:

- §23.30.050 (Vegetation Management) has been amended to strengthen and better tie the protection and/or revegetation of native shoreline vegetation to the protection of salmon and forage fish habitat.
- In §23.40.060(E)(8) (Marinas and Launch Ramps) has been added to the standards requiring that boat launches be designed to minimize impacts to critical saltwater habitats.
- In §23.40.140 (Mining):
  - Subsection (A)(3) now states that "Preference shall be given to mining proposals that result in the creation, restoration, or enhancement of habitat for priority species."
  - Subsection (A)(6) has been added to prohibit "motorized or gravity siphon aquatic mining or discharge of effluent from such activity to any waters of the state that has been designated under the endangered species act as critical habitat, or would impact critical habitat for salmon, steelhead, or bull trout" pursuant to RCW 90.48.615.
  - Subsection (B)(1) has been added for consistency with WAC 173-26-241(3)(h), prohibiting mining waterward of the ordinary high-water mark of a river if it would cause a net loss of ecological functions of the shoreline.

- In §23.40.150 (Moorage Structures):
  - Subsections (A)(6) and (7) ( moved from the existing Boating Facilities section) prohibits moorage structures in certain shoreline habitats.
  - Subsections (B) & (C), having to do with construction and locational standards for moorage structures have been amended and augmented to meet current state and federal habitat protection requirements and guidance.
- In §23.40.190(A)(10) (Shoreline Stabilization) has been amended to prohibit hard shoreline stabilization in jurisdictional shoreline streams on estuarine shores, in wetlands, and in salmon spawning areas, except for the purpose of fish or wildlife habitat enhancement or restoration.
- In §23.40.220(B)(5)(a) (Utilities) has been added, requiring that hydropower facilities be located, designed, and operated to minimize impacts to fish and wildlife resources.

Similarly, while the protection of fish and wildlife habitat is already required throughout various sections of WCC 16.16 (Critical Areas) (Exhibit F), in §16.16.255 (Critical Areas Assessment Reports) new subsection( C)(3) has been added, strengthening the requirement that impacts to salmon and forage fish habitat be address in assessment reports to improve protections for salmon and forage fish. The Planning Commission will review that language at a later meeting.

### **Topic #10, Nonconforming**

- a) *Ensure consistency with Zoning, the CAO, and the SMP regarding nonconforming uses and structures.*

Staff has rewritten Chapter 23.50 (Nonconforming Uses, Structures, and Lots) to conform to the latest DOE guidance addressing nonconforming uses, development, and lots as separate issues. Additionally, definitions for each term have been added to §23.60.140.

- b) *Add standards for nonconforming structures to meet current construction standards.*

In §23.50.020 (Nonconforming Structures):

- (A)(4) now allows legal nonconforming non-overwater structures to be maintained, repaired, renovated, or remodeled to the extent that nonconformance with the standards and regulations of this program is not increased, “provided that a nonconforming structure that is moved any distance must be brought into conformance with this program and the Act.”
- (A)(5) allows overwater nonconforming structures to be maintained or repaired to the extent that nonconformance with the standards and regulations of this program is not increased, “provided that when replacement is the common method of repair, the replaced components shall meet the construction and materials standards of §23.40.150 (Moorage Structures).”

- c) *Address nonconforming expansion dimensional standards.*

§23.50.010(B) (Nonconforming Uses) now clearly states that the expansion, alteration, and/or intensification of a nonconforming use is prohibited, and §23.50.020 (Nonconforming Structures), subsections (E) & (F) clearly address when and how expansion of nonconforming structures are handled.

- d) *Clarify administratively approved single-family dimensional standards.*

To §23.50.020(F) (Nonconforming Structures) we have added clear standards as to how to address the enlargement or expansion of nonconforming single-family structures.

## **Topic #11, Overwater Structures**

- a) Add dimensional standards for overall square footage.*

§23.40.150 (Moorage Structures) has been completely revamped to meet current state and federal standards. To meet this scoped task, thorough design and dimensional standards, including for overall square footage, have been added to subsection (B).

- b) Add shared moorage standards.*

Dimensional standards for shared moorage have been added to §23.40.150(B) (Moorage Structures). Subsection (D) prioritizes shared moorage over individual use structures, and subsection (F) provides additional standards for shared moorage.

## **Topic #12, Permitting**

- b) Add a reference to the Swift Creek Sediment Management Action Plan so as to clarify permitting procedures for actions necessitated by this plan.*

To §23.10.020 (Applicability) we have added subsection (H), which lists the activities to which the SMP does not apply. Subsection (H)(1) specifically exempts “Activities undertaken to comply with a United States Environmental Protection Agency Superfund-related order, or a Washington Department of Ecology order pursuant to the Model Toxics Control Act (such as the Swift Creek Sediment Management Action Plan), or a Department of Homeland Security order that specifically preempts local regulations in the findings of the order.”

## **Topic #13, Public Access**

- a) Clarify standards for construction in the aquatic designation (work occurring in the water).*

This issue had to do with what materials are allowed for structures built in contact with water (e.g., moorage structures). The list of such materials (untreated wood, concrete, approved plastic composites, or steel) are already found in §23.30.030(D) (Water Quality and Quantity), §23.40.125(E)(1)(e) (Cherry Point Management Area), §23.40.150(C)(2) (Moorage Structures), §23.40.210(B)(8) (Transportation), & §23.50.020(D) (Nonconforming Structures), with no distinction between galvanized or non-galvanized steel, as had been scoped. However, state law and guidance makes no such distinction, so the list has been unaltered.

- b) Add ADA standards consistent with federal statutes.*

In §23.40.020 (Shoreline Bulk Provisions), subsection (G) (Uses Allowed in Buffers and Setbacks) (6), we have added language that allows stairs and walkways to exceed standard width requirements to meet ADA requirements. Similar language has been added to Ch. 16.16 (Critical Areas), but the Commission will review that at a later meeting.

- c) Consider revising dimensions for stairs and walkways located within the shoreline or critical area buffers to accommodate public trails.*

In §23.40.160 (Recreation), subsection (A)(6) has been added, directing applicants to WCC Chapter 16.16 (Critical Areas), which contains the standards for trails in critical areas (including the shoreline setback (i.e., HCA buffer).

Additional amendments are being made to Ch. 16.16 (Critical Areas) to further this goal, but the Commission will review those at a later meeting.

- d) Consider amending trail location standards to allow trails to be located closer than in the outer 50% of a critical area buffer.*

In §23.40.020 (Shoreline Bulk Provisions), subsection (G) (Uses Allowed in Buffers and Setbacks), we have added subsection (11) that allows passive recreation facilities that are part of a non-motorized trail system or environmental education program, including walkways, wildlife viewing structures, or public education trails in the shoreline buffer.

Additional amendments are being made to Ch. 16.16 (Critical Areas) to further this goal, but the Commission will review those at a later meeting.