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CLARK COUNTY
WASHINGTON

COMMUNITY PLANNING

Planning Commission Recommendations to the Board of Clark County Councilors

FROM: Steve Morasch, Chair
Clark County Planning Commission

PREPARED BY: Gary Albrecht, Planner II, AICP

DATE: September 29, 2015

SUBJECT: CPZ2015-00002 Shoreline Master Program Limited Amendment

RECOMMENDATION: **Approval** of a SHORELINE MASTER PROGRAM LIMITED AMENDMENT to improve the consistency between the county's shoreline program and the state standards. The amendment would add text to clarify normal maintenance in the list of exemptions, regulate replacement of non-conforming residential structures that are damaged or destroyed, and clarify SMP text to improve implementation.

BACKGROUND:

Clark County adopted an updated shoreline master program (SMP) in July 2012. It was approved by the Department of Ecology (Ecology) in August 2012 and took effect in September 2012. SMP policies are included in Chapter 13 of the comprehensive plan. SMP regulations are included in Clark County Code Chapter 40.460.

Ecology's SMP Handbook indicates jurisdictions can incorporate Critical Areas Ordinances by reference to make those provisions part of the approved SMP. In order to change the referenced provisions in the future, the CAO changes will constitute a limited SMP amendment and must be submitted to Ecology for review and approval before they take effect. Otherwise, the previous version originally approved as part of the SMP update process will continue to apply. The relationship discussed in Ecology's Handbook between CAO and SMP is described in RCW 36.70A.480 Shorelines of the state.

SUMMARY:

The proposed limited amendments to the Clark County SMP, specifically CCC 40.460.530 B (1) & (2) comply with the new Washington Department of Ecology State Wetland Rating System. The Board of Clark County approved several proposed changes to the Wetland Protection and Habitat Conservation Ordinances (CCC 40.450 & CCC 40.440) in Ordinance 2014-12-05 to comply with Ecology's new Wetland Rating System.

This limited amendment would also improve the consistency between the county's shoreline program and the state standards. The amendment would add text to clarify normal maintenance in the list of exemptions, regulate replacement of non-conforming residential structures that are damaged or destroyed, and clarify SMP text to improve implementation.

During a Planning Commission Work Session on August 4, 2015, they had a question about the meaning of CCC 40.460.230 (B)(2). Staff indicated that this section needed further clarification and other sections of the code might need clarification too. Staff mentioned that any additional changes would be proposed during the hearing, Exhibit 3.

ANALYSIS:

The proposed amendments to the SMP (Exhibit 1) Chapter 40.440 Habitat and Chapter 40.450 Wetlands, are intended to comply with state mandates. Ecology updated their wetland guidance manuals and method of scoring to be consistent with revised federal standards. The wetland scoring system is the most evident change to the regulations. Staff also received guidance from Ecology (Exhibit 2), which was specific to the county's unified development code update. The critical area regulations within the county's development code are substantially similar (not identical) to the provisions within the SMP. The amendments that were adopted with Ordinance 2014-12-05, are similar to the amendments that are proposed for the limited SMP amendment, however the process of amending the SMP differs from amending the unified development code. Ecology must ultimately approve the amendments to the SMP; after the county's final decision is rendered per RCW90.58.090 of the Shoreline Management Act (SMA). Washington Administrative Codes (WAC) Section 173.26.100, describes the process, and subsection 201, requires that the county provide evidence that the amendments will result in no net loss of ecological functions. The state code is in italics below.

WAC 173.26.201(c) *“Limited master program amendments may be approved by the department provided the department concludes:*

(i) The amendment is necessary to:

(A) Comply with state and federal laws and implementing rules applicable to shorelines of the state within the local government jurisdiction;

(B) Include a newly annexed shoreline of the state within the local government jurisdiction;

(C) Address the results of the periodic master program review required by RCW 90.58.080(4), following a comprehensive master program update;

(D) Improve consistency with the act's goals and policies and its implementing rules; or

(E) Correct errors or omissions.

Findings: The limited amendments to the SMP, Exhibit 2, are intended to comply with state and federal laws, per “A” above. The county has not annexed new shorelines per “B”, and the county is not reviewing the master program for a comprehensive master program update, per “C”. It is consistent with the SMA goals and policies per “D”, and will correct errors, per “E”. Scrivener’s errors include adding ordinance numbers to 40.460.530 B (1) thru B (5).

(ii) The local government is not currently conducting a comprehensive shoreline master program update designed to meet the requirements of RCW 90.58.080, unless the limited amendment is vital to the public interest;

Findings: The county is not conducting a comprehensive shoreline master program update.

(iii) The proposed amendment will not foster uncoordinated and piecemeal development of the state's shorelines;

Finding: The limited amendment to the SMP, Exhibit 2, will avoid inconsistencies with development standards.

(iv) The amendment is consistent with all applicable policies and standards of the act;

Findings: The limited amendments to the SMP will be consistent with the policies and standards of state and federal regulations.

(v) All procedural rule requirements for public notice and consultation have been satisfied;

Findings: A public notice was sent and will be published on August 12, 2015, prior to the public hearing on August 20, 2015. A public notice will be sent and published for the Board of Clark County Councilor's hearing in September. A 60-day notice was sent to the Department of Commerce on July 31, 2015. The county issued a SEPA DNS on August 4, 2015, and distributed it to the applicable agencies. Email notification sent to Shoreline Stakeholder Advisory Committee Members from the 2012 SMP update, and interested parties; updated August 2015. On August 20, 2015, Commerce Review Team was sent supplemental material for Clark County Material ID_21488.

(vi) Master program guidelines analytical requirements and substantive standards have been satisfied, where they reasonably apply to the limited amendment. All master program amendments must demonstrate that the amendment will not result in a net loss of shoreline ecological functions."

Findings: The limited amendment will be consistent with the changes required by state mandate, and no local ecological analysis has been conducted.

PROPOSED ACTION:

The proposal is for the Planning Commission to adopt the limited amendment to the Shoreline Master Program.

RECOMMENDATION

The Planning Commission heard this matter on August 20, 2015 and voted **7-0** to recommend approval of the proposal. The Planning Commission recommends that the Board of Clark County Commissioners **APPROVE** the following actions:

1. Revise 40.460.170. adding (F) relationship between the Critical Area Ordinance and the SMP
2. Revise 40.460.230 (B) (2)
3. Revise 40.460.230 (B) (16)
4. Revise 40.460.520 (A) & (B)
5. Revise 40.460.530 (B) (1), (2), (3), (4), (5)
6. Revise 40.460.530 (C) (1)
7. Delete 40.460.530 (F) (1) (b)
8. Revise 40.460.530 (3) (a) (1) & (2)
9. Revise 40.460.530 (3) (h) (3)
10. Revise 40.460.560 (A)
11. Revise 40.460.590 (B) & (C)
12. Revise 40.460.630 (F) (2) (g)
13. Revise 40.460.630 (J) (11) (b)
14. Revise 40.460.630 (N) (6)
15. Revise 40.460.630 (K) (13)
16. Revise 40.460.630 (K) (c) & (d)
17. Revise normal maintenance definition in 40.460.800
18. Revise normal repair definition in 40.460.800

Attachments:

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| Exhibit 1: | 40.460 text changes |
| Exhibit 2: | Ordinance 2014-12-05 |
| Exhibit 3: | Additional text changes |