

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

Date: 24 August 2005
Time: 9:00 a.m. – 2:00 p.m.
Place: 5280 Northwest Drive, Whatcom County PDS

AGENDA

1.	9:00	Review Agenda and Meeting Summary for July 27 th <u>Information:</u> August 24 th Agenda and July 27 th Meeting Summary <u>Action Needed:</u> Make any changes or additions and approve as final.
2.	9:05	Draft Shoreline Environment Designation Criteria and Uses <u>Action Needed:</u> Discussion and feedback.
3.	9:50	SMP Shoreline Jurisdiction and 20 c.f.s. points <u>Action Needed:</u> Discussion and feedback.
4.	10:20	SMP Policies/Recap of previously distributed SMP policy sections <u>Action Needed:</u> Overview and discussion of proposed amendments.
5.	1:55	Next Meeting Agenda
6.	2:00	Adjourn

MEETING ATTENDANCE

Stacy Fawell – Lummi Nation	Barry Wenger - Ecology
Steve Seymour – WDFW	David Sherrard – Parametrix
Rollin Harper – Small Cities	Margaret Clancey – Parametrix
Peter Downing – DH Shellfish Protection Dist.	Jeff Chalfant – Whatcom PDS
Llyn Doremus – Nooksack Tribe	Amy de Vera Pederson – Whatcom PDS

DOCUMENTS DISTRIBUTED

1. August 24, 2005 Agenda
2. Draft Inventory and Characterization Report, Chapters 1 to 3
3. Memorandum re: Summary of Staff Recommendations and Committee Comments

MEETING CONTENTS

1. Review agenda and finalize meeting summary for July 27th
 - 1.1 Review of July 27th meeting summary
 - 1.1.1 On page 2, line 2.15, the comment that references “everything north of Slater Road” should be clarified to reflect that “Slater Road is the northern boundary of the Lummi reservation”.
 - 1.1.1.1 Maybe it would be better if the sentence stopped after “...mitigation banking”.
 - 1.1.1.1.1 That would be fine.
 - 1.1.1.1.1.1 The July 27th meeting summary finalized as amended.
 - 1.2 The August 24th agenda was reviewed and approved as final.

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2. Draft Shoreline Environment Designation (SED) Criteria and Uses
 - 2.1 Overview of progress at last TAC meeting: The Committee made it through the SEDs and part way through the use chart. The CAC also met this week and, based on CAC and TAC input, the use chart has been updated to incorporate the recommended changes. This is an updated version of what was distributed last time. At the last meeting, we left off at “gravel bar scalping”.
 - 2.2 Symbols used in the table: a “black dot” represents an allowed use, the “circle with a line through it” is a conditional use, and an “X” indicates a prohibited use.
 - 2.3 What is the last word on chart that was left off?
 - 2.3.1 Aquatic.
 - 2.4 Is there a new WDFW person coming to replace Dan?
 - 2.4.1 Steve is here today, but another person will be coming in his place.
 - 2.5 Gravel bar scalping: Dredging is an activity, but is not necessarily a use. A distinction should be made. Gravel bar scalping should be taken out and regulated as an activity under “mining”.
 - 2.5.1 The uses identified in this table reference uses that identified in the zoning code. The intent is to parallel the SMP with the zoning code to the extent that it can be. However, when it is determined what should or should not be allowed under the SMP, it may be better to combine some of the uses into larger categories.
 - 2.6 Aquaculture: It might be wise to separate out finfish aquaculture and aquaculture that requires structures. They are very different things.
 - 2.7 Forestry was added at the suggestion of CAC and has generally been indicated as an allowed use. We will need at it look closer to see what the existing code says about more urbanized areas and whether there are restrictions in the zoning for forestry in those areas.
 - 2.7.1 That should be clarified to mean “commercial forestry”.
 - 2.7.1.1 Yes.
 - 2.7.2 That is intended to differentiate from forestry activities that are associated with a conversion and aren’t related to long-term management of forest areas.
 - 2.7.3 If you don’t qualify as commercial forestry, then you are under County regulations for clearing and grading. If you are conducting a commercial forestry activity, you are covered by the Forest Practices Act (FPA) and less affected by the local jurisdiction. Barry was asked to look at what the rule says about forestry in Natural areas.
 - 2.7.3.1 Forestry activities are regulated under the FPA, but anything within 200’ of the OHWM is subject to County jurisdiction.
 - 2.7.3.1.1 That is how it is currently structured, but that is not how the current state law reads. The law was revised by Engrossed Substitute House Bill (ESHB) 1933 in 2003.
 - 2.7.3.1.1.1 What is the distinction? That forest activities are not regulated under the Shoreline Program?

