

# SMP Periodic Update 2020

## Exhibit H: Public Comments on the Draft Amendments (updated 11/24/20)

Comment #	Commenter	Commenting on:	Exhibit	Section	Comment (Abbreviated; please see original correspondence for exact language, supporting arguments, and/or supporting material citations.)	Staff Response
BP01	Jeff Chalfant, BP	Public Draft	B	C/P Ch. 11	Removal of "policies" from code and moving it to the Comprehensive Plan – County staff confirmed that all language was transferred to Comp Plan without edits (except for grammatical corrections).	Correct.
BP02	Jeff Chalfant, BP	Public Draft	D	23.20.050(B)(10)	Adding Cherry Point Management Area as a new "Shoreline Environment" – County staff confirmed that this is a simplification step and that no changes to permitted uses or development were made.	Correct. While the CPMA was treated like an environment designation, it just wasn't called out as such.
BP03	Jeff Chalfant, BP	Public Draft	D	23.30.030(D), 23.40.125(E)(1)(e), 23.40.150(C)(2), 23.40.210(B)(8)	The use of galvanized steel appears to be a newly prohibited material for use in or above shoreline. While we understand the limitation for the use of such materials in water there are no feasible alternatives for use above the water on our pier for equipment and structural components. It is our understanding based on our discussion that our comment is consistent with feedback received from the Parks Department and was not the intent and that an adjustment to the language will be made to allow for use above the water.	We have removed the (newly added) prohibition on galvanized steel, as we could find no mention of it in state law or guidance.
BP04	Jeff Chalfant, BP	Public Draft	D	23.30.040(I) & 23.40.020(F)(4)	Fences and signs have specific limitations in terms of size, height, and setback that cannot be accommodated due to requirements of the Coast Guard and other Federal agencies associate with industrial security requirements. We recommend the addition of a provision that will allow for the construction of security fencing and signage required by such regulations including Chemical Facility Anti-Terrorism Standards (CFATS) codified a 6 CFR, Part 27.	Based on this comment we have added to 23.40.020(F)(9) (Shoreline Bulk Provisions) "provided, that the Director may exempt security fencing from this requirement as required by federal or state regulations" to acknowledge that in certain circumstances higher fences may be allowed. Additionally, we have added "Signage required by state or federal security requirements" as an exemption to 20.40.020(F)(10)(b)).

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BP05	Jeff Chalfant, BP	Public Draft	D	23.40.010(B)	<p><i>Table 1 – Shoreline uses for Cherry Point Environment Area</i></p> <p>Fill and Excavation activities are shown as a prohibited use. However, there are development activities that are permitted within the Cherry Point Environment that require the use of fill and excavation. County staff acknowledged this discrepancy as unintentional and will amend the language to ensure that fill and grading activities are allowed as a part of approved use and development.</p>	<p>The existing regulation in 23.40.125(E)(3) has always said that fill is prohibited in the CPMA, though provides an exception of “the minimum necessary to access piers or other structures that provide access to the water.” We believe this covers your concern. We have, however, clarified that “fill or excavation waterward of the OHWM requires a shoreline conditional use permit,” which is a requirement of the SMA. In the Use Table 1 we have also changed it to be “X/C*,” meaning that fill and excavation is prohibited except as otherwise permitted by the specific regulations (i.e., 23.40.125(E)(3))</p>
BP06	Jeff Chalfant, BP	Public Draft	D	23.40.010	<p><i>Table 1 – Shoreline uses for Cherry Point Environment Area, Shoreline Stabilization</i></p> <p>Revetments are shown as a prohibited use; however, bulkheads are allowed as a conditional use. The definition of bulkheads indicates that revetments are sometimes bulkheads. We understand that this is an unintended circular reference and that the County will amend the definition of bulkhead to remove the reference to revetments and replace with a more appropriate reference to the use of rip rap.</p>	<p>We have struck “such as a revetment or seawall” from the definition of bulkhead (20.60.020(16)) to address this circular inconsistency.</p>
BP07	Jeff Chalfant, BP	Public Draft	D	23.40.010	<p><i>Table 1 – Shoreline uses for Cherry Point Environment Area, Industrial Moorage</i></p> <p>The heading of the table indicates industrial moorage includes piers, docks and buoys. The definition of pier indicates that it includes other structures not normally considered to fit Ecology’s definition of a pier such as mooring buoys. County staff clarified that the intent was not to</p>	<p>We have deleted the term “recreational” in reference to mooring buoys in Table 1 and added a P (permitted) in the Cherry Point Environment. Additionally, we have</p>

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					prohibit the installation of buoys and that the definition for piers will be amended to be consistent with the Ecology definition and that it will be clarified that buoys are permitted in the Cherry Point Management Area.	modified Table 1 to indicate that mooring buoys are not included as general public, commercial, or industrial moorage for the purposes of the table; the mooring buoys row does.
DOEWG01	Nate Brown, DOE Wetlands Group	Public Draft	F	16.16.630	We acknowledge and support the County's proposed adoption of buffer tables from Ecology's Wetland Guidance. This approach provides the most flexibility by basing the widths of buffers on three factors: the wetland category, the intensity of the impacts, and the functions or special characteristics of the wetland.	Comment noted.
DOEWG02	Nate Brown, DOE Wetlands Group	Public Draft	F	16.16.225(8)	<p>We are particularly concerned about the provision allowing alteration of "functionally disconnected"...wetlands. This term appears to be undefined in the CAO. In addition, there are no acreage thresholds for this provision. Nor is there apparent consideration that wetlands that are unconnected to larger undisturbed landscapes can still provide important functions, specifically water quality and hydrologic storage. Additionally, some Category III wetlands may provide high habitat functions, which warrant larger buffers, not weaker protections.</p> <p>We also note that this change does not appear to be supported by any findings in the Whatcom County Best Available Review: Addendum to the 2005 BAS Report. Nor does this approach align with the strategies detailed in the Birch Bay Watershed Characterization and Watershed Planning Pilot Study: <a href="https://fortress.wa.gov/ecy/publications/documents/0706030.pdf">https://fortress.wa.gov/ecy/publications/documents/0706030.pdf</a>.</p> <p>We offer the following questions in an attempt to better understand the County's rationale for this approach:</p> <ul style="list-style-type: none"> <li>• What scientific basis is there for reducing protections on these wetlands?</li> <li>• Has any analysis been conducted to indicate these wetlands are not important resources in the UGA?</li> <li>• Has any analysis been conducted of how many wetlands would be affected and what the functions and values of those wetlands are?</li> <li>• Would mitigation be required to occur within the UGAs? If not,</li> </ul>	Deleted "functionally disconnected" and amended as per conversation with DOE staff

