

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

Date: September 26, 2005
Time: 4 p.m. – 7 p.m.
Place: 5280 Northwest Drive, Whatcom County PDS

AGENDA

1.	4:00	Review agenda and Meeting summary for August 8 th <u>Information:</u> September 26 th agenda and August 8 th meeting summary <u>Action Needed:</u> Make any changes or additions and approve as final.
2.	4:05	Draft SMP sections <u>Action Needed:</u> Discussion and comment.
3.	6:50	Next Meeting
4.	7:00	Adjourn

MEETING ATTENDANCE

Kathy Berg	Rebecca O'Brine Willson
Peg Larson	Margaret Clancy
Wendy Steffensen	David Sherrard
Roger Almskaar	Jeff Chalfant
Melissa Stoddard	Amy de Vera Pederson
Aubrey Stargell	Cathy Craver

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1. September 26, 2005 Agenda

MEETING CONTENTS

1. No comments were made on the agenda or meeting summary. Those will be considered final.
2. Continuing from Saturday's meeting. We're going to cover *Resource*, *Conservancy*, and *Aquatic*. The process for getting the Cherry Point items is that Jeff and David S. will meet separately with Liz to get her specific concerns, and then incorporate those into a proposal that will be brought back to the CAC. Barry Wenger from Ecology will also be involved.
 - 2.1. Margaret does not have the map, but has the powerpoint showing the environmental designations.
 - 2.2. Q: Roger - Are we not going to talk about the remaining designations? A: Margaret - We can talk about whatever you would like to go over.
 - 2.3. Shoreline Environment Designations, section 23.30: Wendy pointed out that under the *conservancy* policies we talk about no net loss, but it seems that in *conservancy* it still sounds like *natural*.
 - 2.3.1. Margaret said they are close.
 - 2.3.2. David S. said no net loss language is for all designations, not just *natural* or *conservancy*.
 - 2.3.3. Jeff added that the concept bridges all designations.

- 2.4. Q: Becky - With *conservancy*, would you allow off site mitigation? A: Margaret - Sure, we're not treating it differently for on or off site mitigation. You have a list of criteria you have to meet, and the preference is always for on-site mitigation.
- 2.5. Q: Becky - What are allowed uses in a *conservancy* area? A: David S. – There is much less allowed. *Conservancy* has a lot of uses that need conditional use permits (CUPs). One thing we know about *conservancy* is that it is found mostly in the Middle to Upper Nooksack.
- 2.6. Q: Wendy - I remembered a conversation about forestry, and our *conservancy* was more like Ecology's *natural* designation? What are we losing from that? A: David S. -If we went with Ecology's *natural* designation then a lot of what is *conservancy* would be *resource*. Ecology has a big gap in their designations, and we narrowed down the range.
- 2.7. Q: Aubrey - How much ground truthing was done? Did the TAC do that? A: David S.- Aerial photo truthing was used, and in most cases we could get a good idea of what's going on from that. The photos are only a year old.
- 2.8. Q: Roger- For *rural*, what is the designation criteria for #3 saying? A: Margaret - What we're saying is that there are variety of reasons to develop at lower densities and critical areas are one of them.
- 2.8.1. David S. added he would look at the comprehensive plan and draft some language that would clarify that. Under *conservancy* it's saying if they contain critical areas than rather than put a limitation to *urban* uses, they should be valued within themselves.
- 2.9. Wendy said when compared side by side with the bingo chart, she saw only one item that was different.
- 2.9.1. Roger said that usually the *rural* designations in comp plans are for densities.
- 2.9.2. Wendy mentioned that the only difference she found was in *rural conservancy* where ferry terminal uses were not allowed.
- 2.9.3. David S. will check into that. There is a revised chart that also includes the uses. That can be provided to the CAC. There are overlaps between categories.
- 2.9.3.1. Roger added that when this document goes to the Planning Commission and County Council, it's going to need to have distinguished separation between the categories.
- 2.10. Margaret suggested taking out the word "substantial" under (b)1 for *rural*. The word substantial fits the *conservancy* designation better.
- 2.10.1. Wendy mentioned that if you take out the word "substantial", it still sounds like *conservancy*.
- 2.10.1.1. Margaret will look into that further. What is found through the inventory is what recommendations are based on in the reaches. It's somewhat qualitative.
- 2.10.1.2. Aubrey added that it's important not to send the wrong message to property owners who have taken good care of their property. A less tedious permit process is a good compromise.
- 2.10.1.3. Roger added that is why he doesn't agree with too many CUPs. Ecology could veto them if they wanted.
- 2.11. Roger said that use of the term "low density" was a tough point for the CAO, and there needs to be clarification as to what that means.
- 2.11.1. Margaret said it means 1 unit per acre.
- 2.11.1.1. Roger mentioned the Hearings Board changed that to 5 units per acre.
- 2.12. Q: Wendy - If *conservancy* protects areas outside of the UGAs, what about inside the UGAs? A: David -That's the *urban conservancy* designation.
- 2.12.1. Q: Aubrey - How much habitat is intact within the UGAs? A: David - Not much.

