

Hydraulic Code Implementation Citizen Advisory Group Meeting

Meeting Notes for Thursday, January 11, 2018

Date: Thursday, January 11, 2018 10:00 am - 3:00 pm

Location: Natural Resources Building, Room 556, 1111 Washington St SE, Olympia, WA 98501

These meeting notes are intended to convey highlights from the meeting, including information and perspectives shared and discussed. Decisions made during the meeting are included.

This document is not a word-for-word transcription of the meeting. We have tried to capture the main topics and issues discussed and highlight some of the main questions, comments and action items raised by group members during the meeting.

Members: Please verify and correct any comments attributed to you so that we can accurately capture the issues or points made during the meeting.

Attendees

Name	Affiliation	
HCICAG Members		
Amy Carey	Sound Action	X
Stephan Dillon, P.E.	Hancock Forest Management, Inc.	X
Kim McDonald	Fish Not Gold	X
Shannon Moore	Moore Fish Company (Commercial Fishers)	X
Norman Peck	Kittitas Audubon Society	X
Shane Phillips	Civil Engineers/Shoreline Property Owners	X
Brandon Roozen	Western Washington Agriculture Association	X
Jim Shellooe, P.E.	Association of General Contractors	X
Kimbal Sundberg	Lead Entities – San Juan Island Lead Entity	X
Stephen Whitehouse	Building Industry Association of Washington	X
Lisa Willis	Port of Longview	X
Scott Brown (for Chuck Wilson)	Washington Prospectors Mining Association	X
WDFW Staff		
Dan Doty	Senior Environmental Planner, Habitat Program	X
Teresa Scott	Policy Coordinator, Habitat Program	X
Pat Chapman	Senior Environmental Planner, Habitat Program	X
Lynn Helbrecht	WDFW Climate Change Coordinator, Habitat Program	X
Lisa Wood	Environmental Planner, Habitat Program	X

Introductions, Old Business and General Updates

Teresa and Dan welcomed everyone.

Introductions and Agenda Review

Teresa Scott reviewed the agenda and changes to the schedule.

As a warmup to the meeting, Teresa asked members to introduce themselves and to identify the main things they hope to get out of this meeting. Listed below are some of the things that members wanted to discuss.

- How to get topics of interest to me and my stakeholder group on the HCICAG agenda
- “Ear and voice” for my stakeholder group. Members want to ensure that their recommendations and voice of their stakeholder group is heard and considered.
- Learn about and discuss concerns with proposed legislation.
- Interested in hearing about the new and proposed legislation. Wants to discuss concerns with bill HB 2337.
- Learn about status of the proposed rule changes and get an update about legislative actions.
- Understand HCICAG role relative to proposed legislation.
- Several members wanted to discuss the role of this group and its effectiveness.
- Wants this group to develop a work plan for the coming year and focus on HPA implementation issues.
- Identify issues and topics for the group to address and develop a work plan for the coming year.
- Learn how HCICAG input and is used by decision makers and how advice gets implemented.
- Learn how CAG can provide advice or support on “what’s brewing” (i.e. on issues that transcend HPA implementation) for WDFW?
- What is the impact of this group on overall HPA implementation?

Nearly all members wanted to know how this group’s voice is being heard and used by the Program. Many questioned the relevance and value of this group. Most members wanted to know how HCICAG work is getting conveyed/transmitted to the Program management, if any of the input from this group is getting used, if we (the HCICAG) are effective as a group, and if this advisory group is making any impact on the Program.

Approval of September 2017 and November 2017 Meeting Notes.

Dan asked the group members to send any changes or edits to the September 2017 and November 2017 meeting notes by COB January 17th.

Habitat Program Updates and Discussion

Status of HPA Legislation

Teresa provided a quick update that the agency is not requesting or moving forward with legislation proposed during the last legislative session is not this session. This prompted lively discussion relating to the civil enforcement and penalties portion of last year’s legislation that appears in HB 2337 (see below).

2018 Legislative Session Update

The legislative session started on January 9th and Teresa handed out a list of Habitat-related bills that had been introduced within the past several days. Teresa noted that we were not prepared to discuss concerns on any of the proposed bills at this meeting since it was so early in the session and since WDFW was still early in the process of analyzing each of these bills.

There was particular interest and discussion about **HB 2337**: Relating to civil enforcement and prescribing penalties for construction projects in state waters. One member had concerns about this bill and wondered if this was introduced at the request of the department. The person requested that we have more discussion on this bill and the agency's position. Pat Chapman noted that this was not agency request legislation and provided an overview of the bill analysis that he did for the program.

