



Memorandum

TO: Whatcom County Planning Commission
CC: Mark Personius
FROM: Joshua Fleischmann
DATE: May 25, 2021
SUBJECT: Surface Mining of Dry Meander Zones (PLN2019-00011)

BACKGROUND

In 2019 the County Council placed the following proposal (PLN2019-00011) on the docket:

Amend the Whatcom County Comprehensive Plan and Whatcom County Code to allow the seasonal extraction of sand and gravel from dry upland areas located within the 1,000 year meander zone of the Nooksack River, provided that such extraction has no negative impact on salmon spawning habitat. The intent is to (a) reduce the conversion of land currently used for farming, forestry and wildlife habitat into gravel pits, and (b) safely remove some of the significant sediment load that enters the Nooksack River every year in an effort to reduce flooding and the need to build higher flood prevention berms along the river as the climate continues to change.

ANALYSIS

Preliminarily we would note that the "1,000-year meander zone" appears to be an undefined term. Regulatory terms used to denote geomorphic areas around rivers and shorelines include, but are not limited to: floodplain, floodway, shoreline jurisdiction, channel migration zone, historic migration zone, erosion hazard area, avulsion hazard area, etc. Whatcom County regulates activities as they relate to these areas, but not a 1,000-year meander zone. Since "1,000-year meander zone" appears to be undefined, staff has interpreted that the intended activities of the docketed amendment would be regulated through the Shoreline Management Program (SMP)

We would like to note that existing Whatcom County Comprehensive Plan goals (Goal 8Q) and policies (Policy 8Q-1 thru 8Q-9), as well as the existing SMP code¹, support and offer permitting pathways to conditionally allow sand and gravel extraction within shoreline jurisdiction.

Furthermore, the draft 2020 SMP code amendments², which the Planning Commission voted unanimously to approve at the May 13, 2021 meeting, will continue to allow these activities, consistent with the Shoreline Conditional Use permit requirements, even though the language is being revised for consistency with appropriate RCW and WAC requirements.

¹ WCC 23.100.080.B.1, WCC 23.100.080.B.2, WCC 23.100.080.B.9.a, WCC 23.90.120.B.1.f

² See SMP Update Exhibit D, §23.40.140, (Mining), §23.40.080 (Dredging and Dredge Material Disposal), and §23.40.100 (Flood Control Works and Instream Structures)

Finally, while both the existing and proposed SMP code allows for sand and gravel extraction within shoreline jurisdiction, an extensive permitting/authorization process (and associated costs) at the State and Federal level continues to be the primary impediments to these activities.

RECOMMENDATIONS

Surface Mining Advisory Committee (SMAC)

At their June 26, 2019 meeting, the SMAC reviewed this matter and stated their understanding that no changes were necessary to the SMP code in order to allow for extraction of sand and gravel from dry upland areas located within shoreline jurisdiction and/or the FEMA 100 year floodplain. Furthermore, it was confirmed that the lack of recent sand and gravel extraction within the Nooksack River shoreline jurisdiction/FEMA floodplain/floodway is primarily a function of the time and costs for studies associated with permitting and review at the state and federal level, compared to the economic return on investment.

Planning and Development Services (PDS)

In a February 4, 2021 memo to the Planning commission, staff recommended that the PC include a Finding of Fact in the SMP adopting ordinance that the code would meet Council's intent to allow sand and gravel extraction within shoreline jurisdiction under certain circumstances as described in PLN2019-00011.

Planning Commission (PC)

At their May 13, 2021 meeting, the Planning Commission voted unanimously to approve the 2020 Shoreline Management Program Periodic Update, as amended, including the following finding of fact:

14. As evidenced by the recommendation of the Surface Mining Advisory Committee, Title 23 already meets Council's intent to allow sand and gravel extraction within shoreline jurisdiction under certain circumstances as described in PLN2019-00011 and thus no amendments are proposed to achieve this.

CONCLUSION

No further action is required to achieve the intended outcome of docketed item PLN2019-00011.