

Additional Draft Shoreline Management Program Public Comment – Submitted to Planning Commission Written Record After August 30, 2006

Page Number	Section	Comment/Concern	Requested Change	Source of Comment	Resolution/Response
p. 37	23.50.05.B [June 30, 2006 Public Review Draft]	On August 30, 2006 I submitted seven different items of concern in the new Draft to WCPDS. Upon further review of the document, I would like to add several more comments suggestions: 23.50.05[B] Program Effects on Property Values RCW 84.34.020[1] has not changed in its wording or its meaning since the 1998 Edition of the WCSMP, which states that “Designation of private property as a Natural or Conservancy Shoreline Area pursuant to Section 23.30.40 FULFILLS the “open space land” definitional requirements of the Open Space Taxation Act of 1970, as amended, RCW 84.34.020[1].” Changing the wording in the new Draft to “MAY be considered in evaluating whether an application fulfills the criteria for “open space land”... would be in conflict with RCW 84.34.020[1] and WA State law.		Victoria Luhrs 09-20-2006	Noted. As the indicated, RCW 84.34.020(1) has not changed since the previous code. The language outlined in the existing SMP is not at variance with the statute, however it is potentially misleading because it infers that being designated Natural or Conservancy” fulfills the requirements of open space taxation when it really only serves to fulfill one of the criteria. In addition to meeting the definition of “open space” applications other than farmland must be approved by the county legislative body in accordance with RCW 84.34.037. There are a number of specific criteria in the statute, all of which must be met. Additionally, Whatcom County Code 3.28.020 outlines additional requirements, including Planning Commission review. The following amendment is recommended to address the concern: <ul style="list-style-type: none"> ▪ <i>SMP 23.50.05.B - Designation of private property as a Natural or Conservancy shoreline area pursuant to Chapter 3 <u>shall qualify the property as meeting the definition of may be considered in evaluating whether an application fulfills the criteria for “open space land” under the Open Space Taxation Act of 1970, as amended, RCW 84.34.020(1) and shall qualify such land for application for Open Space Taxation in accordance with RCW 84.34.37 and WCC 3.28.</u></i>
p. 40	23.50.08.C [June 30, 2006 Public Review Draft]	23.50.08[C] Property Rights This paragraph should precisely state “when” and “under what circumstances” County staff is allowed entry onto privately owned property, including the applicable Federal, State, and local laws governing this entry [RCW, WCC, etc.]		Victoria Luhrs 09-20-2006	Noted. In accordance with discussions with the Whatcom County Prosecuting Attorney’s Office the body of law related to entry on to private property is too extensive to be effectively incorporated into the SMP. Attempting to do so would introduce opportunities for inaccurate interpretations of the governing case law and statutes; however, it should be noted that the draft SMP at 23.50.08.C indicates that Whatcom County will observe all applicable federal and state laws and requirements related to entry on to private property. No change recommended.
p. 74	23.90.05.A.1-4 [June 30, 2006 Public Review]	23.90.05.A Policies 1-4 These policies take away the rights of private property owners to build on and use their land, and relinquishes their rights to the arbitrary decisions of the WCSMP staff and the Administrator. These rules have NOTHING to do with the “health, safety, or welfare” of the		Victoria Luhrs 09-20-2006	Noted. It is important to note that the provision in question is a policy and is consistent with the language outlined in the existing SMP. The specific implementing regulations associated

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	Draft]	property owner or the public. If WCPDS is so concerned with the public having a scenic view of all of the waters, mountains, historic sites/structures, farmlands, etc., etc., etc., then Whatcom County should purchase these lands themselves. Which “Staff” decides what is a “scenic view” and what isn’t? This policy is arbitrary and would spark an avalanche of “regulatory taking” lawsuits. [Of course, the taxpayers have to be able to pay for their attorney and court costs, while their taxes then ALSO pay for the County’s attorneys and the County’s total costs of the lawsuits against them. Is this the best way to spend taxpayer’s money instead of improving healthcare and education, and BUYING public, waterfront parks?]			with the cited policies are found in SMP 23.90.05.B. It should also be noted that the policies in question are consistent with the State Shoreline Guidelines (WAC 173-221(4)(b), 173-221(4)(d)(iv)). No change recommended.
p. 84-87	23.90.08.B [June 30, 2006 Public Review Draft]	23.90.08.B Requiring “public access” on private property violates Constitutional and WA State laws, and should be totally removed from this Draft!		Victoria Luhrs 09-20-2006	Noted. The policies and regulations outlined in the draft SMP have been reviewed by the Whatcom County Prosecuting Attorneys Office and have been deemed to be consistent with the applicable constitutional and statutory provisions of state and federal law. The basic nexus and proportionality tests required pursuant to federal law and are incorporated in SMP 23.90.08.A.2. No change recommended.
p. 100-102	Table 23.90.13.C [June 30, 2006 Public Review Draft]	SMP Table 23.90.13.C On many lots, these “Open Space percentages” will not allow for a residence to even be built. More “regulatory taking” lawsuits will ensure.		Victoria Luhrs 09-20-2006	The open space percentages outlined in the draft SMP are taken directly from the existing SMP and are not proposed to be amended. It is also important to note that the open space requirements outlined in the SMP have been part of the program since 1977. Additionally, the open space requirements associated with residential development do not apply to the construction of single-family residences. No change recommended.
p. 170	23.100.13.A.c [June 30, 2006 Public Review Draft]	23.100.13.A[c] I reiterate my concern over the word “imminent”. The SMP Draft has placed NO definition of “imminent” in Chapter 11 – Definitions. Webster’s Dictionary defines it as “ready to take place; hanging threateningly over one’s head”. Black’s Law Dictionary defines “imminent danger” as “An immediate, real threat to one’s safety that justifies the use of force in self-defense.” If a home or appurtenance has been determined, by a state-licensed geo-technical engineer to be in danger, then adequate shore protection should be permitted as quickly as possible for the health and safety of the family on that property. “Imminent” does not allow time for the 6-month [if you’re lucky] permitting process, plus the planning time needed to arrange for construction of the proposed shoreline stabilization. WA State law provides for “EFFECTIVE and TIMELY protection against loss or damage to single family residences and appurtenant structures due to shoreline erosions” [RCW 90.58.100[6].		Victoria Luhrs 09-20-2006	Noted. The following changes are recommended to address the stated concern: <ul style="list-style-type: none"> ▪ <i>SMP 23.100.13.A.3 - New or expanded structural shore stabilization should only be permitted where demonstrated to be necessary to protect an existing primary structure that is in imminent danger of loss or substantial damage, and where mitigation of impacts would not cause a net loss of shoreline ecological functions and processes.</i> ▪ <i>SMP 23.100.13.B.1.a - New or expanded structural shore stabilization for existing primary structures, including roads, railroads, public facilities, etc. is prohibited unless there is conclusive evidence documented by a geotechnical analysis that <u>there is a significant possibility that the structure will be damaged within three years as a result of is in danger from shoreline erosion caused by stream processes, tidal action or waves, and only when significant adverse impacts are mitigated to ensure no</u></i>