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- 2.7.3.1.1.1.1 That is why we asked Barry to look at it, because it says “provided that forest practices regulated under Chapter 76.09 RCW [which is the Forest Practices Act], except conversions to non-forest use, on lands subject to the provisions of this subsection 2(f)(2) are not subject to additional regulation under this chapter.” But the WAC has specific provisions that say a conditional use permit (CUP) is required in “Natural” areas. The question is what DOE’s interpretation is. If you can add another procedural requirement in Natural areas, then how does that apply in other cases?
- 2.7.3.1.1.1.2 It would make sense to regulate conversions within shorelines.
 - 2.7.3.1.1.2.1 Conversions have always been subject to local regulations. A lot of shoreline programs have requirements for forestry permits and there are Shoreline Hearing’s Board decisions that indicate that road building in association with forestry activities are also regulated by the program.
 - 2.7.3.1.1.2.1.1 The question is more whether the actual activity of cutting trees is under the jurisdiction of the program.
 - 2.7.3.1.1.2.1.1.1 With this amendment, it’s not clear if road building (example) associated with forestry is covered by the shoreline program or exclusively under the FPA.
 - 2.7.3.1.1.2.1.1.1.1 Barry has not found out anything on the issue yet.
- 2.8 Manufacturing – composting and mulching facilities: The CAC felt that this should not be allowed in the shoreline. The only place it would be allowed would be in resource zoning within the Conservancy designation. That should actually be shifted to Resource/Resource and not in Conservancy.
- 2.9 Are either of the last two uses (Manufacturing – “fabrication” and “heavy construction contractors”) appropriate for Cherry Point?
 - 2.9.1 We will look at Cherry Point separately and go through the chart to specifically review uses for Cherry Point. It is important to note that these uses under the SMP will only be regulated within 200-feet.
 - 2.9.1.1 One thing that is not in the Cherry Point section is some consideration of regional utilities such as the GSX pipeline.
 - 2.9.1.1.1 It is probably already covered in the Utilities section.
 - 2.9.1.1.1.1 The Cherry Point Management Unit is a fully contained management unit, so it should be addressed in that section.
- 2.10 Lumber manufacturing: should probably be an “X” or a conditional use permit in the Resource/Conservancy district. It should be noted that there may be things that are allowed in the underlying zoning that may not be allowed in the shoreline. The

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- implication is that those uses would have to be located outside the shoreline, but there is an opportunity to have water-dependent aspects of that use within the shoreline.
- 2.11 Mental health facilities and mobile home parks: We need to go through the zoning code to see where those are allowed.
- 2.11.1 It would likely follow where residential uses are allowed.
- 2.11.1.1 That just needs to be checked for consistency, particularly in the Rural areas.
- 2.12 Moorage should also be under Aquatic.
- 2.13 Neighborhood groceries: Check if they are allowed in residential zones.
- 2.14 Put “outpatient mental health facilities” under “mental health facilities” and double check Rural zoning to see if they are allowed.
- 2.15 Plant nurseries: There is a concern that this use may include hot houses, which can result in large amounts of impervious surfaces. It may be appropriate to distinguish between greenhouses/hot houses and nurseries with outdoor growing.
- 2.15.1 The two types of uses should be separated into 2 categories.
- 2.16 Private, non-commercial use of recreational vehicles (RVs): Are there occasions when RVs would be allowed in the Rural Forestry (RF) zone similar to Rural?
- 2.16.1 It may be necessary in some cases to state that RF may be unique and allow a use in RF that may not be allowed in Agriculture (AG) or Commercial Forestry (CF).
- 2.17 Public facilities – community facilities: allowed in more intensive districts, but residential zoning needs to be checked. They are allowed in Urban Conservancy under commercial, but it may be more appropriate as a conditional use.
- 2.18 State and local correctional facilities: Limited to urban areas and commercial districts.
- 2.18.1 It was identified as an essential public facility under the CAO. That is something think about.
- 2.18.1.1 It is also important to note that the State can supercede local land use controls, but not shoreline regulations.
- 2.18.1.2 It could be appropriate to say that we don’t want prisons within SMP jurisdiction. For example, locating such a facility in the Nooksack River floodplain where it may impact wetlands associated with shorelines may be a problem.
- 2.19 One thing that we don’t have here is a “public facility” zoning district. That may be something to look at.
- 2.19.1 Is that zoning just for siting public facilities? Does the county not have that?
- 2.19.1.1 The County doesn’t use that, but the city does. The County can still site public facilities. It is just a zoning convention that the County has not used.
- 2.20 Why not allow “water oriented research facilities” at Cherry Point or in Resource Conservancy?
- 2.20.1 Isn’t there some element of that under the Cherry Point Management Unit?
- 2.20.1.1 We will look into that.
- 2.20.1.1.1 It may help to put a size threshold on a “facility”.
- 2.20.3 What about in Resource Conservancy?