- 2.12.2. Margaret added that there isn't much that has a *natural* designation within the UGAs.
- 2.13. Wendy mentioned that under *natural*, (b) 6, the wording "physical modifications" was a little confusing.
- 2.14. Q: Wendy - Under *aquatic*, (c)1, how are we encouraging over-water structures? A: Roger answered that in the 70's there was a big argument for the oil refineries. It was put in there to say no more single purposes should be allowed because they wanted more multiple purposes included.
- 2.14.1. Q: Wendy - What are the incentives? A: David S. - There are some listed under docks. The way the policy is written is that all docks should go through a hierarchy of criteria.
- 2.14.2. Margaret added that there is language throughout the policy sections that will set forth what we ultimately want to have happen. This includes wording such as "is encouraged" or "should be encouraged". One of things that we need to remember is to make sure the policies match up with the regulations.
- 2.14.3. Roger added that when it says "encourage", it means that it's not up to the government to provide incentives.
- 2.15. Roger mentioned the need to qualify language for no net loss.
- 2.15.1. Margaret said that the document specifically says that you can only have impacts if you mitigate to accomplish no net loss.
- 2.15.1.1. David S. added that you have options to mitigate on site and off site as well. But on-site mitigation is preferred. You are also only held to no net loss to existing conditions.
- 2.16. Q: Wendy-under *aquatic* (c) 2, what about shading under transport of sediment for unobstructed fish passage? A: You're talking about sediment transport as a process that relates to a general habitat protection standard. We will take another look at the wording.
- 2.16.1. David S. relayed that it was taken verbatim from the new WAC, but can still be improved for clarification.
- 2.17. Shorelines of Statewide Significance, section 23.40. David S. summarized the designated shorelines that are of statewide significance. They are Lake Whatcom, Ross Lake, and Baker Lake. The main stem of the Nooksack downstream to Bellingham Bay, the north fork to the mouth of Glacier Creek, and the south fork to the mouth of Hutchinson Creek. The Skagit River upstream of the Whatcom-Skagit County line. Birch Bay from Birch Point to Point Whitehorn.
- 2.17.1. Q: What are the water columns that are being referred to in this section? A: Roger answered that in the 60's and 70's they used water columns as the volume of one square foot from the water's surface to the bottom. It was used in managing surface water conditions.
- 2.17.2. Q: Aubrey - Is Lake Washington of statewide significance? A: Margaret -Yes. Mean annual flow or acreage is the criteria.
- 2.18. Q: Becky - What is intended by having a shoreline of statewide significance? Are we supposed to be protecting these bodies of water in this project? A: Jeff - Yes, we're supposed to make sure these are taken into consideration.
- 2.18.1. David S. added that the statute RCW 90.58.020 says that these areas are for the interest of all the people of Washington. There are 7 criteria listed in the statute for determination.
- 2.19. Q: Wendy - Does subsection .030 have the criteria? A: No, it shows how they should be managed. Subsection .030 defines what they are.

