

**CAO and SMP Update
Citizens Advisory Committee
DRAFT - Meeting Summary**

Date: September 18, 2006
Time: 4:00 p.m. – 8:00 p.m.
Place: 5280 Northwest Drive, Whatcom County PDS

1.	4:00	Review agenda <u>Information:</u> September 18 th Agenda <u>Action Needed:</u> Make any changes or additions and approve as final.
2.	4:05	Draft SMP Public Comment Matrix <u>Action Needed:</u> Discussion and comment.
3.	8:00	Adjourn

MEETING ATTENDANCE

Rebecca O’Brine Willson	Elizabeth Daly
Richard Gilda	David Sherrard (via phone)
Aubrey Stargell	Margaret Clancy (via phone)
Roger Almskaar	Jeff Chalfant
Wendy Steffensen	Amy Pederson
Kathy Berg	Cathy Craver

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1. Draft Public Comment Matrix

MEETING CONTENTS

1. Jeff – The official 60-day public comment period on the June 30, 2006 Public Review Draft SMP period has ended. The comments that have been received have been compiled into a comment matrix to facilitate the development of responses. At this time there are 51 pages of public comments and associated responses. We are still working on responding to all of them and the document you have in front of you is still in draft form. We would like to walk the committee through the comment matrix and give an overview of the bigger topics, and see if there is anything that the committee would like to further comment on or address.
 - 1.1. Roger – You should pick out the priority comments to go over.
 - 1.2. Margaret – Many of the comments are just clarifications. The issues of fencing with respect to requirements for wildlife movement, signage, restoration, and public access are all issues that were brought up. These are some of the items that should probably be reviewed and discussed further during this meeting.
 - 1.3. Jeff – On first page, the first comment relates to the definition of “feasible alternative”. The Birch Bay Water and Sewer District has recommended changing the language to make it consistent with the WAC. The previous definition was a combination of the CAO and WAC language, but it has been changed to be the same as the WAC.

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- 1.4. The MRC asked for a definition of “live aboard”, on page 4-5. The DNR definition of “vessel” has been added.
 - 1.4.1. Margaret – The MRC also made a recommendation on what types of mooring buoys should be used. However, specific language was not added to address that issue because standards and technology will generally change over time.
- 1.5. Q: Roger – On page 2, in response to the Public Trust Doctrine comment, it says, “change made”. What does that mean? A: Jeff – The Governing Principles section was amended to include reference to the Public Trust Doctrine.
- 1.6. Q: Dick – On page 7 for *Shoreline Stabilization*, why does it say that it has been deleted? A: Jeff – There was another section that was contradictory, so it was deleted to make the language consistent.
- 1.7. Q: Wendy – Specifically on the mooring buoy language, how do you make sure that that is part of the code or is adopted? What directs folks to make the right choices? A: Jeff – That level of analysis would generally happen during the Hydraulic Permit Application (HPA) process with WDFW. Otherwise, the Administrator would work with an applicant through the permit review process.
 - 1.7.1. Margaret – There are a number of policies in that section that address orientation, minimizing impacts, and several standards without providing specific guidelines.
- 1.8. Q: Becky – On page 5, were there changes related to orientation of docks? A: Jeff – A response to that comment will need to be addressed in a revised version of the comment matrix.
- 1.9. Q: Dick – If a person gives access to their property, and then there is a new land owner that doesn’t like it, or wants to change it, is there a process to do that? A: David S. – The Administrator can allow the public access to be closed temporarily until the issue is resolved or an alternative is found.
 - 1.9.1. Q: Dick – Would there be a legal definition for that? A: David S. – Yes, and there is a process too.
 - 1.9.2. Q: Liz – Is Gulf Road sufficient public access? A: Jeff – I don’t know if that determination has been made.
 - 1.9.2.1. Liz – Then I will need to submit further comment because it may be a security issue.
- 1.10. Jeff – Concern has been expressed related to nonwater-oriented uses and provision of public access. Single family residences are allowed, but other nonwater-oriented commercial and industrial uses need to provide a substantial public benefit with respect to the objectives of the Act. That is specifically stated in the WAC.
 - 1.10.1. Roger – “Public benefit” should not be a test for a permit.
 - 1.10.1.1. Jeff – In this context, it is incentive zoning. A property owner gets more choice in developing their property in exchange for giving more to the public. The current Program does not allow nonwater-oriented uses, but now nonwater-oriented uses can be allowed where those benefits are provided.
 - 1.10.2. Roger – I wrote a comment requesting a test for public access. I do not see a response yet.
 - 1.10.2.1. Jeff – That comment will be addressed, but it will require a legal review.