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- 2.20.3.1 There are resource policies in the comprehensive plan that are tied to preserving resource lands – keeping them in agricultural or forestry use.
- 2.20.4 Why not a make it a conditional use everywhere?
 - 2.20.4.1 There may already be a general exemption for smaller monitoring stations. If not, we may want to write a general exemption for smaller hydrologic monitoring stations such as USGS stations.
 - 2.20.4.1.1 We will look at that.
 - 2.20.4.1.2 1 In some instances, like USGS stream gauges for example, you may want to have it outright permitted.
 - 2.20.4.1.1.1 You would want some level of review.
- 2.21 Put a “?” in Residential and Shoreline Residential for “public schools”.
- 2.22 Put a “?” in Residential for “athletic fields”.
- 2.23 Recreational campgrounds and RV parks: Rural Forestry can have some of the best spots for campgrounds.
 - 2.23.1 Suggested splitting RV parks and campgrounds due to different associated impacts and intensities.
- 2.24 Look at zoning code to see if “golf courses” are also allowed in residential areas.
- 2.25 Recreation – primitive: If in Natural, why not Resource Conservancy?
 - 2.25.1 That may be another case where you would allow it in RF, but not the other resource zones.
 - 2.25.2 Include in Resource Conservancy, but maybe as a conditional use.
- 2.26 Public campgrounds: more restrictive because they can include a whole range. Suggest combining “public” and “recreation” campgrounds.
- 2.27 Recreation - public forest preserves: These are not really a use, but more an ownership. May want to take this out.
- 2.28 Is there a reason why public parks are not an allowed use in Resource districts?
 - 2.28.1 They may be allowed.
 - 2.28.1.1 The should at least be a conditional use in Resource areas, but that will need to be looked at.
- 2.29 Is there such a thing as an aquatic trailhead (e.g. kayak access)?
 - 2.29.1 Wouldn't that be a “boat launch” or regulated under “navigation”?
 - 2.29.1.1 A trail should not be categorized as navigation.
 - 2.29.1.2 What about interpretive signage and boardwalks?
 - 2.29.1.2.1 We'll look into that under “interpretive trails” or “trails”.
- 2.30 Residential - accessory apartments: State law states that they have to be allowed wherever you allow a single family dwelling.
 - 2.30.1 This may not be necessary as a separate category because it is accessory to a single family use. If Whatcom County doesn't limit accessory apartments to certain areas, it is not necessary to list them separately.
- 2.31 Residential – multifamily: Need to double check to see if Shoreline Residential is applied to multi-family districts and if multifamily is allowed within the Rural district.

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- 2.32 Retail establishments: Put a “?” next to Shoreline Residential and see if retail establishments are allowed in residential and rural districts.
- 2.32.1 What about retail associated with a park? Does that fall under this or is that considered accessory to the recreational use?
- 2.32.1.1 That would be considered accessory to the primary recreational use because it is not a stand-alone use.
- 2.33 Residential – one dwelling: A conditional use in Natural?
- 2.33.1 The current code prohibits residential development in the Natural designation.
- 2.33.1.1 Based on the criteria that was reviewed last time, it would be allowed as a conditional use if there is no non-shoreline location available and only on a lot of record.
- 2.33.1.1.1 More clarification is needed on the various uses.
- 2.33.1.1.1.1 There will be more clarification. This table may not be the best way to do this.
- 2.34 Does a reasonable use have to be called out as an allowed use? Isn’t the idea that it is a case-by-case decision?
- 2.34.1 That is what a conditional use would cover.
- 2.34.2 I think that DOE has said that they don’t want reasonable use provisions in the shoreline.
- 2.34.2.1 I will check that.
- 2.34.2.1.1 If there is not going to be a separate reasonable use provision to provide relief, then we need to be careful about what is specified as a conditional use or prohibited because there isn’t another out.
- 2.34.2.1.1.1 Can a use be conditional, or is reasonable use an option?
- 2.34.2.1.1.1.1 We need to remember that conditional uses have to be approved by Ecology. A reasonable use determination may need to be counter-signed and not fall fully under the final authority of DOE.
- 2.35 Retirement and convalescent homes: should it be and allowed use in Urban areas? Would that fit in with single family residences regulations?
- 2.35.1 They should be a conditional use because they are bigger and more intensive.
- 2.35.1.1 They are a conditional use in underlying zoning.
- 2.36 Substance abuse facilities: Should those be combined with “mental health facilities”?
- 2.36.1 We will check that.
- 2.37 Does surface mining extend into Aquatic areas?
- 2.37.1 This is where “gravel bar scalping” would be added. A performance standard could be added that only allows it as part of flood control practices.
- 2.37.1.1 There are provisions on it in the WAC under surface mining. Does the TAC have guidance on this?
- 2.37.1.1.1 It should be more stringent due to associated impacts to habitat. Allow flood control maintenance, but it should have stringent controls.
- 2.37.1.1.1.1 TAC consensus is to leave it in as a conditional use.
- 2.38 What is a temporary dwelling unit?