This also prompted some discussion on the role of the HCICAG relative to proposed legislation affecting the HPA program and how the department should communicate to the group about legislation. While recognizing that many bills are introduced without agency input, the group would like to receive updates on pending legislation, what it does, and WDFW's role as soon as possible and before the day of a legislative hearing (The hearing for HB 2337 occurred the same day as this meeting).

Update on 2017-18 HPA Rule Change Proposal

Teresa updated the group on the proposed minor rule changes to five sections of the Hydraulic Code Rules in Chapter 220-660 WAC. These changes were discussed in detail with the group at the November 2017 webinar. She noted that the process was moving forward and that the CR-102 would be filed with the Code Reviser soon. We will notify this group and other stakeholders about the official kick-off of the rule making and comment period. Information about this rule making activity is posted on the [HPA rule making web page](#). A public hearing will be held on March 16 or 17 in Wenatchee. Check the rule making web page for details.

One member expressed concern that the proposed changes are not easy to pick out of the CR101. Teresa explained that the proposed changes were discussed in detail with the group during the November 2017 webinar and that the CR-102 and website will also have details on each of the proposed changes.

Update on Trout Unlimited Rule Making Petition

Teresa updated the group on the TU petition to amend mineral prospecting rules and the FW Commission decision on rulemaking. The Fish and Wildlife Commission denied the petition, and scheduled a presentation on the topic to occur at a future commission meeting (to occur on February 10th). This update prompted some broader discussion regarding sharing of information and communication with the advisory group on major issues. Some members were concerned that WDFW had not shared this information and that the HCCAG should be updated on these types of issues immediately. Scott Brown and Kim McDonald said that they were aware of this petition. Kim acknowledged that the responsibility for sharing information is mutual and that CAG members also are responsible for sharing information and issues with the advisory group.

Action Item: Review the group charter and roles and responsibilities at the next HCICAG meeting.

New HPA Permitting system – APPs Replacement and timeline

Dan and Pat gave a quick update on the new HPA permitting system that will replace the current APPS system. The system is still being developed and tested and may be released for testing sometime within next several months. We will update the advisory group once we get a better idea of the timeline for its release.

2017 HPA Annual Summary and Review

Pat Chapman, HPA Regulatory Services Coordinator, gave an excellent “Summary of the HPAs issues in 2017”. His presentation is available at the HCICAG link: <https://wdfw.wa.gov/about/advisory/hcicag/>

Lisa Willis had some questions about HPA Denials for Pile Splicing.

Action Item: Pat/Teresa will send details on these specific projects.

Presentation: WDFW and Climate Change

Lynn Helbrecht, WDFW’s Climate Change Coordinator, provided an overview of how WDFW is planning for and responding to the risks of climate change. She also gave an overview of WDFW’s new Policy 5408 “Addressing the Risks of Climate Change”. Her presentation is available at the HCICAG link: <https://wdfw.wa.gov/about/advisory/hcicag/>

This prompted some questions and discussions on how the HPA program is using this information.

- How does climate policy affect HPA implementation?
- How does climate policy affect how permits are reviewed?

Round Robin and Discussion (Member issues and concerns; stakeholder group reports; announcements)

Note: The late morning and afternoon discussions were lively, varied and all over the board. Below are some highlights from the whiteboard and staff notes that try to capture the range of issues and topics discussed.

Specific topics of interest in the context of HPA implementation

How can we make HPA implementation better with respect to:

- Stormwater and overall water quality (project runoff, future sediment transport)
- Salmon Recovery
- Shoreline Master Program and Critical Area Ordinance updates
 - Basic local government land use decisions
 - How does WDFW share guidance and knowledge with other state agencies and local governments?
 - How should the HPA Program be contributing to SMP and CAO updates at the statewide level (overall data contributions) and locally?
- Cumulative impacts

How can HCICAG give advice on HPA implementation?

- Focus on Implementation
- Group seems to agree that rules and outreach may be the best topics for this group to contribute advice.
- Group likes to learn about other Habitat Program activities (“cool stuff”) in order to understand HPA implementation in the context of broad agency work.
- Group needs to understand the “big agency issues” that affect HPA implementation, especially so the group can understand how group advice can be meaningful.
 - Example is climate policy → culvert sizing → HPA implementation
 - Group would like to receive updates between meetings about big agency issues affecting the HPA program. Example was that the group would have liked to receive news that HB 2337 was going

to be introduced, what the bill does, and what the agency role was in putting together the bill BEFORE the day of the legislative hearing on the bill (which occurred at the same time as the CAG meeting).