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					<p>what are the cumulative effects of large-scale loss of wetlands in the UGAs in the County?</p> <p>In the absence of this information it is unclear how implementation of this provision could achieve No Net Loss of ecological function. In addition, the concept of functional isolation cannot be applied in SMA jurisdiction since all wetlands within that area are considered associated wetlands, by definition.</p> <p>We recommend the County either conduct a more refined analysis and resulting policy, informed by existing special studies, to develop a scientifically-based approach, or delete subsection (8) from the draft.</p>	
DOEWG03	Nate Brown, DOE Wetlands Group	Public Draft	F	16.16.640(C)(1)	<p><i>Buffer width reduction</i></p> <p>We are concerned about the apparently redundant and potentially additive buffer reduction that is allowed by this section. We cannot determine whether subsection (C)(1) can be applied in addition to the Ecology-recommended buffer reduction strategy listed in subsection (C)(2).</p> <p>If they can both be applied to a single project then they would result in buffers that are well below what science says is necessary to protect wetland functions. For example, in the current draft, a 150-foot buffer for a Category 3 wetland that has moderate habitat function adjacent to high intensity land use. Allowing this buffer to be reduced to 75 feet through additive reductions in (1) and (2) will not provide a buffer adequate to protect the wetlands' habitat functions.</p> <p>We recommend that the language, with respect to these two reduction strategies, be clarified such that they cannot be applied to the same proposal.</p>	Amended as per conversation with DOE staff to clarify that buffer reductions are not additive.
DOEWG04	Nate Brown, DOE Wetlands Group	Public Draft	F	16.16.640(C)(2)	<p>May allow High Impact uses to be reduced to Moderate buffer width if Ecology's minimizing measures are implemented. Per Ecology's CAO guidance, in addition to the minimizing measures, there must be a relatively intact corridor between the wetland and other wetland/priority habitat. Additionally, as worded in the draft regs, this provision does not imply how the applicant chooses which measures to incorporate into the proposal or how many. The wording should be modified to encourage all reasonable/applicable measures. As currently worded, an applicant may argue for the reduction based on minimal measures.</p>	Amended as per conversation with DOE staff to meet DOE guidance.

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DOEWG05	Nate Brown, DOE Wetlands Group	Public Draft	F	16.16.640(C)(3)	If a buffer width is reduced, then any remaining "substantial" (needs a definition) portion of the buffer that is degraded shall be replanted with native vegetation. It is unclear how this relates to buffer mitigation ratios described in 16.16.680(H). The addition of a statement clarifying the applicability of buffer mitigation ratios is needed.	Deleted "substantial" and amended as per conversation with DOE staff.
FSJ01	Level Pratt, Friends of the San Juans	Public Draft	F	16.16.710(C)(2)	<p>In the Fish and Wildlife section of the CAO of the SMP (Ch. 16.16), the County mentions ESA-listed species managed by U.S. Fish and Wildlife, but makes no mention of NOAA Fisheries ESA involvement or authority. Further, the County fails to explicitly acknowledge that the marine nearshore is NOAA Fisheries designated critical habitat for Puget Sound Chinook salmon (Figure attached). Research has clearly demonstrated the importance of the marine and estuarine nearshore to the sustainability and recovery of Puget Sound Chinook.</p> <p>To more fully support Chinook and Southern Resident orca recovery, as well as meeting Goals 10A and 10K of the Shoreline Master Program (see also WAC 173-26-221(2)(C)(iii)), Friends of the San Juans recommends the following revision (new text underlined) in WCC §23.05.065.A:</p> <p>16.16.710(C)(2) Areas in which federally listed species are found, have a primary association with, or contain suitable habitat for said listed species, as listed in the U.S. Fish and Wildlife's Threatened and Endangered Species List or Critical Habitat List (<a href="http://ecos.fws.gov/ecp/">http://ecos.fws.gov/ecp/</a>) or the National Marine Fisheries Service (NMFS) (<a href="https://www.fisheries.noaa.gov/species-directory/threatened-endangered">https://www.fisheries.noaa.gov/species-directory/threatened-endangered</a>), as amended. Note: As of September 2005, NMFS designated the estuarine and marine nearshore environment (extreme high water to a depth of approximately 30 meters mean lower low water, as Puget Sound Chinook Critical Habitat (see Federal Register / Vol. 70, No. 170, 9/2/05) that includes most of the Whatcom County estuarine and marine coastline.</p>	We have amended the section (though in practice we've always looked at both lists).
FSJ02	Level Pratt, Friends of the San Juans	Public Draft	F	16.16.225(B)(8)	We also have concerns about a provision in the CAO that is proposed to be incorporated into the SMP that allows for "Alteration of functionally disconnected Type III or IV wetlands when associated with an approved commercial development within an Urban Growth Area;" (WCC §16.16.225.B.8). There is no explanation or definition of a "functionally	Based on this and discussions with DOE staff, we have deleted "functionally disconnected" from this provision. Additionally, based