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- 1.11. Margaret – On page 14, the provisions state that fencing should not interfere with wildlife movement, except for industrial areas. The intent was not to prohibit fences from being built, so the language has been changed to say that the fence has to be designed to not “significantly interfere with” wildlife movement. There could be exceptions in residential areas. Interference may be unlikely in areas of *Shoreline Residential*, and may not be an issue. However, in *Conservancy* there may be potential to block wildlife movement, and a fence would have to be designed to not interfere with access.
- 1.11.1. Wendy – It looks like it is too restrictive.
- 1.11.1.1.Q: Margaret – The “significant adverse impact” language is something that is still being working through. It has been raised as an issue. If it is talked about in the SMP, and the Guidelines say it, then we need to use the same language.
- 1.11.1.2.Jeff – In certain instances the WAC talks about “significant adverse impacts” and “cumulative impacts” in others.
- 1.11.1.3.Roger – There still needs to be a qualification of impacts when a decision is being made.
- 1.11.1.4.Wendy – In the first paragraph, it looks like the language has been weakened in several ways. A phrase has been stricken and “significantly interfere” has been added. There is always an exemption.
- 1.11.1.4.1. Margaret – The exemption previously applied to industrial. The proposed amendments were intended to address smaller lots where someone may be trying to protect their lawn or fence their pets.
- 1.11.1.5.Q: Dick – What if an orchard was planted in a deer trail? A: Becky – Each tree could be fenced.
- 1.11.1.6.Liz – Some residential areas need security fences. “Significantly” should be deleted. It still gives administrator flexibility.
- 1.11.1.7.Margaret – The way the language reads, if access is being provided and a walkway is put in parallel to the shoreline, then there would have to be a buffer from sensitive features. In those cases, a fence could be put up, but views should not be obstructed.
- 1.11.1.8.Q: Kathy – If it says, “trails shall be permeable...”, does that apply to the berm in Birch Bay? A: Margaret – It would.
- 1.12. Jeff – There were additional comments that expressed a need to make a clarification to no net loss, what are issues of concern, and what the code would address. The suggestion was to take language from a 2004 DOE report and put it into the code. An introductory paragraph was developed, which is reflective of those concepts.
- 1.12.1. Margaret – The provision should be consistent with Ecology’s intent.
- 1.12.2. Jeff – This paragraph recognizes that the Act not only addresses preservation and protection, but it is also intended to foster and encourage shoreline development where it is appropriate.
- 1.12.3. Wendy – When that is done, you could have a loss of process and shoreline area. Taken together cumulatively it will impact shorelines. Every time the shoreline is fragmented, it takes away.

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- 1.12.3.1. Roger – I think it is a good solution. If someone comes in with a big project and there are actual big impacts, then they would be required to mitigate anyway. It depends on the quality of what you have.
- 1.12.3.2. Q: Becky – If I was trying to do something that needs a specialist, does the county have a list of specialists that is available for me to look at? A: Jeff – There is a list that is available to the public.
- 1.12.3.3. Becky – It is still difficult to do unless you have someone with very specific qualifications.
- 1.12.3.4. Liz – I don't think the "5-years experience in the Northwest" is a relevant qualification.
 - 1.12.3.4.1. Margaret – If a professional is experienced only with wetlands in the state of Georgia, the wetlands in the Northwest and Georgia are very different. Knowledge from different regions can be very different.
- 1.12.3.5. Q: Liz – Are there certain criteria for these professionals?
- 1.12.3.6. Roger – I would agree with 3 years instead of 5 years.
- 1.12.3.7. Liz – Before, all you used to have to do is apply to become a certified geologist.
- 1.12.3.8. Jeff – The change that was made was from, "in the Northwest" to "Northwest or similar systems". That gives a professional an opportunity to demonstrate their qualifications.
- 1.12.3.9. Q: Wendy – The SMP has to be just as stringent as CAO, so does the CAO also need to be amended? A: Jeff – Yes. If the committee recommends a change to 3 years, then that change should also be made in the CAO.
- 1.13. Margaret – Page 18, the next comment is related to public benefit. This comment is being reviewed by legal staff.
- 1.14. Q: Liz – On signs, specifically "private signs", does that apply to industrial uses as well? It does not say that industrial is included. My concern relates to posting of safety signs. A: Jeff – Safety signs are exempt.
- 1.15. Q: Dick – Do these rule apply to land if it is on the reservation? A: Jeff – If it is in fee ownership, or privately owned, then it subject to County regulations. If it is tribal trust land, then it is not.
- 1.16. Wendy – On page 22, there is a comment from Intalco. I understand not wanting to mix different types of pier elements, but there should be a replacement threshold. For example, if they cut off 25% of their supports, or X amount of the dollars spent, it is just like replacing a significant portion and they should be required to do the whole thing.
 - 1.16.1. Becky – At the bottom, he states that it would not apply when a pier is replaced. Could they choose to replace pier planks with treated wood?
 - 1.16.2. Liz – With the rate of technology these days, there should be technical alternatives.
 - 1.16.3. Kathy – I know that they are using fiberglass for structure replacement in Dakota Creek.
 - 1.16.4. Liz – In the intertidal zone, we use a shield that is clamped and bonded that protects the pilings. If a technical solution exists, it should be used.
 - 1.16.5. Q: Dick – When we talk about treated pilings in the water, are there certain types of treatments that are not wanted, or does it also include pilings treated with salt water that will last forever? Now there are

