



TO: Clark County Council
FROM: Steve Morasch, Planning Commission Chair
PREPARED BY: Jenna Kay, Planner II
DATE: November 27, 2018
SUBJECT: CPZ2018-00010 Shoreline Master Program Amendment (CCC 40.460)

PLANNING COMMISSION RECOMMENDATION

On June 21, 2018, the Planning Commission voted unanimously to approve the staff recommendation to amend the Shoreline Master Program (SMP) Clark County Code 40.460.

PROPOSED ACTION

The proposed SMP amendment would: incorporate the 2018-01-03 critical areas ordinance; address a state law regarding special procedures for local review of WSDOT projects; incorporate a rule regarding local procedures approving/amending shoreline master programs; address a law that clarifies developments not required to obtain shoreline permits or local review; address statutes regarding Energy Facility Site Evaluation Council (EFSEC) projects; add clarifying language regarding the forest practices and archeological, cultural and historic resources sections of code; revise and add definitions to align with state statutes; and, clean-up text and reference errors.

BACKGROUND

The Shoreline Management Act (SMA) was passed by the legislature in 1971 in response to a citizen initiative to protect shoreline resources. The SMA provides an overarching framework of goals and policies which emphasize water dependent uses, environmental protection and public access. Implementation of the SMA is through local Shoreline Master Programs, developed and adopted locally, approved and adopted by the state Department of Ecology (Ecology).

Clark County adopted an updated SMP in July 2012. It was approved by 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's unified development code (CCC), Chapter 40.460.

Local governments may make amendments to their shoreline programs to reflect changing local circumstances, new information or improved data per Washington Administrative Code (WAC) 173-26-090. There are also state mandated periodic review requirements. Clark County's next SMP periodic review is due June 30, 2020.

The proposed changes at this time are recommended to address “housekeeping” items prior to the upcoming SMP periodic review and update. Each proposed change relates to one of the following four items:

- 1) The county passed a critical areas ordinance that updated the critical aquifer recharge areas and flood hazard areas county code [ORD. 2018-01-03]. State statute requires an SMP amendment to incorporate new critical areas ordinances to apply to shorelines of the state pursuant to RCW 36.70A.480(3).
- 2) Ecology adopted changes to WAC rules implementing the Shoreline Management Act on August 7, 2017. The rules became effective September 7, 2017. The adopted rules reflect procedural and process updates. They also incorporate recent state laws and other housekeeping changes. Five rules were amended: WAC 173-28, 173-20, 173-22, 173-26 and 173-27.
- 3) Community Development staff provided feedback on items to clarify in the SMP code.
- 4) Planning staff identified text clean-up opportunities in the process of reviewing the above three items.

Further explanations of these items and how they relate to the proposed amendment are provided in Exhibit 1, attached. The amendments to CCC Chapter 40.460 are provided in Exhibit 2.

APPLICABLE CRITERIA, EVALUATION AND FINDINGS

WAC 173-26-100 and 173-26-201 describe the process to prepare or amend SMPs. After the county’s final decision is rendered, Ecology must ultimately approve the amendments to the SMP per RCW 90.58.090 of the Shoreline Management Act (SMA). WAC 173-26-201(1)(c) states that master program amendments may be approved by the department [Ecology] provided certain conditions are met. Those conditions and the associated findings are included in the following table.

WAC 173-26-201(1)(c)		Finding
(i)	The proposed amendment will not foster uncoordinated and piecemeal development of the state’s shorelines	<p>The proposed amendment, Exhibit 2, was reviewed for consistency with the section of RCW 90.58.020 that addresses uncoordinated and piecemeal development of the state’s shorelines.</p> <p>The proposed amendment does not significantly change the utilization, protection, restoration and preservation of shorelines; foster unrestricted construction on privately owned or publicly owned shorelines of the state; or, reduce coordination in the management and development of the shorelines of the state.</p>
(ii)	The amendment is consistent with all applicable policies and standards of the act	The proposed amendment, Exhibit 2, was reviewed for consistency with the policy statements of RCW 90.58.020, WAC 173-26-176 and WAC 173-26-181. No inconsistencies were identified through this review.