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					disconnected" wetland. It is our understanding that they do not exist in the shoreline jurisdiction. The fact they're in the shoreline assumes a functional relationship. We respectfully recommend that the County cite this CAO section as excepted (not included) in the SMP (WCC §23.05.065.A).	on communication with DOE staff, we have added that the wetlands have to have a habitat score of less than 6 to qualify.
FW/WEC01	Tim Trohovich, Futurewise, and Rein Attemann, Washington Environmental Council	Public Draft	B	C/P Ch. 11	<p>We strongly support the Climate Change/Sea Level Rise policies with necessary improvements. [They go on to explain why addressing this is important, their interpretation of state requirements, and supporting material.]</p> <p>But more is needed. It is important that wetland and aquatic vegetation be allowed to occur to maintain shoreline functions and values. So we recommend the addition of the following policy on page 11-31 of the PDF version to read as follows.</p> <p><u>Policy 11AA-8: New lots and new and expanded development should be located so they will not interfere with the landward expansion and movement of wetlands and aquatic vegetation as sea level rises.</u></p>	This is a policy decision and all comments will be forwarded to the P/C and Council.
FW/WEC02	Tim Trohovich, Futurewise, and Rein Attemann, Washington Environmental Council	Public Draft	B	C/P Ch. 11	<p>We recommend that proposed Policy 11AA-5 be modified to read as follows:</p> <p>Policy 11AA-5: <u>Whatcom County shall monitor the impacts of climate change on Whatcom County's shorelands, the shoreline master program's ability to adapt to sea level rise, and other aspects of climate change at least every periodic update, and revise the shoreline master program as needed.</u> Whatcom County <del>shall</del> <u>should</u> periodically assess the best available sea level rise projections and other sciences related to climate change within shoreline jurisdiction, and incorporate them into future program updates, as relevant.</p>	This is a policy decision and all comment will be forwarded to the P/C and Council.
FW/WEC03	Tim Trohovich, Futurewise, and Rein Attemann, Washington Environmental	Public Draft	D	23.05.130(A)	<p>Modify the property rights section so that it is consistent with state and federal law.</p> <p>Proposed 23.05.130(A) would provide that the regulation of private property must be consistent with all relevant constitutional and other legal limitations including local laws. This provision would allow W/C to adopt policies or regulations that override the Ecology's approved</p>	Our attorney believes that this language does not allow the County to override the SMP. It simply states a legal truth—that regulation of property must be consistent

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	Council				SMP. This violates the SMA and cannot be adopted.	with other laws. This does not somehow give the County permission to amend the SMP without Ecology's approval.
FW/WEC04	Tim Trohovich, Futurewise, and Rein Attemann, Washington Environmental Council	Public Draft	D	23.05.130(E)	Proposed 23.05.130(E) provides that this "program shall not be applied retroactively in a way that requires lawfully existing uses and developments (as of the original effective date of this program) to be removed." This provision will prevent the amortization of existing uses in hazardous areas, such as channel migration zones, frequently flooded areas, and areas subject to sea level rise. This would allow frequently flooded homes to always be rebuilt, no matter the hazard. This is poor policy and should not be adopted.	Our attorney agrees with the commenter on this matter; we have removed (E).
FW/WEC05	Tim Trohovich, Futurewise, and Rein Attemann, Washington Environmental Council	Public Draft	D	23.10.030(C)(2)	Proposed 23.10.030(C)(2) provides "that substantive amendments shall become effective immediately upon adoption by the Department of Ecology." But all SMP amendments must be approved by Ecology and become effective 14 days after Ecology adopts them. Proposed 23.10.030(C)(2) should be modified to reflect these requirements.	The commenter is correct. Though we'd amended similar language in 23.05.090 to meet this requirement, we missed it in this section. The section has now been revised.
FW/WEC06	Tim Trohovich, Futurewise, and Rein Attemann, Washington Environmental Council	Public Draft	D	23.10.030(C)(3)	Proposed 23.10.030(C)(3) provides that the County Council makes final decisions on shoreline conditional use permits and variances. Ecology must approve both conditional use permits and variances. So this section should provide that these are final County decisions, not final decisions on the permits.	The commenter is correct. Though proposed Ch. 22.07 correctly spells it out, we missed it in this section. The section has now been revised.
FW/WEC07	Tim Trohovich, Futurewise, and Rein Attemann, Washington Environmental Council	Public Draft	D	23.30.010(B)	Modify so that it is consistent with the SMA and SMP Guidelines. The WA Court of Appeals has held that "reasonable and appropriate uses should be allowed on the shorelines <i>only if they will result in no net loss of shoreline ecological functions and systems</i> . See RCW 90.58.020; WAC 173-27-241(3)(j)."  However proposed 23.30.010(B) exempts development, use, and activities within the shoreline jurisdiction and within "legally existing substantially developed areas" from the no net loss requirement. This violates the SMA and SMP Guidelines cited by the court of appeals. Pro-	We have amended the text as the commenter has suggested.

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					<p>posed 23.30.010(B) also ignores avoidance and minimization and can be read to exempt development in critical areas from the no net loss standard. We recommend that proposed 23.30.010(B) be modified to read as follows:</p> <p>B. Development, use, and activities within the shoreline jurisdiction <del>and outside of critical areas and legally existing substantially developed areas shall avoid and minimize adverse impacts, and any unavoidable impacts shall be mitigated to meet no net loss of ecological function and ecosystem-wide processes pursuant to WAC 173-26-186.</del></p>	
FW/WEC08	Tim Trohovich, Futurewise, and Rein Attemann, Washington Environmental Council	Public Draft	D	23.30.010(B)	The mitigation sequencing requirement in <i>existing</i> WCC 23.30.010(B) must be retained or included elsewhere in the SMP regulations. Mitigation sequencing applies to all development in shorelines jurisdiction, not just development that adversely impacts critical areas. Deleting existing WCC 23.30.010(B) and relying only on the critical areas regulations violates WAC 173-26-201(2)(e)(ii)(A) and other provisions of the SMP Guidelines.	WAC 173-26-201(2)(e)(ii)(A) seems to be addressing how one applies mitigation sequencing to mitigation applied through SEPA review for those types of impacts not regulated by the SMP (e.g., traffic impacts). The County has already adopted WAC 197-11-768 by reference in our SEPA regulations (WCC 16.08.175).
FW/WEC09	Tim Trohovich, Futurewise, and Rein Attemann, Washington Environmental Council	Public Draft	D	23.30.050 Ch. 16.16	We recommend that shoreline jurisdiction be expanded to include the 100-year floodplain and that the buffers for river and stream shoreline be increased to use the newly recommended 200-year SPTH of 204 feet and that this width should be measured from the edge of the channel, channel migration zone, or active floodplain whichever is wider. This will help maintain shoreline functions and Chinook habitat.	Proposed WCC 23.20.010(B)(4 lists the shoreline jurisdiction as including "floodways and contiguous floodplain areas landward <i>two hundred feet from such floodways,</i> " straight from RCW 90.58.030.  The 204 ft. referenced is not a hard SPTH; this is the weighted 3 <sup>rd</sup> Quantile. WDFW Vol 2 provides a step by step process to determine the Riparian Management