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- 2.38.1 There are a couple of types of “temporary dwelling units”: 1) temporary housing during construction of a single family home, and 2) a temporary dwelling for an ailing relative.
 - 2.38.1.1 What about migrant workers?
 - 2.38.1.1.1 That is a separate use.
 - 2.38.2 Why not allow it wherever a single family home is allowed?
 - 2.38.2.1 That is what is being suggested.
- 2.39 Railroads: Does the state have jurisdiction over railroads?
 - 2.39.1 The Washington State Utilities and Transportation Commission has absolute jurisdiction over railroads.
 - 2.39.1.1 Can new railroads be made a conditional use?
 - 2.39.1.1.1 What about expansion of a railroad right-of-way?
 - 2.39.1.1.1.1 That would not be considered a “new” use.
 - 2.39.1.1.1.1.1 TAC consensus is to make new railroads a conditional use in Conservancy.
- 2.40 Ferry terminals: should probably be prohibited in Urban Conservancy.
- 2.41 Marine port facilities: What about Cherry Point?
 - 2.41.1 Marine port facilities are like a container loading facility, not a single purpose use like an oil dock.
 - 2.41.1.1 We have a port facility going in at Cherry Point.
 - 2.41.1.1.1 Then that should at least be a conditional use in Cherry Point.
 - 2.41.1.1.1.1 It is probably not appropriate in Urban Resort.
 - 2.41.1.1.2 What about a conditional use in Aquatic?
 - 2.41.1.1.2.1 If you’re going to allow it in the upland area, then you have to allow it in Aquatic.
 - 2.41.1.1.2.1.1 Do you have to allow it everywhere in Aquatic?
 - 2.41.1.1.2.1.1.1 It’s only allowed in Aquatic if it’s also allowed in the upland designation.
- 2.42 Rails, truck and freight terminals: Need to double check if allowed in Cherry Point and the TAC agreed that they should not be allowed in Urban Resort.
- 2.43 Under transportation – “rails” and “railroads” have different limitations.
 - 2.43.1 It’s the “terminal” that you can be more restrictive with.
- 2.44 Utilities – hydroelectric power generation facilities: Add to Aquatic as a conditional use permit.
 - 2.44.1 If it is a conditional use in Conservancy with Resource zoning, then it should also be a conditional use in Rural under Conservancy and Rural.
- 2.45 Public utilities: That should be a conditional use.
 - 2.45.1 What about private utilities (e.g. electric company, telephone, cable)?
 - 2.45.1.1 Those are considered public. An example of a private utility might be a hydroelectric utility where the end user would be on the same parcel.
 - 2.45.2 Should it be a conditional use under Aquatic?
 - 2.45.2.1 Yes.

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2.45.3 What about a rural water association? Is that a private or public utility?

2.45.3.1 A shared water system is a public utility.

2.45.3.1.1 The definition of “public utility” was read.

2.45.4 This includes electrical power lines. Do we want to make electric distribution lines a conditional use?

2.45.4.1 We can distinguish between distribution and transmission lines.

2.45.1.1 Does the existing code distinguish between them?

2.45.1.1.1 Yes.

2.46 Wholesale trade or storage: Should be allowed in industrial districts and a conditional use in Urban Conservancy under commercial and industrial.

2.47 Aquaculture: The WAC identifies aquaculture as a priority use. If a separate category for intertidal shellfish aquaculture is created, then it is suggested that intertidal shellfish beds be an allowed use in most areas and a conditional use in Natural.

2.47.1 It is important to note that the zoning code only allows it in 3 zones (AG, RR-I, and R). We can’t allow them everywhere because the zoning code has restrictions on them.

2.47.1.1 You want to be careful how you deal with them because there are different categories: 1) floating fish farms and mussel rafts; 2) beach culture; 3) upland fish farms; 4) fish pens for purposes of enhancement efforts.

2.47.1.1.1 Suggested that a conditional use permit is appropriate for intertidal because intertidal areas are among the most sensitive and productive ecological areas. Need to consider “no net loss” requirements.