		<p>The proposed amendment updates the forest practice uses section of code to provide clarification regarding timber harvest. No other uses are affected by the amendment.</p> <p>The proposed amendment revises text in the archaeological, cultural and historic resources section of code. The revision does not significantly change the protection and restoration of shoreline buildings and sites having historic, cultural or educational value.</p> <p>The proposed amendment incorporates a new Federal Emergency Management Agency (FEMA) flood hazard map, which is expected to improve prevention and minimization of flood damage through use of the best available technical information.</p> <p>The proposed amendment addresses coordination of shoreline management with other relevant local, state and federal programs. This occurs through incorporation of the new FEMA flood hazard map, special procedures for the Washington State Department of Transportation (WSDOT), and incorporation of statutes which clarify projects not subject to the act and those that do not require local permits or review.</p> <p>The proposed amendment does not impact public access and recreation, ecological protection and restoration, navigation, protection of private property rights, or public facilities and utilities planning.</p>
(iii)	All procedural rule requirements for public notice and consultation have been satisfied	All procedural rule requirements for public notice and consultation in WAC 173-26-100 have been satisfied. A public notice was sent and published on May 2, 2018, prior to the initially scheduled Planning Commission hearing on May 17, 2018. This hearing date was changed and another public notice was sent and published on June 6, 2018, prior to the Planning Commission public hearing on June 21, 2018. A public notice was sent and published for the County Council hearing on November 27, 2018. A 60-day notice was sent to the Department of Commerce on April 23, 2018. The county completed a SEPA checklist and issued a Determination of Non-Significance (DNS) for the proposed amendment on April 11, 2018. The SEPA DNS was emailed to the applicable agencies and tribes on April 17, 2018. Notice of the SEPA DNS was published in the Columbian newspaper on April 27, 2018. Email notification was sent to Shoreline Stakeholder Advisory Committee

		Members from the 2012 SMP update and interested parties; updated August 2015.
(iv)	Master program guidelines analytical requirements and substantive standards have been satisfied, where they reasonably apply to the amendment. All master program amendments must demonstrate that the amendment will not result in a net loss of shoreline ecological functions.	<p>The proposed amendment was reviewed for consistency with applicable guidelines and standards in WAC 173-26, Part III. As part of this review, the standards in WAC 173-26-231 were considered to assess the amendment's impact on no net loss of shoreline ecological functions. The proposed amendment is consistent with the applicable standards and guidelines in WAC 173-26.</p> <p>Research was additionally conducted on each component of the proposed amendment in Exhibit 2 to identify applicable sections of the act, related laws and guidelines. Exhibit 1 includes references for each part of the amendment and explains the reason for the proposed change and its relationship to relevant statutes. Based on the research conducted in association with Exhibit 1, staff finds the proposed amendment is consistent with applicable substantive standards.</p>

RECOMMENDATION AND CONCLUSIONS

Based on the information and the findings presented in this report and in the supporting documents, the Planning Commission forwards a recommendation of **APPROVAL** to the Clark County Council. The following table lists the applicable criterion and summarizes the findings of the staff report and Planning Commission report for CPZ2018-00010.

COMPLIANCE WITH APPLICABLE CRITERIA		
Criteria for Policy/Text Amendments	Criteria Met?	
	Staff Report	Planning Commission Findings
A. The proposed amendment will not foster uncoordinated and piecemeal development of the state's shorelines	Yes	Yes
B. The amendment is consistent with all applicable policies and standards of the act	Yes	Yes
C. All procedural rule requirements for public notice and consultation have been satisfied	Yes	Yes
D. Master program guidelines analytical requirements and substantive standards have been satisfied, where they reasonably apply to the amendment. All master program amendments must demonstrate that the amendment will not result in a net loss of shoreline ecological functions	Yes	Yes
Recommendation:	Yes	Yes