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						Area for a parcel based on the ability of a given soil type to support tree growth. The 200 yr index curve is variable, and as shown in Figure A2-33 the SPTH in Whatcom Co. ranges from 101' to 250'. The buffer on Type S Freshwater is proposed to be 200 feet (16.16.740(B), Table 4), measured, presumably, from the edge of the floodway.
FW/WEC10	Tim Trohovich, Futurewise, and Rein Attemann, Washington Environmental Council	Public Draft	D	23.30.060	We strongly support the amendments to 23.30.060 to require review of sites that may have cultural or archaeological resources but are concerned that the SMP update deletes the inadvertent discovery requirements in the existing SMP. Even with predevelopment review, cultural resources can still be inadvertently discovered. Proposed WCC 23.30.606 provides that certain state and federal inadvertent discovery provisions apply, but they delete the County's provisions. This will prevent Whatcom County from requiring compliance with the inadvertent discovery requirements. So we recommend that the existing inadvertent discovery requirements in "B" be retained so the County can effectively address the inadvertent discovery of cultural resources.	This section was developed in consultation with the Lummi Nation Tribal Historic Preservation Office and the WA State Dept. of Archaeology & Historic Preservation, so we assume it meets all requirements. 23.30.060(B)(3)(a) still requires an inadvertent discovery plan conform to DAHP's most current management standards when warranted.
FW/WEC11	Tim Trohovich, Futurewise, and Rein Attemann, Washington Environmental Council	Public Draft	D	23.30.070(A)(3)	Proposed WCC 23.30.070(A)(3) must be deleted. WAC 173-26-221(4)(d)(iii) does not allow developments to not provide public access because "[o]ther reasonable and safe opportunities for public access to the shoreline are located within ¼-mile of the proposed development site" as the proposed amendments do.	WAC 173-26-221 applies to the establishment of environment designation boundaries and provisions, and there is no subsection (4)(d), so we're not clear as to what the commenter is referring.
FW/WEC12	Tim Trohovich, Futurewise, and Rein	Public Draft	D	23.30.080	We recommend that the SMP require new lots and new buildings be located outside the area of likely sea level rise and if that is not possible, buildings should be elevated above the likely sea level rise. These	Before adopting specific regulations, it seems like we'd need to know the de-

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	Attemann, Washington Environmental Council				<p>requirements will provide better protection for buildings, property, and people and will also allow wetlands and marine vegetation to migrate as the sea level rises. We recommend the following new section be added to the SMP periodic update:</p> <p><b><u>23.30.080 Sea Level Rise.</u></b></p> <p>A. <u>New lots shall be designed and located so that the buildable area is outside the area likely to be inundated by sea level rise in 2100 and outside of the area in which wetlands and aquatic vegetation will likely migrate during that time.</u></p> <p>B. <u>Where lots are large enough, new structures and buildings shall be located so that they are outside the area likely to be inundated by sea level rise in 2100 and outside of the area in which wetlands and aquatic vegetation will likely migrate during that time.</u></p> <p>C. <u>New and substantially improved structures shall be elevated above the likely sea level rise elevation in 2100 or for the life of the building, whichever is less.</u></p>	<p>tails of likely sea level rise (location, elevation, magnitude, etc.) and anticipate the development of the CoSMoS model (on which the COB and WCPW are working), which should provide the best data for Whatcom County. The policies being introduced would set us up for developing such regulations once this model is completed.</p> <p>It should also be noted that in reviewing development proposals, PDS already requires structures to be built above the anticipated flood stage through the County's critical area (i.e., geohazard/tsunami) and flood regulations.</p> <p>Nonetheless, this is a policy decision and all comments will be forwarded to the P/C and Council.</p>
FW/WEC13	Tim Trohovich, Futurewise, and Rein Attemann, Washington Environmental Council	Public Draft	D	23.40.010	<p><i>Table 2, Shoreline Use.</i> We recommend that bulkheads and other forms of hard armoring should be shoreline conditional uses. This ensures that these damaging uses will get an appropriate level of review. The SMP should also provide that all property owners seeking to construct a bulkhead on the shoreline of their property must receive Hydraulic Project Approval (HPA) from the Washington Department of Fish &amp; Wildlife per 2SHB 1579 starting on July 1, 2019.</p>	<p>Our code already allows requires staff to do the same level of review as a substantial or CUP and to condition administrative permits. It also requires a geotechnical analysis for all shoreline stabilization types to ensure the least impactful method is</p>

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						<p>selected.</p> <p>Obtaining an HPA is already a state requirement for any work in waters of the state. WCC 23.05.040(C) reminds applicants that it's their duty to seek any other required permits from other agencies. Additionally, a standard condition on all of our permits is that one may need additional permits from other agencies. We do not believe that we should be listing every state and federal permit one may need in every section of code where such might apply.</p>
FW/WEC14	Tim Trohovich, Futurewise, and Rein Attemann, Washington Environmental Council	Public Draft	D	23.90.130(C) (existing)	<p>We oppose the elimination of environment specific impervious surface and open space requirements in current 23.90.130(C) Table 2, Buffer, Setbacks, Height, Open Space, and Impervious Surface Coverage Standards for Shoreline Development.</p> <p>WAC 173-26-211(5)(b)(ii)(D) requires rural conservancy shoreline environments to limit impervious surfaces to ten percent of the lot which Table 2 currently does. Research by the University of Washington in the Puget Sound lowlands has shown that when total impervious surfaces exceed 5 - to 10% and forest cover declines below 65% of the basin, then salmon habitat in streams and rivers is adversely affected. This science documents the need to retain the existing impervious surface limits and open space standards to achieve no net loss.</p>	<p>New Table 3. Bulk Regulations for Shoreline Development still contains impervious surface limits meeting this requirement.</p> <p>However, we did miss the open space requirements, and have added them back in as 23.40.020(E) and Table 3</p>
FW/WEC15	Tim Trohovich, Futurewise, and Rein Attemann, Washington Environmental	Public Draft	D	23.40.125(B)(2)	<p>We strongly support the fossil fuel use regulations in proposed 23.40.125(B)(2). The changing climate shows the need for a just transition away from fossil fuels. The proposed fossil fuel use regulations are an important step in this important transition. We support them.</p>	<p>Comment noted.</p>