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environmentally sensitive plastics. If someone found something good, could they use it or, if it is treated, is it out the door? A: Margaret – This provision applies to an existing non-conforming use. If a non-conforming structure needs to be replaced and will not be expanded, but the pilings have to be replaced, this provision says that that piece of the structure cannot adversely impact the environment. If someone wants to use a material that is “treated” and it is demonstrated that it will not impact water quality, then it could be used.

- 1.16.5.1.Q: Dick – Can something be added that says that? A: Jeff – The current provisions reference “untreated wood”. However, it could be amended to say, “or other non-polluting...”
- 1.17. Q: Kathy – On page 23, how can live aboards be prohibited? A: Jeff – They are not prohibited.
- 1.18. Jeff – We are still waiting for legal review to respond to some of Roger’s comments.
- 1.18.1. Q: Becky – Will the County attorney contact the commenter? A: Jeff – Those responses will also be incorporated into this matrix when it is forwarded to the Planning Commission.
- 1.18.2. Q: Liz – Is the Dolan case the issue? A: Roger – That is some of it. It is related to the “test” to mitigate the impact connected with public access.
- 1.18.3. Jeff – On page 24, there is a citizen comment that refers to “rough proportionality”. That comment was directed to the Dolan case.
- 1.19. Jeff – Dick’s comments start on page 27. The change to restoration and enhancement has been made.
- 1.20. Jeff – At the top of page 28, there was a concern was there is not an exemption for utilities. Unfortunately, based on state law we are not able to change the state listed exemptions from shoreline substantial development. However, utility work is typically related to maintenance and there are exemptions for that type of activity.
- 1.21. Jeff – At the bottom of page 28, for pre-application meetings, there is language to exempt residential, commercial forestry, agriculture, and shoreline restoration. They would not generally benefit from pre-application meetings in the same way that other projects would; however, we would still allow an applicant to request such a meeting if they wish.
- 1.22. Jeff – On page 29, related to enforcement, that language is from the State Shoreline Act.
- 1.23. Dick – On page 30, this discourages anyone from doing a forest practice operation.
- 1.23.1. Jeff – I think the committee decided that commercial forest practice operations are generally not an appropriate use in *Urban, Shoreline Residential, or Natural*.
- 1.23.2. Aubrey – I am okay with the language.
- 1.23.3. Dick – The way this reads, it seems that someone could not do forest practices if it is not in commercial forestry.
- 1.23.4. Aubrey – You could plant, but you just can’t harvest them afterwards unless you are zoned forestry. There is a disincentive to establish forestry where it is not already located now.
- 1.23.5. Q: Roger – Are there significant lots in *Shoreline Residential*? A: Jeff – No they are all 1 acre or less in size.