2.47.1.1.2 Suggested an option for a tiered approach for regulation based on the differing levels of impact associated with the proposed type of aquaculture.

2.47.1.1.2.1 Would like to see all intertidal aquaculture be a permitted use.

2.47.1.1.2.1.1 At the passive, low-intensive level, it may be appropriate to allow them, but a conditional use process would not preclude them.

2.47.1.1.2.1.2 It was suggested that a proposal be written for review by DOE, WDFW, etc. Based on their comments/input, we can consider an alternate proposal.

2.47.1.1.2.2 What does a conditional use permit trigger?

2.47.1.1.2.2.1 Ecology review.

2.47.1.1.2.2.2 The basic premise is that a use is prohibited unless it can be demonstrated that it will not have an adverse affect on the environment and that you are taking all reasonable steps to ensure that it will not have an adverse affect on shoreline functions, neighboring uses, etc.

2.47.1.1.2.2.2.1 A priority use does not always mean that something is an allowed use. It is the same with other uses such as ports.

2.47.1.1.2.2.2.1.1 The issue was tabled until an alternate proposal can be distributed to the TAC for review and discussion.

3. SMP Shoreline Jurisdiction and 20 c.f.s. points

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- 3.1 Paul is still on vacation, so we haven't received updated map showing the CMZ for the Sumas River.
 - 3.2 We contacted USGS on the 20 c.f.s. points to try to get more information on the regression and how to figure out the error bands, but we have not received a response.
 - 3.2.1 Llyn will follow up with USGS.
 - 3.2.2 We need that information because we don't want to mix and match methodologies because it may be problematic. It may be best to select one approach and use it.
 - 3.2.2.1 Is there guidance from DOE on this?
 - 3.2.2.1.1 If you mix and match, or if you select one over another, you need to show your work and explain why.
 - 3.2.2.1.1.1 It would be easier to use one technique and justify why.
 - 3.2.2.1.1.1.1 The uncertainty is high depending on the technique you use. You need to be consistent, but also need to acknowledge that streams are dynamic.
 - 3.2.2.1.1.1.2 If you don't know exactly where it is, it might be better to err on side of inclusion.
 - 3.2.2.1.1.1.3 Again, it may be better to chose one methodology and justify it.
 - 3.3 The City of Nooksack is working with a flood modeling consultant to review the initial data used to create the FEMA floodway on the Sumas River. It will be interesting to see how that compares with the CMZ mapping for the Sumas.
 - 3.4 Information on USGS "stream stats" was provided by Lummi Nation staff.
4. Draft Inventory and Characterization Report, Chapters 1-3
- 4.1 An overview of the draft document was provided. The introduction, methods, and results of the county-scale landscape assessment of ecosystem processes for the marine and freshwater environments are in these chapters. This is the first of several batches that will be coming to the TAC. Later batches will address individual WMUs and shoreline reach inventory results. There are 2 figures that are missing (Figures 3.16 and 3.21). We will try to send out in an e-mail or bring them to the next meeting. The references have not yet been checked. Highlighted areas are sections that are still being worked on.
 - 4.1.1 Will it be possible to get this on CD?
 - 4.1.1.1 CDs can be provided. Extra copies are also available for other folks.
 - 4.1.1.1.1 The first three chapters and the appendices will be e-mailed to everyone. Comments on the draft document are requested by September 9th. If there are burning issues at the next meeting on September 7th, they can be addressed then, but there will be additional time after that to get comments in. There will be another batch of chapters coming on the 7th.
5. SMP Policies/Recap of previously distributed Draft SMP policy sections