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					<i>net loss of shoreline ecological functions and/or processes. Where a geotechnical analysis confirms a need to prevent to potential damage to a primary structure, but the need is not as immediate as three years, the analysis may still be used to justify more immediate authorization for shoreline stabilization using bioengineering approaches.</i>
p. 170	23.100.13.A.h [June 30, 2006 Public Review Draft]	23.100.13.A[h] This policy of developing and regulating a whole drift sector for shoreline stabilization would only work in “the perfect world of shorelines”, which is not realistic. For example, my residence and garage/shop have been determined to be in danger from wave erosion. I need adequate shore protection to save my home. The Coastal Engineer has determined that our beach is classified as a “high-energy” beach [on DOE scale], which needs something as substantial as a rock revetment, a bulkhead, or a seawall to protect it. The 300-foot property just south of mine has no home built on it; therefore, by WCPDS regulations, NO shore protection can be installed on that property. On the next lot south, the home is built farther back from the bank than mine, and so has not been determined to be in danger yet. The next lot has no home on the waterfront side, so can have no bank stabilization. The owner of the next lot agreed to a binding covenant to never be able to install “hard shore-protection” on his beach [a condition of his Variance to be able to build a home on the lot.] Because of different soil composition, different bank heights, different wave energy hitting the beaches, different time-table threats to the homes and appurtenances, the whole thought process of this policy is just too unrealistic to fairly regulate. Can you imagine implementing this policy if ALL of the homes have to be in IMMINENT danger before shore-protection can proceed? This section should be deleted from the Draft.		Victoria Luhrs 09-20-2006	Noted. SMP 23.100.13.A.h is a policy that expresses a desire to coordinate shoreline stabilization and beach management measures. It is not a regulatory requirement; however, the following change is recommended to clarify the intent of the policy: <ul style="list-style-type: none"> SMP 23.100.13.A.H.8 Shore stabilization should be developed in a coordinated manner among affected property owners and public agencies for a whole drift sector (net shore-drift cell) or reach <u>where feasible</u>, particularly those that cross jurisdictional boundaries, to address ecological and geo-hydraulic processes, sediment conveyance and beach management issues. Where beach erosion threatens existing development, a comprehensive program for shoreline management should be established.
p. 173-174	23.100.13.B.1.b [June 30, 2006 Public Review Draft]	23.100.13.B.1[b] Bulkheads and other hard structures are prohibited on marine feeder bluff and estuarine shores... except as a conditional use under very limited conditions. A conditional use permit takes over 6 months to obtain, not including time to appeal, if necessary. This cannot be started until the danger is imminent. The home will probably be lost by then. A much better alternative is written in the 2003 San Juan County Unified Development Code 18.50.210A[4] “Bulkheads shall be permitted on marine feeder bluffs only where [a] a clear and significant danger to established development exists and [b] there is reasonable cause to believe that the bulkhead will in fact arrest the bluff recession and will not seriously disrupt the feeder action or the driftway.		Victoria Luhrs 09-20-2006	In accordance with the previous comment, the requirement for an imminent threat to be present prior to approval of a hardened shoreline stabilization structure is recommended to be removed. Additionally, it is important to note that in such cases where immediate action is needed and there is not enough time to secure the appropriate permits owners may protect their properties under the provisions for emergency exemptions. No additional change recommended.
p. 212	23.100.11.F.5 [June 30, 2006 Public Review Draft]	Chapter 11 – Definitions “Feeder bluff”. The phrase, “significant amount of” should be added before “eroded sand or gravel material is naturally transported”. Otherwise, there is no quantitative amount of sand and gravel necessary to label a bank as a “feeder bluff”. WCPDS Staff can arbitrarily call ANY bank on a drift cell a “feeder bluff” if it has only 2 pieces of sand or gravel in it and does not contribute material to an accretion shoreform at all. There should be a clearer, more exact determination for this classification of “feeder bluff”.		Victoria Luhrs 09-20-2006	Noted. Feeder bluffs are complex geological features that when evaluated individually often do not contribute significant amounts of sand or gravel to a given accretion shoreform; however, when taken in the aggregate their cumulative effect on such accretion shoreforms is significant. As a result, such a change to the definition of “feeder bluff” would introduce significant challenges to the management of such systems. No change recommended.

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Map		At this time I think it is sufficient to include an asterisk on the SMP map indicating that the GP designation is governed by "Stipulated Judgment No. 93-2-02447-6 between Governor's Point Development Company and Whatcom County, State of Washington, and Department of Ecology and is incorporated by reference into Whatcom County's Shoreline Management Program. A copy of the Judgment is on file with the Whatcom County Planning Department."		Dannon Traxler, Langabeer & Tull. P.S. 09-21-2006	Noted. Change recommended in advance of Planning Commission hearing on September 28, 2006. See draft SMP map for details.
General		I urge you to adopt the September 2006 draft shoreline master program because it provides strong environmental protections, especially for clean water and salmon habitat. As the population of Whatcom County continues to grow, the pressures on our natural resources will also increase. We need strong protections for these resources to ensure they remain healthy for current and future generations as well as the flora and fauna.		Eric Hirst 09-28-2006	Noted.
General		I want to thank you in advance for reviewing the draft Whatcom County Shoreline Master Program update. I wish to express my support for the plan as written. Overall, the plan is thoughtful, consistent with other County and City planning documents, and provides much needed protection for our public resources. Please ensure these protections are not weakened during the review process. Shorelines are an important resource for all our citizens. The Shoreline Master Program will help ensure future growth and activities do not jeopardize our natural assets.		Analiese Burns, Common Ground Environmental 09-28-2006	Noted.
General		<p>I am writing in support of a shoreline master program with strong protections for marine shorelines, salmon and orca habitat, kelp and eelgrass beds, and water quality.</p> <p>I support the current September draft and want to make sure that we continue to ensure that: clean water and salmon habitat is protected as new development occurs; we protect the quality of life of shoreline neighborhoods, by reducing shoreline erosion, ensuring land uses are compatible with each other; we encourage opportunities for public access, and make sure that land uses that generate new demand for public access provide it; and that we encourage opportunities for restoration, through incentive programs and other volunteer opportunities.</p> <p>Please do not let current draft policies be weakened, and please support policies that allow for the future use and orderly development of shorelines while protecting water quality and keeping our shorelines healthy, for example: policies in Chapter 9 for shoreline vegetation conservation, water quality and quantity, ecological protection and critical areas, and public access; and policies in Chapter 10 for shoreline stabilization, moorage - docks, piers and mooring buoys, and restoration and enhancement.</p> <p>I would like you to continue to strengthen policies for Cherry Point and Birch Bay to ensure that future development minimizes harm to water quality, salmon migration corridors, and herring spawning areas.</p>		Todd Citron 09-28-2006	Noted.
General		<p>I cannot make it to the hearing tonight on the SMP update but I want to voice my appreciation for keeping this a strong working doc. and my concerns about any policy changes that may weaken this current draft before you.</p> <p>Please encourage any changes that strengthen and do not weaken wording in this current draft document which is designed to protect water quality, keep our shorelines healthy, and ensure land uses that support a shoreline master program with strong protections for marine shorelines, salmon and orca habitat, kelp and eelgrass beds, and water quality. Please do not be blinded by shortsighted, environmentally uneducated property owners who do not understand what is good for themselves, their heirs or their communities.</p> <p>Overall, I support this September draft because it does a pretty good job of ensuring that clean water and salmon habitat is protected as new development occurs but it does not address residential development enough to make up for the negative accumulative effects on ecological functions of each individual lot that is cleared and built.</p> <p>Here on Lummi Island, residential development is the single biggest threat to our shoreline health and water resources. Without further buildout oversight, this degradation will happen one lot at a time with the end result the same as if it were one single large development.</p>		Wanda Cucinotta 09-28-2006	Noted. There is a countywide TDR program. Consideration of some of the ideas proposed for Lummi Island could potentially be advanced in future review of the TDR program.

