



Memorandum

DATE: April 9, 2021
TO: Planning Commission
FROM: Cliff Strong, Senior Planner
THROUGH: Mark Personius, Director
RE: Shoreline Management Program (SMP) Periodic Update 2020

Tonight's Goals

On April 22nd the Planning Commission will hold its joint public hearing with the Department of Ecology on the SMP Update. However, prior to opening the hearing, staff will review with the Commission the alternative language we developed for §16.16.710 (Habitat Conservation Areas – Designation, Mapping, and Classification).

Attachments

For your public hearing staff is providing the Commission with a staff report as well as the entire complement of all the Exhibits as you've reviewed, modified, and provisionally approved so far. These include:

To Review (provided in your packet):

- 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 – Synopsis of written public comments, with staff responses
- Exhibit I – No Net Loss Addendum
- Exhibit J – Shoreline Restoration Addendum

Additionally, we remind you that there are certain background documents available on our SMP Update webpage in which you may be interested.

Background Documents:

- 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 in pdf and Word versions on PDS's SMP Update webpage:

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

Follow-Up from 3/25 Meeting

In your 3/25/21 meeting the Commission raised issues with the draft language of a §16.16.710(C)(1)(a)(iv) (now (D)) wherein staff had proposed a new Type O water, which included certain waterways that a lay person might consider “artificial” but nonetheless are regulated by the state as waters of the state due to certain conditions. Staff’s goal had been to have narrower buffers on these modified watercourses. Nonetheless, there was consternation over the language as not being clear and Ryan and I have developed alternative language, as follows

16.16.710 Habitat Conservation Areas – Designation, Mapping, and Classification.

A. Habitat conservation areas are those areas identified as being of critical importance to the maintenance of certain fish, wildlife, and/or plant species. These areas are typically identified either by known point locations of specific species (such as a nest or den) or by habitat areas or both. All areas within the county meeting these criteria are hereby designated critical areas and are subject to the provisions of this article.

~~B.~~ For purposes of this Chapter, irrigation ditches shall not be considered Habitat Conservation Areas unless:

1. The watercourse conveys or historically conveyed (prior to human alteration) waters of the state; or

2. The watercourse is used by anadromous or resident salmonid or other resident fish populations;
or

3. The watercourse flows into shellfish habitat conservation areas.

~~B-C.~~ The approximate location and extent of identified fish, wildlife, and sensitive plant habitat areas are shown on the County’s critical area maps as well as state and federal maps. A property-specific assessment is necessary to determine the extent of the HCA.

~~C-D.~~ Habitat conservation areas shall include all of the following:

1. Surface Waters of the State.

a. All waterbodies that meet the criteria for Type S, F, Np, or Ns waters as set forth in WAC [222-16-030](#) of the Washington Department of Natural Resources’ (DNR) Water Typing System, as now or hereafter amended.

i. Type S waters are those surface waters which meet the criteria of the Washington Department of Natural Resources, WAC [222-16-030](#)(1) as now or hereafter amended, as a Type S water and are inventoried as “shorelines of the state” under the Shoreline Management Master Program for Whatcom County, pursuant to Chapter [90.58](#) RCW. Type S waters contain salmonid fish habitat.

ii. Type F waters are those surface waters which meet the criteria of the Washington Department of Natural Resources, WAC [222-16-030](#)(2) as now or hereafter amended, as Type F water. Type F streams contain habitat for salmonid fish, game fish and other anadromous fish.

iii. Type Np waters are those surface waters which meet the criteria of the Washington Department of Natural Resources, WAC [222-16-030](#)(3) as now or hereafter amended, as Type Np water. Type Np waters do not contain fish habitat.

iv. Type Ns waters are those surface waters which meet the criteria of the Washington Department of Natural Resources, WAC [222-16-030](#)(4) as now or hereafter amended, as a Type Ns water. These streams are areas of perennial or intermittent seepage, ponds, and drainage ways having short periods of spring or storm runoff. Type Ns waters do not contain fish.

- ~~Type O waters include all segments of aquatic areas that are not type S, F or N waters but that are physically connected to type S or F waters by an above-ground channel system, pipe, culvert, stream, or wetland.~~
- b. ~~Ditches or other~~ artificial watercourses are considered streams for the purposes of this chapter when: identified in subsection (B), above.
- ~~i. Used to convey waters of the state existing prior to human alteration; or~~
 - ~~ii. The waterway is used by anadromous or resident salmonid or other resident fish populations; or~~
 - ~~iii. Flows directly into shellfish habitat conservation areas.~~

As you can see, we have deleted the Type O waters and made it clear in the new (B) that “artificial” watercourses are not HCAs unless they meet certain state criteria for being regulated. We have also modified Table 4, Buffer Requirements for HCAs, so that “artificial” watercourses that do meet the state criteria for being regulated (as identified in 16.16.710(D)(2)) and manmade ponds under 20 acres in size (identified in 16.16.710(D)(10)) would have a 25-foot buffer (half the width of an Np or Ns type water) or lesser if approved through an Habitat Management Plan or a Conservation Farm Plan.

Staff Recommendation

After holding your public hearing and addressing any issues that arise, staff recommends that the Planning Commission approve the 2020 Shoreline Management Program Periodic Update exhibits and forward them to Council.