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FW/WEC16	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	Public Draft	D	23.40.010	In the Cherry Point Aquatic Reserve we recommend that conditional use permits be required for changes of use, that existing uses be defined specifically, and that new piers, docks, wharfs, and wings be prohibited at Cherry Point. These measures are necessary to protect the valuable resources of the Cherry Point Aquatic Reserve.	The County Council is considering such regulations for Title 20 (Zoning), which would also apply. Staff doesn't believe they need to be repeated here. Nonetheless, we have incorporated their proposed use requirements into 23.40.010 Table 2 (Use Table).
FW/WEC17	Tim Trohimovich, Futurewise, and Rein Attemann, Washington Environmental Council	Public Draft	D	23.40.140	<p>We oppose the amendments to 23.40.140 Mining policies and regulations and urge the County to retain the existing policies and regulations as they are needed to achieve no net loss.</p> <p>If mining is going to be allowed in floodplains, floodways, and channel migration zones, which the County is proposing to allow, then additional standards are needed. First, mines should be located outside the channel migration zone so that they do not increase the rate of channel migration. Second, mines should be no deeper than the bottom of the nearby streams and rivers so when the river moves into the mine, which is a certainty, the impacts will be reduced. Third, the mine reclamation plan should have a design so that when the river or stream moves into the mine, the mine workings are not so wide that the captured sediments destabilize the river or stream or increase erosion risks on upstream properties.</p> <p>We recommend that the following new regulation be added.</p> <p><u>D. Mining in the 100-year floodplain, floodway, or channel migration zones shall meet the following standards:</u></p> <p><u>i. Mines should be located outside the channel migration zone unless there is no feasible alternative site.</u></p> <p><u>ii. Mines shall be no deeper than the bottom of the nearby streams and rivers.</u></p> <p><u>iii. The mine reclamation plan shall have a design so that when the river or stream moves into the mine it is not so wide or deep that the captured sediments destabilize the river or</u></p>	Such mining has always been allowed; we're not changing that. Nonetheless, all comments will be forwarded to the P/C and Council.

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FW/WEC18	Tim Trohovich, Futurewise, and Rein Attemann, Washington Environmental Council	Public Draft	D	23.40.140	<p><u>stream or increase erosion risks on upstream properties.</u></p> <p>In 2020, the legislature adopted RCW 90.48.615(2) which prohibits “[m]otorized or gravity siphon aquatic mining or discharge of effluent from such activity to any waters of the state that has been designated under the endangered species act as critical habitat, or would impact critical habitat for salmon, steelhead, or bull trout. This includes all fresh waters with designated uses of: Salmonid spawning, rearing, and migration.”</p> <p>We recommend that the SMP Update prohibit motorized or gravity siphon aquatic mining and discharging effluent from this type of mining in shorelines that are the critical habitat for salmon, steelhead, or bull trout and that salmonids use for spawning, rearing, and migration.</p>	We have added a section regarding this.
FW/WEC19	Tim Trohovich, Futurewise, and Rein Attemann, Washington Environmental Council	Public Draft	D	(existing) 23.100.150	<p>We oppose the amendments to remove policies and regulations encouraging or requiring low-impact development.</p> <p>The update removes some policies and regulations that encouraged, allowed the County to require, or required low-impact development techniques. For example, former (C)(2) on page 156 provided that “[c]lustering and low impact development techniques may be required where appropriate to minimize physical and visual impacts on shorelines in accordance with policies and regulations of WCC 23.90.090.” This regulation has been deleted. While the subdivision regulations are now proposed to allow the County to require clustering, the requirement for low-impact development has been deleted. Low impact development is an important technique for reducing development’s water quality impacts on rivers, lakes, streams, wetlands, and Puget Sound. We urge the County to retain these policies and regulations; they needed to maintain no net loss of shoreline resources.</p>	Former 23.100.150 (C)(2) was moved to 23.40.130(A)(10), though without the reference to LID. At the time, we had been thinking about stormwater LID techniques, which is covered by a general regulation of meeting our Title 20 stormwater regulations; we had not been thinking about LID in terms of plat design. The term has now been reinstated. 23.40.130(A)(10).
FW/WEC20	Tim Trohovich, Futurewise, and Rein Attemann, Washington Environmental Council	Public Draft	D	(existing) 23.40.200(A)(10), (11), and (12)	<p>Do not delete existing 23.40.200(A)(10), (11), or (12) prohibiting freestanding signs between the right-of-way and buildings, the waterbodies, or placing them in critical areas buffers, or the sign limits in Table 2, Sign Area Limits.</p> <p>Existing WCC 23.40.200(A)(10), (11), and (12) currently prohibit many freestanding signs between the right-of-way and buildings the waterbodies or placing them in critical area buffer. Signs are not a priority shoreline use, but the policy of the SMA calls on the County and Ecol-</p>	The SMA, WAC, or DOE guidelines do not address signs. For simplicity’s sake we were proposing to just have our Title 20 sign regulations address signs. However, T-20 does not address these circumstances, so we have reinserted existing

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					ogy to protect shoreline views. These existing regulations are necessary to implement the policy of the SMA and cannot be deleted. Existing Table 3 is also needed to limit the sizes of signs in shoreline jurisdiction to implement the policy of the SMA. Again, it cannot be legally deleted.	23.40.200(A)(10), (11), & (12) as 23.40.200(A)(6), (7), & (8).  Existing Table 3 does not address sign size.
FW/WEC21	Tim Trohovich, Futurewise, and Rein Attemann, Washington Environmental Council	Public Draft	F	16.16.265(A)(1)	Require wider setbacks between development and shoreline and critical areas buffers to protect homes and property from wildfire danger.  Whatcom County is susceptible to wildfires. Climate change has the potential to increase wildlife risk through changes in fire behavior, wildfire ignitions, fire management, and the vegetation that fuels wildfire.  Setbacks from critical areas buffers provide an area in which buildings can be repaired and maintained without having to intrude into the buffer. It also allows for the creation of a Home Ignition Zone that can protect buildings from wildfires and allow firefighters to attempt to save the buildings during a wildfire. Since a 30-foot-wide Home Ignition Zone is important to protect buildings, we recommend that 16.16.265(A)(1) require a setback at least 30 feet wide adjacent to shoreline and critical area buffers. Combustible structures, such as decks, should not be allowed within this setback to protect the building from wildfires. This will increase protection for people and property.	This distance was established by Council and staff is not proposing to change it. However, all comments will be provided to them.  (Note that this comment contradicts comments GCD12 and MES09.)
FW/WEC22	Tim Trohovich, Futurewise, and Rein Attemann, Washington Environmental Council	Public Draft	F	Article 3	We strongly support updating the GeoHazard Area standards in Article 3.  Whatcom County is susceptible to landslides. The SMP Guidelines, in WAC 173-26-221(2)(c)(ii)(B), provide: "Do not allow new development or the creation of new lots that would cause foreseeable risk from geological conditions to people or improvements during the life of the development." Landslides are a type of geological hazard that can result in major impacts to people and property.  We strongly support designating the landslide deposits, scarps and flanks, and areas with susceptibility to deep and shallow landslides as geologically hazardous areas. This will better protect people and property.	16.16.322(D) already precludes land divisions, and requires risk-reducing measures be taken for non-division development in geohazard areas. 16.16.310 also covers landslide deposits, scarps and flanks.
FW/WEC23	Tim Trohovich, Future-	Public Draft	F	Article 3	Landslides are capable of damaging commercial, residential, or industrial development at both the tops and toes of slopes due to the earth	CAO Article 3 already covers this.

