



Fish and Wildlife Commission Presentation Summary Sheet

Meeting date:

5/13/2022

Agenda item:

Delegating Rulemaking to Director Susewind – Special Use Permit program

Presenter(s):

Amy Windrope – Deputy Director

Background summary:

The department is examining its Special Use Permit (SUP) program, which provides equipment modification and reasonable access accommodation permits for hunters and fishers awarded disability designation. The Special Use Permit allows for a limited, specific exception to a recreational activity, service, equipment, or regulation, as provided in RCW 77.32.237.

Staff are restructuring the SUP program to increase efficiency, accessibility, and consistency of processing to create better alignment with related civil rights laws, RCWs, and WACs. With cross-program collaboration, guidance from the Attorney General's Office, and support of the ADA Advisory Committee (ADAAC), staff developed operational goals for the SUP program:

1. Streamline the application process and improve ease of use for all involved - constituents, physicians, and department staff
2. Reflect the department's commitment to Diversity, Equity, and Inclusion in the administration of the SUP program by establishing clear, consistent, equitable standards to identify and resolve barriers to participation.
3. Assess and address potential SUP-related operational issues and risk to the department

The crucial foundation to achieve the above goals is to conduct rulemaking, consisting of amending and clarifying existing SUP-related rules and establishing new rules with specific criteria for each standard SUP.

SUP-related rules = existing WACs (220-200-160 through 190, WAC 220-305-120, WAC 220-413-110, and WAC 220-413-140) Changes include:

- Editorial and housekeeping clarifications
- Granting appeal rights for standard SUP denials
- Providing for consistent, case-by-case consideration of unique SUP requests

Standard SUPs include the use of crossbow during archery season, using a scope during muzzleloader season, and shooting from a vehicle (blue placard); using bait-casting gear in fly-fishing only season/waters will be added during rulemaking.

Staff recommendation:

Department staff requests the Commission **delegate rulemaking authority^{^^} to the Director for the Special Use Permit program** as needed for clarity, risk mitigation, and overall program improvement.

“The Director shall have the authority to adopt, amend, and repeal rules relating to recreational opportunities for persons with disabilities, pursuant to RCW 77.32.237. This authority includes, but is not limited to, (1) rules defining who is a person with a disability (2) rules that set forth terms and conditions of reasonable accommodations, and (3) rules governing the conduct of a person with a disability participating in fish, shellfish, and wildlife-related recreational activities and the conduct of companions permitted, as a reasonable accommodation, to assist such a person in fish, shellfish, and wildlife-related recreational opportunities.”

^{^^} RCWs 43.300.040 and 77.04.020 authorize the Commission to delegate to the Director any powers or duties vested in the Commission. The memo dated 11/2/18, General Delegation of Authority paragraphs B, C and N, provided the Director authority to manage other aspects of the SUP program.

Policy issue(s) and expected outcome:

This request will allow for more efficient use of the Commission’s time, as was desired, by reducing the department’s operational issues on the agenda, freeing up time for the Commission’s higher priorities. Administration of the SUP program will require agility to adjust processes, and possibly rules, as the department responds to various impacts such as constituent demand fluctuations, ongoing (through 2025 permit renewal issues, adaptive equipment modifications, changes to application processing, and possible Commission actions that impact the SUP program, e.g., allowing crossbows in muzzleloader season).

The requirements of the Administrative Procedure Act (Chapter 34.05) are the same whether the Commission or the Director conduct rulemaking, so comparable public involvement opportunities will occur. Engagement between the SUP program and ADAAC will continue, while the Commission will still have the option to act upon ADAAC recommendations regarding the SUP program or request the Director do so.

Fiscal impacts of agency implementation:

No significant impacts

Public involvement process used and what you learned:

The rulemaking process followed under the Director’s authority will include public input and contact with state and federal agencies, special interest groups, and stakeholders. The department will review and consider responses from all.

Action requested and/or proposed next steps:

Commission delegates rulemaking authority to the Director for the Special Use Permit program, effective immediately.

Draft motion language:

“I move to accept the delegation language presented, specifically, “The Director shall have the authority to adopt, amend, and repeal rules relating to recreational opportunities for persons with disabilities,

pursuant to RCW 77.32.237, effective immediately. This authority includes, but is not limited to, (1) rules defining who is a person with a disability (2) rules that set forth terms and conditions of reasonable accommodations, and (3) rules governing the conduct of a person with a disability participating in fish, shellfish, and wildlife-related recreational activities and the conduct of companions permitted, as a reasonable accommodation, to assist such a person in fish, shellfish, and wildlife-related recreational opportunities.”

Post decision communications plan:

Update and utilize a Communications Plan from Public Affairs, including notifications to other state and federal agencies, special interest groups, and current constituents with disability status.