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		<p>Please consider adding stronger language which includes small non-conforming lots when approving this plan.</p> <p>This could be done by requiring a TDR program that takes residential development away from the shoreline environment but gives landowner's use of their shoreline lots. There could be clusters of homes, within the TDR areas, overlooking the shoreline of which landowners own and can enjoy therefore not "taking" their right to a home and use of their property. Please support required new development fees on Lummi Island that will support land purchases for this TDR purpose. This plan could also work along many other Whatcom County's sensitive shoreline areas.</p> <p>Please be aware that without permit oversight these policies will not do what they are intended unless the Planning Department sets up policy to require mandatory onsite inspections for all (any) shoreline development and has the funds needed to do so.</p> <p>I encourage you also to keep strong language that:</p> <p>***Protects the quality of life of shoreline neighborhoods, by reducing shoreline erosion, ensuring land uses are compatible with each other.</p> <p>***Encourages opportunities for public access, and makes sure that land uses that generate new demand for public access provide it. (new development fees)</p> <p>***Encourages opportunities for community led restoration projects and through landowner incentive programs.</p> <p>Please also consider making Lummi Island a "Water Resource Special District" (like Birch Bay, Lake Whatcom, Lake Samish and Drayton Harbor) that has extra protections against non point source pollution for the protection of our fragile water resources and marine environments.</p>			
General		<p><u>General Comments</u></p> <p>Overall, the update does a fairly good job of protecting shorelines and habitat that will help protect Puget Sound water quality and its natural resources, such as shellfish beds, forage fish spawning habitat, and natural shoreline processes upon which numerous species, including juvenile salmon rely. We also generally support the environmental designations, the general policies and regulations, and the use policies and regulations, which will foster appropriate shoreline uses and future development along the shoreline, while reducing potential conflicts with existing uses and minimizing environmental impacts.</p> <p>In particular, we support the policies and regulations in Chapter 9 for: vegetation conservation; water quality and quantity; ecological protection and critical areas; and public access. We also support the policies and regulations in Chapter 10, particularly the shoreline stabilization; moorage: docks, piers and mooring buoys; flood control works and instream structures; and restoration and enhancement.</p>		Cyrilla Cook, People for Puget Sound, and Tim Trohimovich, Futurewise 09-28-2006	Noted.
p. 16	23.30.04.1	<p><u>Requests for Revisions</u></p> <p>We believe that several improvements should be made to improve the draft...</p> <p>Urban resort designation revisions: restoration of degraded processes was removed as a goal of this designation.</p> <p>Concern: This seems inconsistent with the shorelines of statewide significance designation for Birch Bay (23.10.03), which states that redevelopment should be encouraged where restores or enhances shoreline functions and processes impaired by prior development activities.</p> <p>Birch Bay contains Pacific herring spawning areas, and restoration will be particularly important to stem further decline of this population.</p>	<p>The urban resort policies should include restoration through incentive programs as a goal of this designation.</p> <p>For Birch Bay, designated as a shoreline of statewide significance, lodging and related facilities should be required to provide public benefits similar to that of 23.100.05B.1.d, such as public access, including trails and viewpoints or restoration of degraded herring spawning habitat.</p>	Cyrilla Cook, People for Puget Sound, and Tim Trohimovich, Futurewise 09-28-2006	As noted in previous public comments received regarding the Urban Resort Shoreline Area Designation, the primary purpose of the designation is to facilitate a more intensive tourist oriented use of the shoreline. As a result, it may not be appropriate to include restoration of the shoreline as a primary goal or objective for the area designation; however, it is important to note that consistent with the State Shoreline Guidelines, where permitted, nonwater-oriented commercial developments must provide public benefits with respect to public access and/or restoration within all shoreline area designations.

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p. 83-84	23.90.08.A	The public access policies have been revised; new development will not be required to address existing deficiencies. Concern: Need to make sure that this revision doesn't affect ability of County to implement Section 23.40.03.e, which allows non-water oriented commercial uses only if public benefits such as access or restoration are provided. Public benefits will only accrue if sufficient public access is provided beyond that needed to meet generated demand of the proposal.	Ensure the language is clear that for consistency with the SMA, certain uses are only allowed conditionally, and those conditions mean provision of public benefits: either restoration of degraded habitat beyond that what is needed to mitigate project impacts, or public access beyond what is needed to meet demand generated by a project proposal.	Cyrilla Cook, People for Puget Sound, and Tim Trohimovich, Futurewise 09-28-2006	Noted. Consistent with the State Shoreline Guidelines nonwater-oriented industrial or commercial uses are prohibited except where physically separated from the shoreline or where such uses provide a public benefit in the form of public access and/or ecological restoration. No change recommended.
p. 131	23.100.05.C.2	Commercial uses allowed in the urban resort designation include the following water-oriented resort uses: high-rise resorts or hotels, motels, restaurants and small scale delicatessens, barber and beauty shops, sporting goods stores, bicycle rental, camera shops, book shops. Nonwater-oriented commercial may be permitted as a conditional use subject to the criteria for such uses in SMP 23.100.05.B.1.d. Commercial uses allowed in this designation are permitted either by themselves or as part of a structure or development also containing residential uses, subject to policies and regulations of this program. Concern: Beauty and barber shops, camera and book shops do not meet the definition of "water-oriented": for example, they do not facilitate public access or foster shoreline enjoyment. These uses are also inconsistent with the shorelines of statewide significance designation, which states that uses that do not require waterside location should be located so that lawful public enjoyment of shorelines is enhanced. Per the SMP guidelines, lodging and related facilities should be located inland and provide for appropriate means of access to the shoreline.	The uses listed under urban resort should be subject to conditional use and the criteria for nonwater-oriented commercial (23.100.05.B.1.d). They should not be allowed to occur by themselves, rather, they should be part of a mixed-use project that has water-oriented uses. In Birch Bay, lodging and related facilities should be required to provide public benefits similar to that of 23.100.05.B.1.d, such as public access, including trails and viewpoints or restoration of degraded habitat.	Cyrilla Cook, People for Puget Sound, and Tim Trohimovich, Futurewise 09-28-2006	Noted. The following change is recommended to address the stated concern: <ul style="list-style-type: none"> 23.100.05.C.2 - Urban Resort: Water-oriented resort oriented commercial development is permitted subject to policies and regulations of this Program. Examples of permitted uses are high-rise resorts or hotels, motels, restaurants and small scale delicatessens, barber and beauty shops, sporting goods stores, bicycle rental, camera shops, book shops, and other water-oriented related uses. Nonwater-oriented commercial may be permitted as a conditional use subject to the criteria for such uses in SMP 23.100.05.B.1.d. <u>Commercial uses allowed in this designation are permitted either by themselves or as part of a structure or development also containing residential uses, subject to policies and regulations of this Program.</u>
p. 148	23.100.08.B.7	Quarry mining is allowed in marine shorelines by conditional use in the conservancy environment. Concern: Quarry mining is incompatible with protection of marine shoreline habitat, such as salmon migration corridors or rockfish habitat.	Prohibit mining in areas of rockfish habitat.	Cyrilla Cook, People for Puget Sound, and Tim Trohimovich, Futurewise 09-28-2006	Noted. In accordance with the Whatcom County Comprehensive Plan there are no Mineral Resource Lands within shorelines jurisdiction along the marine shorelines.
p. 194-200	23.100.17 – Cherry Point Management Area	Cherry Point Management Unit has been modified; designation is not subject to Chapter 9 (general policies, including ecological protection), or use policies in 100.10-100.13, unless referenced in this sections. Eelgrass and Pacific herring spawning habitat do not appear to be protected in the Cherry Point Mgt Unit at the same level as Provided under Chapter 9. There are no policies for protection of native vegetation needed to shade herring spawning area. While mitigation is required for impacts, replacement of these habitats is a technical challenge, and success may be limited. This designation is also not subject to the restoration policies. Restoration through incentives during redevelopment may be needed to prevent further decline of herring populations.	New piers and overwater structures should be required to avoid impacts to ambient light conditions and stable mud substrate needed for eelgrass, through careful design and emerging technology. Add appropriate policies to encourage planting of native vegetation along shorelines, especially during redevelopment. Example: "uses adjacent to the ordinary high water mark should be designed in a manner that provides landscaping and environmental restoration at the water's edge consistent with constitutional and other limitations on the regulations of private property. Add appropriate policies to encourage ecological restoration during redevelopment.	Cyrilla Cook, People for Puget Sound, and Tim Trohimovich, Futurewise 09-28-2006	The Whatcom County Critical Areas Ordinance has been adopted by reference. Therefore, the protective measures for critical areas contained therein, including those for fish and wildlife habitats, are incorporated in whole. Through the mitigation sequencing outlined in SMPXXXX and the provisions of the CAO nearshore habitats, including eelgrass are protected. Prescriptive measures such as those found in Chapter 9 are appropriate for individual docks; however, the Technical and Citizens Advisory Committees determined that larger scale projects such as those likely to be developed in the Cherry Point Management Unit should rely more on case-by-case evaluation of impacts and development of appropriate mitigation measures.