- 2.20. Q: Kathy - How has this played out in Whatcom County? A: Roger - The city of Bellingham has spent a lot of money on purchasing land and down zoning in the watersheds.
- 2.20.1. Q: Kathy - Do you treat Birch Bay differently than Sandy Point? A: David S. - Birch bay has an *urban resort* designation which makes it accessible to the public. It's different in that aspect.
- 2.21. Q: Aubrey - What is the disconnect with Lake Whatcom? A lot of development has happened since the 70's. Were these regulations strenuously enforced? A: Jeff - What we consider environmentally sensitive today is a lot different than in the 70's.
- 2.22. The concepts are pretty generally stated in this section. For Lake Whatcom, there are a lot of shorelines that you can't designate as *natural* because they just aren't.
- 2.23. Margaret added that there is no proposal to change this section, but there also isn't anything preventing the group from adding to it as long as it is compatible.
- 2.24. Q: Becky - When we submit this, is someone from the state reviewing it? A: Yes. Barry Wenger from Ecology will also review it to see where we should tighten up some regulations.
- 2.25. Applicability, exemptions, and nonconforming uses: section 23.50
- 2.25.1. Applicability says how these regulations apply to you.
- 2.25.2. Exemptions are narrowly defined.
- 2.25.2.1. David S. suggested making the "Exemptions" section "Exemptions from the substantial development process".
- 2.25.2.2. Q: Aubrey-for the fair market exemption, how did you come up with \$5,000? A: That is the basic threshold for substantial development.
- 2.25.2.3. For construction of a normal protective bulkhead, the new WAC is substantially more protective.
- 2.25.3. For a substantial development permit, you apply and it goes to the Hearing Examiner as opposed to an administrative approval. Roger added that this is similar to a shoreline CUP.
- 2.25.4. Emergency construction is allowable, but the emergency has to be in effect. That is word for word with what the law says.
- 2.25.4.1. Q: Becky - So, if you want to do something within the 200 feet of shoreline jurisdiction you would need a substantial development permit? A: David S. - Yes, but it also has to be consistent with the shoreline program.
- 2.25.5. Q: Aubrey - Where did the new piece for construction and practices normal or necessary for farming come from? A: David S. - The new WAC.
- 2.26. For construction of a dock, you will still need an HPA from the Army Corp of Engineers.
- 2.27. It was suggested to change the order of (j) and (k) for better organization.
- 2.28. For (i), certification of the governor, this says that the Energy Citing Council has the jurisdiction, and once you've gone through their process, you don't have to go through the process of getting a permit. It's already included.
- 2.29. Q: Becky - For (n) on noxious weed control, could you go online to the RCW and find ways to control noxious weeds? A: Jeff - No, this is saying that you are not allowed to use herbicides or pesticides to get rid of noxious weeds within the shoreline unless you are a certified applicator. This does not give you the "how-to" on ridding noxious weeds.
- 2.30. Q: Kathy - Is a marine shoreline within a watershed? A: Yes.
- 2.31. Q: Roger - For building and land alterations, why is a shoreline permit for logging required? You need to take the trees out for building. A: David S. - The new WAC provides that forest practices should be allowed through CUPs. Barry Wenger from

- Ecology has confirmed this. Commercial forestry practices within the shoreline would need a substantial development permit.
- 2.31.1. Aubrey mentioned that it seems like you should just allow tree removal (up to 30%) within the shoreline without a permit except in the *natural* area designation.
 - 2.31.2. David S. said *conservancy* is so close to *natural* that Ecology wouldn't allow it.
 - 2.31.3. Margaret suggested adding an explanation for the statement of exemption, referenced by (b) and (c).
- 2.32. For the Relationship to Other Local Regulations, David S. suggested working on the wording, it seems awkward. Sections (a) and (b) sound the same and maybe should be combined.
 - 2.33. Q: Jeff – Does anyone know what the County Water Safety Ordinance is? A: Roger - That was for boat speeds and safety.
 - 2.34. For Relationship to other State and Federal Laws, Log Patrol says that all drift wood on state shorelines belong to the state unless it is branded or you have purchased rights for it.
 - 2.35. The Camping Club Act was from the 60's and 70's when people were living in camps and they became illegal subdivisions.
 - 2.36. These different Acts and different rules are part of what the administrator shall inform the landowner on. A handout containing all of these would be helpful, but it would be difficult to let each landowner know when changes are made to the rules. This becomes a public service, but it's not feasible to contain every rule and regulation. That may be a liability if not everything is on there.
 - 2.36.1. David S. said that the way it would be worded would make the county free of liability. It would serve a purpose to inform citizens that other rules and regulations would apply, and the technical administrator will assist them in reviewing the rules.
 - 2.37. Liberal Construction is taken from the Act. It should be read and taken literally as the courts will not look at any glitches in wording if challenged, rather they will look at the larger standard and purpose to protect the *resource*, shorelines.
 - 2.38. Some changes were made for non-conforming development. It's proposed that if your lot fails to meet the 75% requirement, then it should be reduced by the difference. This should be only for lots less than 10,000 square feet. Shorelines should also have special considerations for height limits.
 - 2.38.1. Q: Roger - Isn't there already a height limit like in *urban resort*? A: Jeff - That would not be for single-family.
 - 2.39. For (b) of non-conforming development, you would need a CUP to move into a buffer.
 - 2.40. This will need to be compared to the CAO.
 - 2.41. We can revisit the non-conforming development section.
3. Meeting adjourned.