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- 5.1 A memo outlining the draft SMP sections reviewed to date was distributed (e.g. aquaculture, commercial, residential, marinas). It was suggested that the TAC determine priorities for review of draft SMP sections at this time.
- 5.2 It was indicated that there are some TAC comments on the draft Stream Control Works section, but specific comments will be presented in writing for discussion at the next meeting.
 - 5.2.1 It was noted that if issues are of broad policy concern, then they should be discussed at the meeting. If comments are specific, then it would be better to submit them in writing so they can be reviewed and possibly addressed for the next meeting.
- 5.3 Residential section: There are a lot of detailed policy sections that have been moved into the regulations sections where they are more appropriate. Other changes were made to incorporate specific requirements of the WAC, and to streamline/clarify the existing SMP structure.
 - 5.3.1 An overview of draft amendments to the Residential section was provided.
 - 5.3.2 Single family residential: No net loss of ecological function. Given that single family residences are a shoreline exemption, sometimes they may be placed in locations where there might be loss of ecological function, so is there an inconsistency there?
 - 5.3.2.1 The WAC states that regulations for shoreline uses must assure no net loss of ecological function, even for those that do not require a shoreline substantial development permit. There is no exemption under the WAC for no net loss. We need to be sure that the regulations are written to ensure no net loss.
 - 5.3.2.1.1 So, in processing an application for a shoreline exemption for a single family home, mitigation may still be required to ensure no net loss?
 - 5.3.2.1.1.1 Yes.
 - 5.3.2.1.1.1.1 The restoration plan would also help address the no net loss issue.
 - 5.3.2.1.1.1.1.1 Yes, but the restoration plan doesn't include what you impose on a single family residential permit (i.e. doesn't include mitigation).
 - 5.3.3 Should some general policies be repeated throughout the SMP in each chapter, or should they be consolidated in the beginning? For example, "no net loss" applies everywhere. Does that need to be repeated in each section?
 - 5.3.3.1 There two ways to look at it: 1) put them in the general policies; and 2) put them in each section within the context of each use.
 - 5.3.3.2 Some people may pick up the SMP and look only at the specific section that they are concerned about, so it may be beneficial to repeat the policies in each section.
 - 5.3.3.2.1 Some of the general policies are addressed differently in each section, so there is some merit to including them in each section.

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- 5.3.3.3 It may be useful to put reminders in each section to go back and review the general policy and regulations section.
- 5.3.3.3.1 We can work on that.
- 5.3.4 A lot of the policies may already be covered by the GMA, so it may be appropriate to take them out. Language that is embedded in the GMA may not be necessary or beneficial in the SMP.
- 5.3.5 Physical and visual access: In subdivisions with more than four lots where all of the houses are out of shoreline jurisdiction - if there is not substantial development within the shoreline jurisdiction, but the development covers the shoreline frontage, where is the opportunity for public access?
- 5.3.5.1 If you are subdividing land along the shoreline, the entire development is subject to the requirement. There doesn't need to be a substantial development to apply this requirement to a subdivision. If a proposed subdivision application comes in, it has to be reviewed for compliance with the SMP, Comprehensive Plan, zoning, etc. A building permit or a substantial development permit is not necessary to trigger review for access.
- 5.3.5.1.1 There are issues where actual access may not be practicable, so it may be helpful to clarify that.
- 5.3.1.1.1 "If such public use is compatible with the size and nature of development area" - That can be re-worded to better refer to "natural conditions".
- 5.3.1.1.2 There's also the requirement for a legal nexus. So, if you are going to require public access, you have to show that there is a connection between the impact of that development and the access requirement.
- 5.3.1.1.2.1 What about "public access" v. "community access"?
- 5.3.1.1.2.1.1 That is addressed in the SMP. The WAC requires public access for any development of over 4 units, unless you can make a specific finding that it is not feasible.
- 5.3.6 General regulations: We will need to review use of "buffers" v. "setbacks" to make sure the correct term is used. There is more administrative flexibility with varying buffers. Setbacks, in general, are a specific dimensional requirement and require a shoreline variance to change them. A functional buffer for a critical area will be referenced as a "buffer". If it's a building setback, like a side-yard setback, it will reference "setbacks".
- 5.3.7 Land division: Should open space be mentioned in reference to the CAO if it is not addressed there?
- 5.3.7.1 That reference should be taken out.
- 5.3.7.1.1 There are open space requirements for subdivision under the SMP.
- 5.3.7.1.1.1 Yes, but that shouldn't be in this section.
- 5.3.7.2 The CAC commented that it should be made clear that common areas should be directed to the area of the site that is the least sensitive.