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					In accordance with constitutional limitations on land use regulations restoration may not be required to address development impacts on private properties. However, the draft SMP does include provisions for vegetation conservation consistent with the State Shoreline Guidelines at SMP 23.90.06.A.
p. 83-87	23.90.08 – Public Access	<p>I. Public Access</p> <p>One of our greatest concerns is with the public access portion of this draft. A great deal of confusion remains with the concept that private property owners, or proponents of private development projects, must allow public access onto private property. Not only does this notion violate Washington State law, it violates the United States Supreme Court decisions in <u>Nollan v. California Coastal Commission</u>, 483 U.S. 825 (1987) and <u>Dolan v. City of Tigard</u>, 512 U.S. 374 (1994).</p> <p>In response to our concerns in the August 30th testimony, Whatcom County staff has attempted to make some changes to the public access section in the September 2006 draft. We are pleased with the change to the Public Access policies section at Proposed WCC §23.90.08.A (p. 83). The new addition to the section states that</p> <p>[p]hysical or visual access to shorelines should be incorporated in all new development when the proposal would either generate a demand for one or more forms of such access, and/or would impair existing legal access opportunities or rights... As required by the Governing Principles, all such conditions should be consistent with all relevant constitutional and other legal limitations on regulation of private property. Proposed WCC §23.90.08.A(2) (2006).</p> <p>We believe that this addition will assist in understanding and enforcement of this plan. However, we are still concerned that there is a great deal of public misperception of public shoreline access. For example, in the comment matrix in response to our public access concerns, the reply was "(a) Whether the requirement serves a valid public purpose. In the case of the Shoreline Management Act [referring to Washington State's Shoreline Management Act] public access is mandated." (Comment Matrix, p. 14).</p> <p>That simply is not the case. Washington State's Shoreline Management Act (SMA) explains that local government, "in developing master programs for shorelines of statewide significance, shall give preference to uses in the following order of preference which: (5) Increase public access to publicly owned areas of the shorelines." WASH. REV. CODE §90.58.020 (2006). In addition, state law explains that local master programs, "shall include, when appropriate, the following: (b) A public access element making provision for public access to publicly owned areas [.]" WASH. REV. CODE §90.58.100(2)(b) (2006).</p> <p>However, the SMA does not talk about demanding public access to private property, or private shorelines. We strongly believe that there needs to be further discussion and clarification of these constitutional issues.</p> <p>In addition, while we appreciate the list of exemptions to public access, such as single-family residential and agriculture (found at WCC §23.90.08.B(3)), we do not understand the state statutory authority for requiring public access dedications of land, or the requirements of constructing walkways and providing picnic tables and sufficient parking on private property that will run with the land in perpetuity. We also do not understand how that can be constitutional, particularly in relation to the nexus and proportionality requirements of <u>Dolan</u>. We strongly recommend that this section be removed.</p>		Building Industry Association of Whatcom County (BIAWC) 09-28-2006	Noted.

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p. 75-78	23.90.06 – Vegetation Conservation	<p>II. Vegetation Management and “Qualified Professional” and “Qualified Consultant”</p> <p>We want to thank the staff for addressing our concerns with the definition of “qualified professional” and “qualified consultant.” We suggested that “botanist” be added as a qualified professional for the vegetation section. We are pleased to see botanist added in the definition section Chapter 11, page. 228. However, it would be helpful to find this information in the actual vegetation section text.</p> <p>However, many of our concerns with vegetation management have not been addressed. We still have not received a response to our request that lawns be allowed, nor is there an exception for ornamental flowers, shrubs, and plants that may be non-native vegetation. We believe that language similar to the critical areas ordinance for maintenance of existing, lawfully established vegetation is added for shoreline areas. (See Whatcom County’s Critical Areas Ordinance provision at WCC §16.16.230(B) (2005)).</p>		BIAWC 09-28-2006	Noted. The regulations associated with vegetation management in the draft SMP defer to the adopted Critical Areas Ordinance buffer requirements and provisions which, in accordance with the provisions of SMP 23.10.06.A and 23.90.03, are incorporated by reference and are proposed to be applicable within SMP jurisdiction. Therefore, incorporating such language within the SMP verbatim would be unnecessarily redundant and would introduce opportunities for error in implementation. No change recommended.
p. 228	23.110.Q.1 – “Qualified Professional” or “Qualified Consultant”	<p>We want to reiterate our earlier concerns with the premise of the “qualified professional” or “qualified consultant”. While we appreciate that language has been added to the wetland identification professional to make it more constitutional, we still do not understand why three years of experience needs to be required if a professional is legally licensed in the state of Washington. (Definition Section, Chapter 11, p. 228.) In most disciplines that require licensing, a professional is considered competent if he/she is licensed. We need more explanation as to why the County has chosen to have a year requirement. We are concerned that this is an arbitrary restriction on a professional to practice.</p>		BIAWC 09-28-2006	Noted. In the current draft of the SMP there is no requirement to have a “year requirement” for professions that have licensing requirements. The requirement for three years of professional experience is intended to ensure that applicants are represented by truly qualified professionals and facilitate a timely review process for development applications. No change recommended.
p. 178-182	23.100.14 – Signs	<p>III. Signs</p> <p>We have grave concerns with the sign section as written. We respect that Whatcom County staff has made some improvements, but as written this section still violates the United States’ Constitution’s First Amendment guarantee of freedom of speech. We appreciate the new section that states Whatcom County “recognizes the constitutional right for property owners to communicate using signs on their property...” Proposed WCC §23.100.14(1) (2006) (p. 178). However, the way the way the text is written makes the opposite occur.</p> <p>For example, in the “Signs Regulations” section there is the statement that “political signs within the campaign season” are allowed on private property on private shorelines. (Proposed WCC §23.100.14.B (2006).) In effect, this is a denial of political speech, as there are time restrictions placed on these signs. In reality, political speech (which is a fundamental right under the First Amendment) cannot be restricted by a government entity without a strict scrutiny analysis. A blanket provision like what is being proposed can be unconstitutional.</p> <p>We do not understand what the reason is for limitation on free speech in Whatcom County’s Shoreline Management Program, and we would greatly appreciate a legal opinion from the County with appropriate citations explaining how this section would pass a constitutional challenge.</p>			<p>Noted. The following revision is recommended to address the stated concern:</p> <ul style="list-style-type: none"> SMP 23.100.14.B.1 - Unless otherwise prohibited by zoning regulations or this Program, shoreline developments are permitted to maintain a total of three (3) on-premise signs; provided that, only one (1) may be a free-standing, roof, or projecting sign; further provided, that if this sign is double-faced, then only one (1) other wall sign is permitted. Further provided that this provision does not apply to private informational signs posted on private property by the owner for reasonable purposes such as address, home occupation signs, No Trespass, and temporary signs such as For Sale, Rent and political campaign signs within the campaign season; provided, no sign exceeds four (4) square feet in area. All signs proposed for a development requiring a substantial development permit shall be designated on application and approval documents.
General		<p>Ensuring that we have clean water and adequate salmon habitat is critical to the survival of our native salmon species. I strongly support the adoption of an ordinance that provides strong protections for marine shorelines, salmon and orca habitat, forage fish, kelp and eel grass beds, and water quality.</p> <p>We should also take steps to prevent shoreline erosion and ensure that permitted land uses</p>		Elisabeth Darby Britt 09-28-2006	Noted.