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- 1.23.6. Dick – I was thinking of somewhere less than 5 acres, and of someone who wants to plant a couple of trees.
- 1.23.7. Q: Becky – Isn't there a point when a property is so small that it would not be viable for a forest practice operation? A: Aubrey – That may be around 3, 4 or 5 acres.
- 1.23.8. Becky – You are talking about the trees within the 200 feet of shoreline jurisdiction. There is a process to address danger and dead trees, or a view corridor.
- 1.24. Q: Liz – At the bottom of page 30, doesn't the Coast Guard trump local jurisdiction? A: Jeff – Not for the SMP. The unique thing about the SMP is that it is part of Coastal Zone Management (CZM), which is federal.
- 1.25. Q: Becky – So, what was allowed in *Shoreline Residential* for tree maintenance? What if someone wants to take down one or three trees? Would they have to go through a permit process to say "this is our view corridor, can I take these down"? A: Jeff – Yes.
- 1.25.1. Q: Becky – What about dead trees? A: Jeff – It may require notification. However, if it is an immediate threat, the tree can be taken down and the County notified after. It depends on the circumstances.
- 1.25.2. Q: Becky – Does this apply to a certain size of tree? A: Jeff – It applies to all trees.
- 1.26. Margaret – In the *Shoreline Residential* designation, there is generally nothing over an acre in size. Therefore, there is not likely to be an issue for forest practices in those areas.
- 1.27. Q: Roger – On page 31, for clustering, it says "what is appropriate". What does that mean? A: Jeff – It allows a discussion to be had as to whether or not it is appropriate for a specific project or a specific site.
- 1.27.1. Q: Roger – Should it say clustering may be required "where appropriate"? A: Margaret – Yes.
- 1.28. Jeff – On page 49, third comment down, the provision where signs were originally limited to 2 square feet has been amended to allow 4 square feet.
- 1.28.1. Dick – If sign size is being addressed, then double-sided signs should also be addressed if we are trying to deal with aesthetics.
- 1.28.1.1. David S. – It is not likely that there will be an aesthetics issue related to the back of signs.
- 1.28.2. Q: Roger – Hasn't there been a court case on political signs? A: Jeff – It says that there cannot be an absolute prohibition on signs. The proposed SMP amendments in fact allow more signs and double the size limit.
- 1.28.3. Q: Kathy – What about commercial signs? A: Jeff – That is addressed in a different section.
- 1.28.4. Q: Kathy – Can you have a freestanding sign? A: Jeff – Yes.
- 1.28.5. Q: Liz – At our facility, we choose to do a safety program that requires safety banners, but it is not required by law. Would signs and/or banners be allowed for safety purposes when not legally required? A: Jeff – We will take another look at this section to address that.
- 1.28.6. Q: Dick – On page 50, for signs on docks, what about "no trespassing" or "no swimming" signs? Are there any limitations on those? A: Jeff – No, they are taken care of under private informational signs. "No trespassing" can be added as an example, and an exemption for safety signage could also be added.

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- 1.29. Q: Dick – On page 54, why would a conditional use permit be required for floatplanes? I thought that the CUP provision was taken out. A: Jeff – In the existing code, if it is not addressed as a use, then it requires a CUP.
- 1.29.1. Becky – If someone moved to Lake Samish and wanted a dock for their plane, would they have to go to the FAA? A: Jeff – No, the FAA does not regulate docks, just where a plane would land and take off.
- 1.30. Q: Kathy – The County Council just passed a temporary ordinance for fish net pens. Is that separate from what is in here? A: Jeff – The ordinance is a continuation of an interim moratorium on commercial salmon net pen aquaculture that they have adopted over the last year or so.
- 1.30.1. Q: Kathy – Why isn't it permanent? A: Jeff – The interim ordinance is addressed in the proposed Draft SMP that the committee has been reviewing.
- 1.31. Q: Roger – Did we ever discuss making the SMP setbacks the same as the CAO buffers. A: Jeff – Yes, that has been done. There is an exception for non-conforming lots.
- 1.32. Q: Liz – On page 63, does public access have to be provided for things that will not fall under maintenance? A: Jeff – Those activities would not require public access.
- 1.33. Q: Becky – What will be different from the June 30th update? A: Jeff – The responses in the comment matrix will be incorporated into the Draft SMP that will be forwarded to the Planning Commission for their review and recommendation. The Planning Commission will hold a public hearing on September 28th. Following the public hearing, they will go into work session and will ultimately make a recommendation to the County Council. The County Council may hold their hearing and have additional work sessions. Following County Council review, the SMP will be forwarded to Ecology for approval.
- 1.34. Q: Wendy – Will there be a new Draft SMP at the September 28th meeting? A: Jeff – Yes. The goal is to get the Draft SMP to County Council by the end of the year. Once the SMP is approved by Ecology it will be done.
- 1.35. Q: Wendy – When is the draft restoration plan coming out? A: Jeff – It is anticipated this coming Thursday.
2. Meeting adjourned.