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- 5.3.7.3 Under (d), the minimum width of 30' landward from OHWM, is that parallel?
- 5.3.7.3.1 It does mean parallel, but that needs to be changed because we don't always want to make community open space along the shoreline if the shoreline is a sensitive area.
- 5.3.7.3.1.1 That needs to be re-visited and changed.
- 5.3.7.3.1.1.1 A concern was expressed that "recreation and open space" does not necessarily imply a wild area with maintenance of natural vegetation.
- 5.3.8 Another question is whether buffer areas required for critical areas should be managed as tracts that are commonly owned. In the CAO, that is one of the options, but it is not required in every instance. That is something that the SMP could do. It may be easier with larger divisions v. smaller divisions. It may be appropriate to add a preference that buffer areas be placed in common ownership and managed as a single tract.
- 5.3.8.1 If a "preference" is something that the TAC supports, then it should be more explicitly stated.
- 5.3.8.1.1 The CAO provisions sound protective enough.
- 5.3.8.1.1.1 There are different functions between the requirements of the CAO and SMP. The CAO has a clear environmental protection emphasis. Whereas, the SMP has an emphasis on both use and an environmental protection component.
- 5.3.8.1.1.2 The CAO covers a variety of critical areas that require a variety of regulations and it's appropriate to provide a range of management options county-wide, but shorelines are areas that are particularly sensitive and it is important to have the highest level of protection for these areas. So, something should be added here.
- 5.3.9 Over-water residences: What about people living on their boats?
- 5.3.9.1 Boats are vessels that are regulated under maritime law.
- 5.3.9.1.1 If the Coast Guard recognizes it as a vessel, then it is not regulated as a structure under the SMP.
- 5.3.10 Shoreline public access: Does public access include a viewing point?
- 5.3.10.1 Yes.
- 5.3.11 Publicly owned tideland areas have to be provided with access. If the uplands are privately held, the public tidelands still have to be provided with access. If it is a privately held tideland, then you can't require it to be dedicated.
- 5.3.11.1 If private development is located over public tidelands, then public access has to be provided.
- 5.3.11.1.1 So, I would have to provide parking for the entire public to access?
- 5.3.11.1.1.1 It only requires that a public walkway be provided. There is not a requirement that parking be provided.

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- 5.3.11.1.1.2 The intent of these provisions is to make it very clear when public access is required.
- 5.3.12 Multi-family development: Language needs to be added here for trails to be setback with access points to the water and that they may be fenced to protect ecologically sensitive areas.
- 5.3.13 What about provision of public access across a commercial shellfish bed?
 - 5.3.13.1 The shellfish area may need to provide legal access, with the right to close access if the tidelands are leased under such an agreement. Instead, you may need to provide a viewing platform and, if the lease expires and is not renewed, then physical access may be renewed at that time. That is something that should be looked into.
- 5.3.14 The language regarding view corridors implies that there is no native vegetation. Does that need to be clarified with respect to the vegetation retention component?
 - 5.3.14.1 It needs to be clear that visual access is not to compromise required vegetation retention, restoration, etc.
- 5.3.15 Should public access generally be allowed 24 hours? What about limiting it to daylight hours? Dawn to dusk might be more appropriate for residential development.
- 5.3.16 What about appurtenances (e.g., fences, garages) v. accessory uses?
 - 5.3.16.1 Appurtenant structures are accessory uses. There are two different levels of “accessory uses”.
 - 5.3.16.1.1 Appurtenances are exempt as part of a single family residence, but accessory structures are not.
 - 5.3.16.1.1.1 That difference is addressed in the code.
- 5.3.17 “Such development shall not be located in required shoreline setback spaces where feasible”: that seems to imply that where it’s not feasible that you’re going to allow them.
 - 5.3.17.1 That should be changed to “such development shall not be located in required shoreline buffers.”
- 5.3.18 Docks and floats: need check the “January 28, 1993” date. Is this when this requirement of the code was originally promulgated?
- 5.3.19 Why aren’t things like height and parking already covered by other codes (e.g. UBC)?
 - 5.3.19.1 For example, when you go to a taller building, then as part of the development review process it needs to be demonstrated that the higher intensity use will be sufficiently addressed under the program. Reviews under the IBC, IRC, Uniform Fire Code, etc. are not discretionary, but the SMP would allow it to be discretionary. It also allows you to implement the mandates of the SMA in the review of the proposed project.
- 5.3.20 “Landfill” and “land filling”: We need to be careful how this term is used if it is specifically mentioned in various sections and within different contexts.

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- 5.3.20.1 It would probably be better to cross-reference applicable sections.
- 5.3.21 Boat ramps: They are not a specified use, but boat docks are specifically mentioned.
 - 5.3.21.1 It is suggested that the whole section related to private boat ramps be stricken due to issues related to consistency with critical areas and preservation of ecological function.
 - 5.3.21.1.1 What about community boat ramps?
 - 5.2.21.1.1.1 That would be addressed under the moorage section.
- 5.3.22 Stormwater: Are the 50% and 500 s.f. thresholds common practice or consistent with the current stormwater manual?
 - 5.3.22.1 The county has not specifically adopted the current DOE stormwater manual.
 - 5.3.22.2 That threshold is based on common practice used by the County Public Works Department and was recommended by them during the latest revision of the Title 20 - Stormwater Special District requirements.
 - 5.3.22.2.1 Can't you just cross-reference the zoning code in the SMP?
 - 5.3.22.2.1.1 It is not recommended because, if the referenced section in Title 20 is amended, incorporation of that amendment into the SMP for consistency would require Ecology approval. In this case, redundancy is ok.
 - 5.3.22.3 Does reference to the "current DOE stormwater manual" conflict with current county stormwater regulations?
 - 5.3.22.3.1 It may be best to reference the County stormwater regulations and then those can be updated for compliance with the Ecology manual later.
- 5.3.23 On-Site sewage systems: concern expressed regarding the ability of on-site septic system failure to create significant impacts to shellfish beds.
 - 5.3.23.1 There have been some changes to the state law that the County Health Department is working on that include increased inspections, etc.
 - 5.3.23.2 There is a provision in the Utilities section that requires development to hook up to public sewer where it is available.
 - 5.3.23.3 The SMP can specify that experimental sewage systems are not allowed within shorelines due to failure rate, increased monitoring requirements, etc. However, the opposite argument might also be made that engineered experimental systems may be better than conventional systems in poor soils, etc. What does the TAC think?
 - 5.3.23.3.1 Wouldn't the health regulations supercede?
 - 5.3.23.3.1.1 The SMP regulations could be more stringent.
 - 5.3.23.3.1.1.1 Request to come back to this issue and bring alternative language to the TAC.
- 5.3.24 Flood hazard reduction: What does "structural flood hazard reduction measure" mean?