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		<p>are compatible with each other. I would like to encourage the Planning Commission to recommend policies that allow for future use and orderly development of shorelines while protecting water quality. In particular, we need to ensure that we make provisions for ecological protection of shoreline vegetation and critical near shore areas.</p> <p>Please strengthen policies for Bellingham Bay, Cherry Point and Birch Bay to ensure that future development doesn't harm water quality, salmon migration corridors and herring spawning areas. I grew up on Birch Point and have wonderful memories of smelt and herring running along the shoreline.</p> <p>In closing, please support restoration of degraded shorelines while ensuring that there is adequate shoreline for water dependent uses or water oriented uses, including single family development. I also strongly support providing public access when feasible.</p>			
General		<p>Recent news of a large fish kill in Hood Canal only highlights the critical importance of protective planning for our shorelines and adjacent water bodies. I urge you to strengthen the shoreline rules to head off such problems before they occur. This "do no harm" model may appear to cost more, and indeed some members of our society say we cannot afford such protections.</p> <p>However, recent NW history has shown over and over (Duwamish waterway, Asarco & the Port of Tacoma, Georgia-Pacific mercury, etc) that in fact ignoring the problems and cleaning them up later is vastly more expensive, and even worse, the costs are borne almost exclusively by the public, when most of the pollution is from private enterprise.</p> <p>Strict shoreline setbacks, septic management, and restrictions on commercial and industrial uses of the shore and near shore environments are essential if we are to pass on a sustainable environment to our children's children.</p>		Rodd Penble 09-29-2006	Noted.
General		<p>I was unable to attend the hearing on the 28th, due to illness. However I want you to know that I support the September draft. Please do not allow current draft policies to be weakened. I also urge you to strengthen policies for Cherry Point and Birch Bay to ensure that future development minimizes harm to water quality, salmon migration corridors, and herring spawning areas.</p> <p>Our water -- in both the Bay and "resevoir" -- is our most precious resource and must be protected.</p>		Libby Hazen 09-29-2006	Noted.
General	Bulkhead Repair and Replacement	<p>The proposed rules for the re-construction of bulkheads that are damaged or need repair are not fair to property owners. The grandfather rules should apply. To make us go through expensive studies and approvals is just another bad example of government taking more power at the expense of the citizens.</p> <p>Most of have bulkheads to protect us from storms. The only time salt water touches them is during a storm. They have no effect on the beach except to protect our houses. I believe your agenda is to destroy the houses we live in.</p>		Arne Cleveland 09-29-2006	Consistent with the State Shoreline Guidelines at WAC 173-26-231(3)(iii)(c), the provisions for non-conforming development outlined in the draft SMP update do apply to bulkheads and replacement of such structures is allowed where there is a demonstrated need to protect existing primary uses or structures or public facilities from erosion caused by tidal action, stream undercutting. Additionally, the provisions for maintenance and repair of lawfully established structures apply to such structures. No change recommended.
General		<p>This draft plan is still confusing.</p> <p>I asked Hal Hart, his assistant and one of the consultants the same question: Which section supercedes which when the sections contradict each other with regards to General Policies and Regulations vs Applicability and Non-Conforming uses. I got three different answers! PLEASE RESPOND: Why can't the plan say what it means and mean what it says? The</p>		Michelle Luke 10-05-2006	Noted. The SMA and associated SMPs are inherently complex pieces of legislation. Locally adopted SMPs must serve as a comprehensive plan as well as provide for the development regulations for Shorelines of the State. As a result, there are a variety of issues that must be

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		property owner deserves a basic level of predictability. The plan does not provide this in the text.			addressed in the Program ranging from provisions for shoreline dependent development to the protection of shoreline ecological functions. As a result, great effort has been extended to develop a clearer more streamlined version of the SMP that provides for greater predictability while complying with the State Guidelines.
Chapter 2 – Goals and Objectives	Public Trust Doctrine	The Public Trust Doctrine needs to be included in the goals of the SMP for the following reasons. 1) PTD dates to statehood while SMP dates to the 70's. Important corrective action will not take place if we depend only on the SMP. (examples) a) The salt water marsh at the north end of Birch Bay was filled in just before SMP was adopted yet it is Public Trust lands below the mean high water mark. The break water at the mouth of the Birch Bay marina blocks the flow of material along the beach. b) The restaurant on the shoreline of Birch Bay was built below the mean high water mark on PT lands. c) The old Whatcom landfill north of Whatcom Creek is likely Public Trust Lands. 2) Public employees seem to be more concerned with private law suites then protecting public rights from private taking. Public employees need to have PTD training.		Gerald Larson, MRC 10-09-2006	Noted. The Public Trust Doctrine has been included in the Governing Principles section of the draft SMP update at SMP 23.10.03.E. No change recommended.
p. 98 - 99	23.90.13.B.7.a & d	I just discovered two problems impacting the Port property behind Mt. Baker Plywood. The CAO buffer in this area is 150 feet, which impacts 4.75 acres of the 6 acre parcel. .54 acres is outside of shoreline jurisdiction. 1.97 acres of the site could be useable with buffer averaging. This is one of the few remaining waterfront industrial sites in Bellingham with access to deep water. The site could be used for expansion of Bellingham Cold Storage, for dry boat storage or to offload and stock pile gravel from Lummi Island, which is currently stored adjacent to the GP lagoon, or a variety of other water-related uses. The Coast Guard is looking at the possibility of relocating their Bellingham station on this site. Two problems I see with the proposed shoreline regulations are: 23.90.13.B. provides seven exceptions to allow use of shoreline buffers. None of those seem to allow upland land uses or facilities to support water-oriented uses. 23.90.13.B.7.a. provides for uses "waterward of the ordinary high water mark", but if a barge needed to offload gravel, it appears that the gravel could not be off loaded or stored in the shoreline buffer. There are other areas in Whatcom county, particularly at Cherry Point, where goods off loaded at a dock would need to be loaded or stored within the buffer. 7.a. could be broadened to allow water-oriented uses within shoreline buffers. 23.90.13.B.7.d. regarding buffers allows roads to cross shoreline buffers only to access water-dependant uses. The only way to access the property behin[d] Mt. Baker Plywood is through a shoreline buffer. The Mt. Baker Plywood site buildings block the only upland access. If you changed "water-dependant" to "water-related" it would give more latitude for use of this parcel and similar parcels where the only acces[s] is through a buffer.		Sylvia Goodwin, Port of Bellingham 10-10-2006	Noted. The uses cited in the comment all appear to be water dependent uses or accessory to water dependent use. Such uses are allowed within the CAO buffer when appropriate mitigation is provided. Additionally, it is important to note that the proposed SMP update includes proposed amendments to WCC 16.16 included in Exhibit 2 to the SMP staff report which allow for alteration of critical areas and/or buffers to accommodate water-oriented uses; however, in order to more completely address the stated concern the following change is recommended: <ul style="list-style-type: none"> WCC 16.16.225.B <i>Alteration of critical areas and/or buffers is prohibited except when...</i> <p>3. <i>Alteration is necessary to accommodate an approved commercial/industrial shoreline dependent water-oriented use and any associated development/activity and/or the development activities listed in SMP 23.90.13.B.7.a when permitted in accordance with the Whatcom County Shoreline Management Program (SMP) where the facility provided that such development is operated, located, designed and constructed to minimize and, where possible, avoid critical area disturbance to the maximum extent feasible; or...</i></p>