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	wise, and Rein Attemann, Washington Environmental Council				sliding and other geological events. So the areas at the top, toe, and sides of the slope are geological hazards. We recommend these areas be designated as landslide hazards.	
FW/WEC24	Tim Trohovich, Futurewise, and Rein Attemann, Washington Environmental Council	Public Draft	F	Article 3	<p>Require the review of geologically hazardous areas capable of harming buildings or occupants on a development site.</p> <p>We recommend that the regulations require review of any landslide capable of damaging the proposed development. Geological hazards, such as landslides are capable of damaging property outside the hazard itself. The 2014 Oso slide ran out for over a mile (5,500 feet) even through the slope height was 600 feet. A 2006 landslide at Oso traveled over 300 feet. Recent research shows that long runout landslides are more common than had been realized. This research documents that over the past 2000 years, the average landslide frequency of long runout landslides in the area near the Oso landslide is one landslide every 140 years. The landslides ran out from 787 feet to the 2,000 feet of the 2014 landslide. So we recommend that Whatcom County require review of all geological hazards capable of harming a proposed lot or building site.</p>	CAO Article 3 already covers this.
FW/WEC25	Tim Trohovich, Futurewise, and Rein Attemann, Washington Environmental Council	Public Draft	F	16.16.325(C)	We support WCC 16.16.325(C) which requires individualized setbacks from landslide hazard areas based on the actual hazard. WCC 16.16.325(C) will help protect people and property. Construction should not be allowed in these setbacks.	Comment noted.
FW/WEC26	Tim Trohovich, Futurewise, and Rein Attemann, Washington Environmental Council	Public Draft	F	Article 5.5	<p>To protect the coastal aquifers, we recommend that Article 5.5 apply to all areas subject to saltwater intrusion.</p> <p>All of the islands in the County and its marine shorelines have the potential for wells to be contaminated by salt water. WAC 173-26-221(2)(a) requires that shoreline master programs must provide for management of critical areas designated as such pursuant to RCW 36.70A.170(1)(d) located within the shorelines of the state with policies and regulations that ... [p]rovide a level of protection to critical areas within the shoreline area that assures no net loss of shoreline ecologi-</p>	To staff's knowledge, only Lummi Island has been designated as a vulnerable seawater intrusion areas by the County Council (which is why it has the rules in Art. 5.5).

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					<p>cal functions necessary to sustain shoreline natural resources." Critical areas include areas with a critical recharging effect on aquifers used for potable waters.</p> <p>Saltwater intrusion can worsen until wells "must be abandoned due to contaminated, unusable water." Saltwater intrusion is often worsened by over-pumping an aquifer. The Western Washington Growth Management Hearings Board has held that Growth Management Act requires counties to designate vulnerable seawater intrusion areas as critical aquifer recharge areas. The Board also held that counties must adopt development regulations "to protect aquifers used for potable water from further seawater degradation."</p>	
FW/WEC27	Tim Trohovich, Futurewise, and Rein Attemann, Washington Environmental Council	Public Draft	F	Table 1, Standard Wetland Buffer Widths	We support updating the buffer widths to conform to Ecology's most recent recommendations, as they are based on best available science	Comment noted.
FW/WEC28	Tim Trohovich, Futurewise, and Rein Attemann, Washington Environmental Council	Public Draft	F	16.16.640(B)	Buffer averaging should not allow widths less than 75% of the required buffer for all wetlands. Type IV wetlands have important functions and values. Allowing 50% buffer reductions for type IV wetlands is inconsistent with best available science and should not be allowed.	Based on this comment we have removed the allowance for Type IV wetlands in 16.16.640(B) and inserted the language from 2016 DOE Guidance (XX.040 Exemptions and Allowed Uses in Wetlands) providing exceptions to regulation of certain wetlands/buffers from regulation in a new section 16.16.612.
FW/WEC29	Tim Trohovich, Futurewise, and Rein Attemann, Washington Environmental	Public Draft	F	16.16.740(B)	<p>Retain using the PHS recommendations as the default for buffers and management recommendation priority habitats and species.</p> <p>Currently, Table 4, Buffer Requirements for Habitat Conservation Areas (HCAs), provides that for areas with which federally listed species have a primary association, state priority habitats, and areas with which priority species have a primary association the "[m]inimum buffers shall</p>	While the text in the table is proposed for deletion, amended (B)(2) requires that minimum buffers be based on habitat a management plan prepared pursuant to

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	Council				be based on recommendations provided by the Washington State Department of Fish and Wildlife PHS Program; provided, that local and site-specific factors shall be taken into consideration and the buffer width based on the best available information concerning the species/habitat(s) in question and/or the opinions and recommendations of a qualified professional with appropriate expertise." This requirement is being deleted and instead the buffers are based on a habitat a management plan. While we recognize the habitat management plan will include information on the PHS program recommendation and a survey of best available science related to the species or habitat, the current requirement is clearer that the default buffer should be the PHS recommendations. We think this is clearer and provides better protection for priority species and habitats and recommend it be retained.	WCC 16.16.750, subsection (B)(4) of which requires that assessment reports include Management recommendations developed by WDFW through its PHS program. Thus, the requirement is still there (and always was, as this section isn't proposed for modification).
FW/WEC30	Tim Trohovich, Futurewise, and Rein Attemann, Washington Environmental Council	Public Draft	F	16.16.740(B)	We also recommend that the required consultation with Indian Tribes and Nations in Table 4 be retained. They have significant expertise on fish and wildlife and their habitat needs.	16.16.750(C) still allows for agency and tribal consultation.
FW/WEC31	Tim Trohovich, Futurewise, and Rein Attemann, Washington Environmental Council	Public Draft			We support preparing a No Net Loss technical memo. While WAC 173-26-090(2)(d)(ii) provides that "[t]he review process provides the method for bringing shoreline master programs into compliance with the requirements of the act that have been added or changed since the last review and for responding to changes in guidelines adopted by the department, together with a review for consistency with amended comprehensive plans and regulations," this provision does not excuse compliance with WAC 173-26-090(2)(d)(i) and cannot override RCW 90.58.080(4)(a) of the Shoreline Management Act. So, while SMPs must be brought into compliance with new laws and new SMP Guidelines, they must also comply with all current provisions of the SMA and the SMP Guidelines including the no net loss requirement. We urge Whatcom County to update the SMP to achieve no net loss.	A NNL technical memo will be prepared prior to the Planning Commission making their recommendations to Council. We thought it more appropriate to do this task after the public comment period in case the proposals needed to be amended.
GCD01	Glyn & Carol Davies	Public Draft	D	23.10.160(C)	A penalty of double standard post development is excessive. Please consider reducing the penalty to the cost of mitigation plus a percentage penalty in the range of 15% - 25%.	This section doesn't say that penalties in the way of fines are doubled; it says that "corrective action, restora-