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- 5.3.24.1 It means, for example, that if your house is proposed in a location that will require a dike, levee, etc. to protect it in the foreseeable future, then it may not be allowed in that location.
 - 5.3.24.1.1 Isn't building a house on stilts also a structural flood hazard reduction method?
 - 5.3.24.1.1.1 The CAO says that new residences cannot be located in the CMZ.
 - 5.3.24.1.1.1.1 That isn't necessarily the "floodplain".
 - 5.3.24.1.1.2 We need to be sure that the SMP and CAO are consistent on this issue.
- 5.4 Commercial section: When "no net loss of ecological function" is referenced, shouldn't it specify "shoreline ecological functions"?
 - 5.4.1 Yes, that should be specified throughout.
 - 5.4.2 Reference to "optimum use" should probably be changed.
 - 5.4.2.1 It should be consistent with the WAC, which references "preferred use".
 - 5.4.3 It is possible to provide a significant "proven" benefit?
 - 5.4.3.1 That is what the WAC says, but we will look at that.
 - 5.4.4 How would you deal with displacement of existing water-dependent uses under .33(b)(1)? Is that specific to re-development?
 - 5.4.4.1 Yes. Water dependent uses are a priority under the SMA. So, a water-related use cannot displace a water dependent use.
 - 5.4.4.1.1 So, someone that has not already developed their property still has the option to do a water-dependent use or a water-related use, but if someone already has an existing water-dependent use, then the site is limited to future water-dependent uses (to avoid displacement of the existing water-dependent uses).
 - 5.4.4.1.1.1 There should be some level of economic consideration in that provision.
 - 5.4.4.1.1.1.1 The issue was tabled for later discussion.
 - 5.4.5 The first sentence in the water-enjoyment use section should be changed from "water-related" to "water-enjoyment".
 - 5.4.6 Is there an opportunity for off-site restoration?
 - 5.4.6.1 That should be allowed if you cannot restore ecological functions on a site. Off-site may be a viable alternative.
 - 5.4.6.1.1 It may make sense for someone to do off-site restoration in an area that has been identified through the planning process and in the restoration plan as an objective.
 - 5.4.6.1.2 Restoration of an equal or greater value off-site could be consistent, particularly if it is tied to the restoration plan and the analysis of the inventory and characterization report. It would function more like mitigation.

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5.4.6.1.2.1 If you're earning your way onto the shoreline by accomplishing restoration, then you may not need to have an on-site requirement, unless there is a substantial opportunity to do on-site restoration.

5.4.6.4.2.1.1 Will that preclude restoration or maintenance of ecological functions on-site?

5.4.6.4.2.1.1.1 Suggested reviewing the applicability of the commercial section and coming back to the issue.

5.4.7 Can public access be provided off-site?

5.4.7.1 Yes, if the County has adopted a public access plan.

5. The next meeting is on Wednesday, September 7th.

5.1 Please continue to review the draft SMP sections and send in comments. The upcoming schedule is very full and a draft SMP document will need to be compiled for distribution in September.

6. Meeting adjourned at 2:12.

Action Summary

Discussion Item	Action
3	Follow up with USGS on 20 c.f.s. data [Llyn]
3	Bring updated CMZ map that includes the Sumas River [Paul]
5	Check origin of the January 28, 1993 date referenced in the SMP [Jeff]
5	Review language related to on-site sewage systems and bring alternative language for review and consideration [Peter D.]
5	Send out a general e-mail reminder to send in any and all comments on the Draft SMP so they can be incorporated. [Amy]