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Map	Jorgensen Lake	I am submitting this letter with concern of putting Jorensen Lake under the Shoreline Management Program. At this time, I believe it would be premature to put this lake in such a designation. Not enough time and information has been gathered by the county and surrounding property owners to make a fair judgment on the faith of this lake. We [the property owners] would like to work with the county to study and possibly do a thorough survey of the lake shoreline with the DOE to come up with an equitable solution. Please delay any action at this time before receiving all input for all concerned.		Thomas Bartl 10-12-2006	Noted. Staff has conducted additional research regarding the status of Jorgensen Lake as a Shoreline of the State. In accordance with staff's assessment of the existing historic aerial photographs it appears that the area of the lake fluctuates seasonally; however, there is evidence that in all ordinary years that the level of the lake is equal to or greater than 20 surface acres. No change recommended.
p. 198	23.100.17.B.4.b (1)	<p>In response to ConocoPhillips' comment that section 23.100.17.B.4.(b)(1) of the draft SMP does not make it clear that maintenance dredging is allowed for existing piers, the matrix reads:</p> <p>"Noted. SMP 23.100.17.B.4.b.1 indicates that dredging for existing development is permitted when limited to the minimum necessary and interference with the intertidal zone is minimized. Clarification has been added to allow for such activities when associated with maintenance of existing development. No change recommended."</p> <p>As we discussed this morning, the fact that the response states that "clarification has been added," but then states that no change is recommended makes the response rather confusing. This morning you said that the response was intended to convey that new language was added to the draft SMP in order to clarify the language of the current SMP, and to make clear that dredging projects for existing piers, such as navigation maintenance dredging, is allowed subject to the conditions listed in subsection 17.B.4.(b)(1).</p> <p>Please let me know if my recap of our conversation is accurate. As I said this morning, I certainly understand what a herculean task it is to create a comment matrix for a document as complex as the draft SMP. The fact that out of the many dozens of responses you drafted one is not completely clear is totally understandable. ConocoPhillips simply wishes to have a statement in the administrative record which clarifies the comment matrix response mentioned above and ensures the County's reading of section 23.100.17.B.4.b.1 as it relates to maintenance dredging is appropriately memorialized.</p>		Steven J. Thiele, Stoel Rives, LLP 10-12-2006	Noted. The response outlined in the comment matrix was intended to indicate that clarification had been added to the Public Review Draft version of the SMP to clarify that maintenance dredging is allowed within the Cherry Point Management Area were appropriate.
General	Bulkhead Repair and Replacement	Speaking with a few neighbors and from my understanding, the major concern for the homeowners along the water of Birch Bay Drive is the proposed rule change for the reconstruction of bulkheads that are damaged or in need of repair. We find them to be unfair against all of us as property owners. It seems it would only be fair if a 'grandfather rule' applied for existing homes with bulkheads. The bulkhead that my grandfather built along with the adjoining neighbor back in the early 1970s, was designed to protect the homes from winter storms. Basically the only time water gets in contact with the wall is during the winter months when the winds / tides reach an extreme.		Tim Carkner 10-12-2006	Noted. Consistent with the State Shoreline Guidelines at WAC 173-26-231(3)(iii)(c), the provisions for non-conforming development outlined in the draft SMP update do apply to bulkheads and replacement of such structures is allowed where there is a demonstrated need to protect existing primary uses or structures or public facilities from erosion caused by tidal action, stream undercutting. Additionally, the provisions for maintenance and repair of lawfully established structures apply to such structures. No change recommended.
General	Public Access	<p>The Shoreline Management Act includes a strong public policy to "[i]ncrease public access to publicly owned areas of the shorelines."¹ Developments approved under the Shoreline Management Act generally include requirements for public access.²</p> <p>I understand that questions have been raised about the constitutionality of the public access</p>		Tim Trohimovich, Futurewise 10-12-2006	Noted.

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		<p>requirements in the proposed shoreline master program update. We strongly believe that they are constitutional and good public policy.</p> <p>Shoreline master programs must comply with the shoreline master program guidelines adopted by the Washington State Department of Ecology.³ The current shoreline master program guidelines were negotiated by a broad group of stakeholders to settle appeals over Ecology's earlier regulations. The stakeholders included members of the conservation community, including Futurewise, local governments, and the business community, including the Association of Washington Business and the Building Industry Association of Washington.⁴ This broad group of stakeholders agreed to guidelines that mandate public access requirements for shoreline master programs. These guidelines were subjected to careful legal, policy, and environmental analysis. Perhaps for these reasons, the guidelines have not been appealed and are presumed to be constitutional.⁵ A copy of the public access subsection is enclosed. The county's updated shorelines master program must follow these guidelines.</p> <p>In evaluating claims that public access requirements are unconstitutional it is important to understand that the Shoreline Management Act is the legislative implementation of the Public Trust Doctrine.⁶ In <i>Esplanade Properties LCC v. Seattle</i>, the Ninth Circuit Court of Appeals held that Washington's public trust doctrine fit the takings exception in <i>Lucas v. South Carolina Coastal Commission</i>, 505 U.S. 1003 (1992). Therefore, the shoreline master program regulations that prohibited a property owner from building a deck at the foot of Magnolia Bluff on which to construct several homes over Puget Sound was not a taking since the Public Trust Doctrine meant the owner did not have a property right to build the deck in the first place. This was so even though the property owner had no economic use of the Puget Sound tidelands. While <i>Esplanade Properties LCC</i> dealt with a total takings (a takings where the property owner has no economic use of their property) and public access requirements have much less economic impact on the property owner, the same principle may apply to related provisions including public access requirements. This is especially so given that one of the important aspects of the Public Trust Doctrine is to protect the public's right to use navigable waterways such as Puget Sound, rivers, streams, and lakes.⁷</p> <p>While there have been very few takings claims under Washington's Shoreline Management Act or against shorelines master programs, it is comforting to know that our Supreme Court has held that it is Washington State that is liable for takings claims and defense costs when a takings claim is filed against a shoreline master program that substantially complies with the state guidelines.⁸ This is another good reason to adopt public access provisions that follow the state guidelines.</p> <p>I hope we have addressed the issues raised around the issue of public access. We strongly urge you to adopt public access requirements consistent with shoreline master program guidelines.</p> <p>¹ RCW 90.58.020(5). ² See <i>State Dept. of Ecology v. Ballard Elks Lodge No. 827</i>, 84 Wn.2d 551, 55 – 54, 527 P.2d 1121, 1123 (1974). ³ RCW 90.58090(2)(d). ⁴ <i>State of Washington, Department of Ecology, et al. v. Shorelines Hearings Board, et al.</i>, Thurston County Superior Court Cases Nos. 01-2-01790-7, 01-2-01792-3, 01-2-01793-1, and 01-2-01797-4 Consolidated Stipulation of Parties and Stipulation For Dismissal pp. 1 – 9 available at: http://www.ecy.wa.gov/programs/sea/SMA/guidelines/downloads/Court_Stipulation.pdf ⁵ <i>Nguyen v. State Department of Health Medical Quality Assurance Commission</i>, 144 Wn.2d 516, 536 – 37, 29 P.3d 689, 698 – 99 (2001). ⁶ <i>Caminiti v. Boyle</i>, 107 Wn.2d 662, 670 – 71, 732 P.2d 989, 995 (1987).</p>			