- Group suggests that the group identify the topic of interest and staff round up “cool stuff” presentations to fit that conversation.
- Group suggests that slide presentations be provided via webinar prior to CAG meetings – get the information ahead of time, then use valuable in-person time to have the discussion about implications to HPA implementation.
- The group prefers to use most of our meeting time to discuss rules and develop recommendations and less time on one-liner updates and “cool stuff” presentations

Summary of process items/topics that members want to understand or implement moving forward:

- How can the group collaborate with WDFW to set the agenda for HCICAG meetings?
- How can members be informed about “what’s brewing” at WDFW so that the group can form agendas relevant to those topics?
- Does the group (or, indeed, staff) need a better understanding about administrative processes? E.g., rule making petition process, process of agency contributions to bill drafting.

Possible discussion/presentation topics moving forward:

- WDFW role in SMP and CAO updates and how WDFW can improve its effectiveness at providing advice and science input to those processes.
 - Could also include discussion about the authorities linking Growth Management, Shoreline Management, and HPAs (and how agencies currently share guidance and advice). Group notes that project proponents are stymied about the sequencing and seeming overlapping jurisdictions involved in environmental permitting.
- Focus on rule making:
 - Explore current rules:
 - identify issues (areas of conflict for stakeholders)
 - identify confusing language
 - identify inconsistencies within HPA rules and between HPA and other environmental permitting
 - etc.
 - Make a list of topics to explore more deeply
 - Develop a workplan to approach these topics
 - Meet more often in order to move through these topics in a timely manner
- Stay informed about (but perhaps not dwell on) “what’s brewing” and “cool stuff.”

Teresa Scott gave a primer recap on Laws/rules/implementation

- “Law” or “Statute” is created by the legislature. Laws are compiled as RCW (Revised Code of Washington).
- The legislature states in RCW 34.05.328 that *“unless otherwise authorized, substantial policy decisions affecting the public be made by those directly accountable to the public, namely the legislature, and that state agencies not use their administrative authority to create or amend regulatory programs.”* To WDFW staff, this means that the “big-P Policy” issues regarding regulatory programs should be resolved at the legislative level and should not be amended through agency administrative action.

- Bills in the legislature seek to amend laws (statutes), that is, seek to amend RCW
- “Rules” or “regulations” are created by agencies in order to implement laws/statute. Rules are compiled into WAC (Washington Administrative Code).
- The HPA statute is [chapter 77.55 RCW Construction Projects in State Waters](#). HPA rules in [chapter 220-660 WAC](#) implement chapter 77.55 RCW. [Note: familiarity with ch. 77.55 RCW provides a firm foundation on the complexities and boundaries of the HPA Program’s regulatory environment.]
- WDFW must also adhere to other statutes and their associated rules, such as:
 - [Chapter 34.05 RCW](#) – Administrative Procedures Act (ch. 1-21 WAC Rule making)
 - [Chapter 19.85 RCW](#) – Regulatory Fairness Act
 - [Chapter 42.30 RCW](#) – Open Public Meetings Act
 - [Chapter 42.56 RCW](#) – Public Records Act
 - [Chapter 43.376 RCW](#) – Government-to-Government Relationship with Indian Tribes
 - [Chapter 43.21C](#) – State Environmental Policy (ch. 197-11 WAC)
 - Etc., etc. [Note: Reading RCW is not for the fainthearted, but it’s very informative in giving the reader an idea of the breadth of the regulatory environment under which state agencies operate.]
- Implementation of rules can take many forms:
 - Permits are issued and data on those permits generated
 - Guidance documents that help internal and external project proponents design projects
 - Internal guidance in the form of processing protocols and advice for making permitting decisions (e.g., HPA manual, standard operating procedures)
 - Agency outreach that ...
 - Provides materials and training to help permittees comply with permit provisions
 - Provides materials to help prospective applicants understand the permitting process and context
 - Coordinates with other state/federal/tribal agencies to improve the permitting process for applicants and resolve conflicts among permitting objectives.

Next Steps and Action Items:

Next Steps:

- There was general consensus that there was a need for us to hold a strategic planning work session/meeting review the HCICAG roles and responsibilities, identify key stakeholder issues and areas of concern related to implementation of the hydraulic code, and develop a work plan for the next year.
- Internal review of WDFW’s mission and objectives for the HCICAG, identifying the types of issues the program is seeking input/recommendations/advice on, and how the agency wants to receive that input.
- WDFW and each member will identify potential topics/task for the group to work on.
- WDFW will provide ongoing updates to on rule making and legislative action.
- Individual CAG Members will provide the department and the group with issues they are having with HPA implementation and provide updates and discussion topics when possible.

Action Item: Schedule the next HCICAG meeting with the primary objective to review the HCICAG roles and responsibilities, identify key stakeholder issues and areas of concern related to implementation of the hydraulic code, and develop a work plan for the next year.

The meeting will be held in the Tacoma area if possible.