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						tion, or mitigation" will be required at a double ratio "when appropriate" as a way to discourage violations.
GCD02	Glyn & Carol Davies	Public Draft	D	23.30.040(C)	Please consider clarifying the planting of vegetation to minimize impacts to views from the water requirement in this provision. For example, views from the water are optimized by plants and shrubs that do not exceed 3' – 4' in height. Dense, forested vegetation on the shoreline is highly obstructive to views, so this provision should be clear regarding the type of vegetation that protects views.	This provision is aimed at protecting views from the water. The SMA requires protecting views to <i>and from</i> the water. (RCW 90.58.020))
GCD03	Glyn & Carol Davies	Public Draft	D	23.40.020(F)	Suggest adding a 15 <sup>th</sup> provision to this clause to conform to 16.16.720(G)(4) Accessory Uses. "When located in the shoreline jurisdiction, residential water-oriented accessory structures may be permitted in an HCA buffer; provided that the size shall be limited to 10% of the buffer's area or 500 square feet, whichever is less."	We have added a cross reference to that section.
GCD04	Glyn & Carol Davies	Public Draft	D	23.40.150(A)(2)	"No pier or dock shall be used for a residence." This provision should be deleted since it contradicts 23.40.150(A)(A) that allows moorage for single family residences.	23.40.150(A)(A) to which the commenter refers is proposed for deletion. Furthermore, it refers to "moorage associated with a SFR," which means a private dock at a private SFR (i.e., a personal dock), which is still allowed. The prohibition in 23.40.150(A)(2) refers to someone living on their boat or dock.
GCD05	Glyn & Carol Davies	Public Draft	D	23.40.150(A, B, & C)	<i>Dimensional Standards – Freshwater and Marine – tables</i> Please consider allowing ramps to be 6' wide rather than 4' wide as a safety measure when transporting kayaks, canoes, or boating provisions, equipment and supplies to the dock for launching (kayaks or canoes) or loading into a boat (ice chests, water skis, wakeboards, etc.). 4' is narrow when carrying bulky items to the float, and can be dangerous, particularly if the ramp or pier is high off the water due to the shoreline configuration relative to the float. This would also mean increasing the square footage for the individual use dock or pier to 520	WDFW regulations in WAC 220-660-140 and 380 limit the width of residential dock ramps to 4' wide.

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					sq. ft. to accommodate a 6' wide ramp, and increasing the added square footage if the dock has to be extended due to water depth to 6 sq. ft. rather than 4 sq. ft.	
GCD06	Glyn & Carol Davies	Public Draft	D	23.40.150(A, B, & C)	We also suggest changing the minimum water depth to either 10' measured below ordinary high water, or 6' measured over mean low low water. This is to allow adequate clearance for propellers to protect the sea floor or lake bed from turbulence when a boat is operating in shallow water	Changing to a 10' standard would essentially allow a doubling of the length of docks on our lakes, when we're required to minimize overwater structures. It would also interfere with public navigation.
GCD07	Glyn & Carol Davies	Public Draft	D	23.40.150(C)(8)	Please consider adding a qualifier to this provision stating "...unless shoreline constraints, and/or positioning of pilings make it infeasible to create sufficient buoyancy for the float without positioning flotation components under a portion of the grating."	This standard is from WDFW regulations in WAC 220-660-140 and 380.
GCD08	Glyn & Carol Davies	Public Draft	D	23.40.150(D)(6)	Please consider increasing the size of a covered moorage accessory for a single-family pier or dock to 500 sq. feet (25 x 20) and 20 ft. in height above OHWM to accommodate larger boats that are increasingly common on the lakes in Whatcom County. Also please consider deleting the requirement in this provision that the cover (the "roof materials") be "...translucent or at least 50% clear skylights." The purpose of a covered moorage is to protect the boat, principally from sunlight, which is not served by a translucent cover. Additionally, even if the cover is translucent, the boat under it is not, which defeats the purpose of a translucent cover in any case.	These standards are from DOE guidance.
GCD09	Glyn & Carol Davies	Public Draft	D	23.40.170(C)(3)	Please consider increasing the total allowed footprint of home, sidewalks and similar structures, parking areas and normal appurtenances to "the greater of 40% of the total area of the lot or 4,000 sq. ft." 2500 sq. ft. is small for just the residence by today's standards, and is prohibitively small when it includes the garage, driveway, sidewalks, decks, patios, etc. in addition to the home.	This provision is existing and is for construction on constrained lots, which by definition cannot accommodate larger development; if one wants a larger home, one can buy an unconstrained lot.
GCD10	Glyn & Carol Davies	Public Draft	F	16.16.235(4)(b)(iii)	Why is tree replacement at a 3:1 ratio? Please consider a tree replacement ratio of 1:1.	A 3:1 ratio is based on DOE guidance, which recommends a ratio of 4:1 for mature trees and 2:1 for young