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		<p>⁷ <i>Orion Corp. v. State</i>, 109 Wn.2d 621, 641, 747 P.2d 1062, 1073 (1987). ⁸ <i>Orion Corp. v. State</i>, 109 Wn.2d 621, 643 – 44, 747 P.2d 1062, 1074 (1987).</p> <p>Enclosure WAC 173-26-221 (available from: http://apps.leg.wa.gov/WAC/default.aspx?cite=173-26-221) (4) Public access.</p> <p>(a) Applicability. Public access includes the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations. Public access provisions below apply to all shorelines of the state unless stated otherwise.</p> <p>(b) Principles. Local master programs shall: (i) Promote and enhance the public interest with regard to rights to access waters held in public trust by the state while protecting private property rights and public safety. (ii) Protect the rights of navigation and space necessary for water-dependent uses. (iii) To the greatest extent feasible consistent with the overall best interest of the state and the people generally, protect the public's opportunity to enjoy the physical and aesthetic qualities of shorelines of the state, including views of the water. (iv) Regulate the design, construction, and operation of permitted uses in the shorelines of the state to minimize, insofar as practical, interference with the public's use of the water.</p> <p>(c) Planning process to address public access. Local governments should plan for an integrated shoreline area public access system that identifies specific public needs and opportunities to provide public access. Such a system can often be more effective and economical than applying uniform public access requirements to all development. This planning should be integrated with other relevant comprehensive plan elements, especially transportation and recreation. The planning process shall also comply with all relevant constitutional and other legal limitations that protect private property rights. Where a port district or other public entity has incorporated public access planning into its master plan through an open public process, that plan may serve as a portion of the local government's public access planning, provided it meets the provisions of this chapter. The planning may also justify more flexible off-site or special area public access provisions in the master program. Public participation requirements in WAC 173-26-201 (3)(b)(i) apply to public access planning. At a minimum, the public access planning should result in public access requirements for shoreline permits, recommended projects, port master plans, and/or actions to be taken to develop public shoreline access to shorelines on public property. The planning should identify a variety of shoreline access opportunities and circulation for pedestrians (including disabled persons), bicycles, and vehicles between shoreline access points, consistent with other comprehensive plan elements.</p> <p>(d) Standards. Shoreline master programs should implement the following standards: (i) Based on the public access planning described in (c) of this subsection, establish policies and regulations that protect and enhance both physical and visual public access. The master program shall address public access on public lands. The master program should seek to increase the amount and diversity of public access to the state's shorelines consistent with the natural shoreline character, property rights, public rights under the Public Trust Doctrine, and public safety. (ii) Require that shoreline development by public entities, including local governments, port districts, state agencies, and public utility districts, include public access measures as part of each development project, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline environment. Where public access planning as described in WAC 173-26-221 (4)(c) demonstrates that a more effective public</p>			

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		<p>access system can be achieved through alternate means, such as focusing public access at the most desirable locations, local governments may institute master program provisions for public access based on that approach in lieu of uniform site-by-site public access requirements.</p> <p>(iii) Provide standards for the dedication and improvement of public access in developments for water-enjoyment, water-related, and nonwater-dependent uses and for the subdivision of land into more than four parcels. In these cases, public access should be required except:</p> <p>(A) Where the local government provides more effective public access through a public access planning process described in WAC 173-26-221 (4)(c).</p> <p>(B) Where it is demonstrated to be infeasible due to reasons of incompatible uses, safety, security, or impact to the shoreline environment or due to constitutional or other legal limitations that may be applicable.</p> <p>In determining the infeasibility, undesirability, or incompatibility of public access in a given situation, local governments shall consider alternate methods of providing public access, such as off-site improvements, viewing platforms, separation of uses through site planning and design, and restricting hours of public access.</p> <p>(C) For individual single-family residences not part of a development planned for more than four parcels.</p> <p>(iv) Adopt provisions, such as maximum height limits, setbacks, and view corridors, to minimize the impacts to existing views from public property or substantial numbers of residences. Where there is an irreconcilable conflict between water-dependent shoreline uses or physical public access and maintenance of views from adjacent properties, the water-dependent uses and physical public access shall have priority, unless there is a compelling reason to the contrary.</p> <p>(v) Assure that public access improvements do not result in a net loss of shoreline ecological functions.</p>			
Chapter 3 – Shoreline Jurisdiction and Area Designations	Associated Wetlands	<p>I have not read the complete draft as yet, but my concerns/comments regarding the draft SMP are:</p> <p>1) If a body of water (surficial) is designated as a shoreline area because of its size (i.e. over 20 acres - eg. Jorgesen Lake), should not the associative bodies of water linked to the same designated body of water through surface or ground water connectivity, although separated via beaver dams or narrow land masses, also be included and listed as part of that body of water so designated as shoreline? That is should not the whole wetland complex of the Mosquito Lake Bogs, Mosquito Lake and Jorgesen Lake and the unnamed wetlands lying S-SE of Mosquito Lake Road all be included into the Jorgesen Lake shoreline area? I believe that they should since the complex of wetlands are hydrologically interconnected. I believe that the Beaver Ponds Complex associated with H street et. al. within (I believe) the Bertrand Creek sub basin watershed should also be listed as a possible shoreline?</p>		Jayne Uerling, 10-13-2006	Noted. Pursuant to the Shoreline Management Act shoreline jurisdiction includes all shorelines of the state (e.g. lakes 20-acres in size or greater, marine waters, streams with a mean annual flow of 20 c.f.s or greater) and their associated wetlands. The wetland areas of concern may potentially be considered associated and therefore within the jurisdiction of the SMP; however, SMP jurisdiction will not extend 200-feet from such associated wetlands and the provisions for such features will essentially be identical to the standard provisions of the CAO (which already apply). It is also important to note that associated wetlands cannot be mapped and identified on the official shoreline map as the County does not have a comprehensive inventory of such wetlands. No change recommended.
Chapter 5 – Applicability and Non-conforming Uses	Non-conforming Single Family Residence	<p>2) The ability to obtain building permits to rebuild a single family residence, in situ, within a conservancy shoreline designation and within 100' of the 200' buffer being established for a shoreline/wetland where the shape, location, geology, and topography of the parcel/lot is such that no other site would be more suitable and less detrimental to the continued, and would otherwise increase, degradation of the shoreline/wetland boundary. And where the condition and continued safety of the existing house is such that any type of remodel to the structure would virtually necessitate a rebuild to bring the structure into compliance with building codes and improved safety and health concerns and where any thing other than a complete rebuild would not resolve the issues relating to the structure.</p>		Jayne Uerling, 10-13-2006	<p>In accordance with the provisions of the draft SMP update at SMP 23.50.07 non-conforming developments such as the residence in question may be rebuilt. The provisions for non-conforming developments under the SMP are essentially identical to the provisions of the Whatcom County Critical Areas Ordinance (which already apply).</p> <p>Additionally, it is important to note that the</p>

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		<p>... To further elaborate my concerns/comments listed above.</p> <p>Single-residential construction within a conservancy designation. My home is an existing non-conforming structure that is in very poor condition and I would like to re-build it at some point in the near future, or at least have a future owner, should I sell, to be able to rebuild a single-family residence.</p> <p>My property, composed of two parcels lying in T38NR5ES23 and T38NR5ES26 will lie completely within the conservancy boundary designation of Jorgesen Lake. Personally I commend the description and designation of the area as I believe the lake and its associative wetlands as an incredible asset to the county and I feel very privileged and honored to be living there. As this is my home, I also see that as an extension I am honored to be the de facto steward to this wonderful county asset or of at least my small 13 plus acres.</p> <p>The home I reside in, lying within the buffer established by the county's CAO for wetlands of this type, was built in 1975-1976 with poor quality construction methods and inferior building materials. The history of the house shows periods where the property was used either as a rental with an absentee owner, or as recreational property with the owners living in a different locale and more or less infrequently visiting the house. It appears, and this has been confirmed through a conversation with the original owner, that minimal upkeep, repair, maintenance has been carried out over the years. Although livable (barely so), the condition of the house is in very poor shape. It is extremely poorly insulated and shows considerable dry rot, along with termite and other wood boring infestations. Each spring and summer it houses a population of more than 30 bats, 6 shallow families; and two to three, or more families of starlings. What follows is a very heavy fly infestation through the winter months that feed and breed on the bird and bat droppings within the walls and ceiling of the house. This is a very difficult nuisance to control even though I am presently working towards relocating the birds and bats to a site outside of the house walls, rafters, and eaves.</p> <p>After watching the complete cycle of various pests and upon further inspection of the other inherent problems of the construction, I am faced with losing both my home and the value of my investment if I am unable to build. A remodel of the home would be Most of what has become known did not come up with the usual house inspections and assessments normally associated with the purchase of a home, even though every effort was made to gather a complete assessment.</p>			<p>proposed buffer from the lake is 100-feet (same as the existing CAO). The 200-foot jurisdiction line only delineates that area in which the SMP regulations apply. It is not a buffer or setback.</p>
General	Water Quality and Quantity	<p>3) The ecological impacts (habitat value and water quality/quantity) due to "quick", virtually new UGAs in a rural area, type of development of shoreline areas such as resorts, group homes, condominium/apartments or other higher density type development projects. This is especially a concern with projects that lie within 500' of the OHWM of a designated shoreline, or is located on a slope sufficient as to affect quality of the body of water.</p>		Jayne Uerling, 10-13-2006	<p>Noted. The inclusion of Jorgensen Lake as a Shoreline of the State will not introduce the potential to develop any uses that are not currently addressed by the existing Comprehensive Plan and Zoning Regulations.</p>
General	Forest Practices	<p>4) The impacts to a shoreline area of logging in, adjacent to, or near the shoreline area. What affects will the SMP have on Forest Practices Act and of the application of re-forestation methods of such sites?</p>		Jayne Uerling, 10-13-2006	<p>The draft SMP will not impact the Forest Practices Act or the application of re-forestation methods. Such activities are under the purview of the Washington State Department of Natural Resources. However, any development associated with such activities, such as the construction of roads, etc. will be required to comply with the provisions of the SMP and a Shoreline Substantial Development Permit may be required if such development exceeds \$5,000 in fair market value.</p>

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Page Number	Section	Comment/Concern	Requested Change	Source of Comment	Resolution/Response
p. 3	23.10.03 – Governing Principles	23.10.03: D and E appear to be redundant statements of the same idea that private property rights must be protected in the implementation of the SMP.	We feel that the current D contains language that is inappropriate for this document and should be removed, and the text of E (which is the previous D) should be returned to its prior form: Regulatory or administrative actions contained herein must not unconstitutionally infringe on private property rights or result in an unconstitutional taking of private property.	Steve Irving & Tom Pratum, North Cascades Audubon Society 10-13-2006	Noted. The sections cited address fundamentally different components of a similar issue. SMP 23.10.03.D is intended to provide direction for the development of SMP regulations that are consistent with the state and federal constitutions and applicable statutes. SMP 23.10.03.E is intended to provide direction for the constitutional and lawful administration of such rules once in place. No change recommended.
p. 83-84	23.90.08.A.2	23.90.08.A.2: The last sentence added here is another redundant statement of the fact that the SMP must protect property rights. This is well covered in the governing principles and the sentence should be removed. We note in passing that the phrase “private property” appears 14 times in this document and the relation of the document to private property rights had been well discussed without this addition.		Steve Irving & Tom Pratum, North Cascades Audubon Society 10-13-2006	Noted. The concept of public access is one that has been of concern by many in the community. The language outlined in SMP 23.90.08.A.2 was added to address the concerns of the community regarding this issue. No change recommended.
p. 194	23.100.17.A.1.b		23.100.17.A.1.b: We suggest adding the following sentence to this section for clarity: These areas include the Department of Natural Resources Cherry Point Aquatic Reserve.	Steve Irving & Tom Pratum, North Cascades Audubon Society 10-13-2006	Noted. The Shorelines Technical Advisory Committee has recommended against such specific reference due to various complex legal issues surrounding the Department of Natural Resources Cherry Point Aquatic Reserve and the lack of an associated management plan. It should be noted that the Technical Advisory Committee did support the inclusion of a new policy (SMP 23.100.17.A.1.d) that is intended to encourage collaboration among the various agencies and stakeholder groups associated with the Cherry Point area in the development of a comprehensive management strategy for the resources in the area. No change recommended.
p. 195	23.100.17.A.4		23.100.17.A.4: The qualifier “Where appropriate” has been added without any definition. We suggest changing this to read: Where deemed appropriate by County personnel,... so it is clear that the permittee alone cannot make public access decisions.	Steve Irving & Tom Pratum, North Cascades Audubon Society 10-13-2006	Noted. The purpose of the added language is to address concerns related to the administration of the public access requirements of the SMP. It is important to note that it is policy language and is intended to indicate that the public access provisions will be implemented consistent with the applicable state and federal laws and constitutional limitations. Please refer to SMP 23.100.17.B.2 for the corresponding regulatory requirements. No change recommended.
p. 195	23.100.17.A.5	23.100.17.A.5: The added qualifier “New” would seem to allow dredge and fill operations on existing development without proper consideration of their adverse ecological effects mentioned in that same sentence. This qualifier should be removed, and the statement should return to its’ previous form.		Steve Irving & Tom Pratum, North Cascades Audubon Society 10-13-2006	Noted. The addition of the new language is intended to clarify that the prohibition of dredging is limited to new shoreline developments and that those developments that have located in the Cherry Point Management Unit that require the use of maintenance dredging are allowed to do so with proper consideration of adverse impacts consistent with SMP 23.100.17.B.3 and 23.100.17.B.4.b.