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						trees. For simplicities sake, we averaged it. Additionally, this is the same replacement ratio in on Council's adopted tree protection regulations for Lake Whatcom and our other special watershed districts.
GCD11	Glyn & Carol Davies	Public Draft	F	16.16.235(B)(5)(e)	Please consider a pruning height for shrubs on the order of 2' – 3' in order to minimize view obstruction.	We have now moved that provision from the view corridor section to the vegetation management section.
GCD12	Glyn & Carol Davies	Public Draft	F	16.16.265(A)(1)	Please consider eliminating the building setback. The purpose of the critical area buffer is to provide protection; with generous buffer requirements (100' for shoreline, 50' – 100' for critical areas, etc.) there is no need for an additional 10' building setback (or consider reducing the building setback to 5' from the buffer).	This setback was established by Council and staff is not proposing to change it. We have, however, amended the section to allow for a reduction where the setback isn't warranted, modeled on the COB's similar regulation.  (Note that this comment contradicts comment FW/WEC21.)
GCD13	Glyn & Carol Davies	Public Draft	F	16.16.265(A)(1)(b)	Please consider allowing for a grade-level deck that is covered by a corresponding deck on the 2 <sup>nd</sup> floor, as well as the bottom of the stairs/staircase for access to a second level deck, if any.	Comment noted.
GCD14	Glyn & Carol Davies	Public Draft	F	16.16.270(C)(12)	Same comment as GCD08 above: Please consider increasing the total allowed footprint of home, garages/shops, decks, parking, and all lawn and nonnative landscaping to "the greater of 40% of the total area of the lot or 4,000 sq. ft." 2500 sq. ft. is small for just the residence by today's standards, and is prohibitively small when it includes the garage, driveway, sidewalks, decks and patios and lawn in addition to the home. Also, 23.40.170.C.3 allows an additional 500 sq. ft. for landscaping, lawn, turf, ornamental vegetation, or garden. This provision should match and allow the same additional 500 sq. ft.	Reasonable use as proposed would now be the last effort to avoid a constitutional taking and allow development on very constrained lots and these cases should be rare. The new paradigm is to administratively allow up to 50% buffer reduction (with mitigation) through a

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						minor variance (administrative) and a greater reduction with a public hearing (Hearing Examiner). This new approach should provide greater flexibility while cutting down on costs to applicants and cases going to the H/E. The shoreline code cited is what is allowed without a shoreline variance; an applicant always has the option to seek a larger footprint through a variance.
GCD15	Glyn & Carol Davies	Public Draft	F	16.16.620(F)	Please allow for a storage tank when a storage tank is mandated by County requirements for the well.	A storage tank is not required to be adjacent to a well, as is a pump(house); it could be placed elsewhere on a property, outside of critical areas/buffers.
GCD16	Glyn & Carol Davies	Public Draft	F	16.16.620(G)(2)(d)	Please consider allowing the dispersion outfall within the outer 50% of the buffer.	The 25% is existing language; however, we have proposed adding, "unless a closer location is demonstrated to be the only feasible location" to account for odd circumstances.
GCD17	Glyn & Carol Davies	Public Draft	F	16.16.265(A)(1)	Please consider eliminating the building setback. The purpose of the critical area buffer is to provide protection; with generous buffer requirements (100' for shoreline, 50' – 100' for critical areas, etc.) there is no need for an additional 10' building setback (or consider reducing the building setback to 5' from the buffer).	We have added text to the section describing its purpose.  However, this setback was established by Council and staff is not proposing to change it.
GCD18	Glyn & Carol Davies	Public Draft	F	16.16.680(F)	Please consider limiting the replacement ratio for preservation to 3 times the ratio for reestablishment or creation (in most cases, 1:1 ratio	Mitigation ratios for wetland impacts are taken verbatim

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					should be applicable, so a 3 times ratio is generous and should suffice).	from DOE guidance.
GCD19	Glyn & Carol Davies	Public Draft	F	16.16.720(A)	Since you are proposing eliminating provision "O" under this section that calls out residential, perhaps reference residential use in this provision: "...including, without limitation, residential uses."	We're not sure to what the commenter is referring.
GCD20	Glyn & Carol Davies	Public Draft	F	16.16.720(B)(3)	Please allow for a storage tank when a storage tank is mandated by County requirements for the well.	Tanks do not necessarily need to be next to a well, as a pump house does. Tanks could be located elsewhere on a property, outside of critical areas/buffers.
GCD21	Glyn & Carol Davies	Public Draft	F	16.16.720(G)(1)(d)	Please consider 6 foot width for private trails.	Comment noted.
GCD22	Glyn & Carol Davies	Public Draft	F	16.16.745(C)(1)(c)	Please consider allowing buffer reduction to 65% of the standard buffer specified in the table.	The amendments proposed are intended to meet DOE guidance. As such, we cannot vary without developing our own Best Available Science.
GCD23	Glyn & Carol Davies	Public Draft	F	16.16.760(8)	Please consider mitigation at 1:1 ratio regardless of whether placed before or after impact occurs. Sometimes mitigation must occur after the impact occurs for logistical reasons. This should not result in a 25% penalty.	This ratio is not proposed for amendment; Council approved it in 2017 to account for temporal loss.
LNTHPO01	Tamela Smart, Lummi Nation Tribal Historic Preservation Office	Public Draft	D	23.60.030(18)	One of our primary concerns is the use of the term "significant" in regards to cultural resources. This term has a specific meaning under Federal law. The definition that is included for this term on page 227 is taken from the Federal process and it does not apply here. Under state law a different process is followed.	The term significant has been deleted from the definition of "cultural resource site" as it is no longer used in the regulations.
MES01	Ed Miller, Miller Environmental Services	Public Draft	F	16.16.255(B)	Subsection (5) was stricken, and a side bar note says this is addressed by (4). This does not appear to be the case as 4 is an allowance for water dependent use.	We think the commenter erred in his reference. Allowance for water dependent uses is subsection (3); (4) refers to uses allowed by Ch. 16.16, which includes activities allowed with or without notification.
MES02	Ed Miller, Miller	Public Draft	F	6.16.255(B)(8)	<i>Alteration of functionally disconnected Type III or IV wetlands with as-</i>	The term "functionally dis-

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	Environmental Services				<i>sociated with an approved commercial development within an Urban Growth Area.</i> Please define "functionally disconnected". If this was intended to mean "isolated wetlands", this provision would exclude many wetlands that have seasonally flowing outlets within the Birch Bay area. Also, why doesn't this exemption apply to residential development in other UGAs?	connected" has been deleted.
MES03	Ed Miller, Miller Environmental Services	Public Draft	F	16.16.225(C)	Please define "ecological connectivity" and "habitat corridors." It appears this section will grant the County the authority to protect/prohibit development over areas outside of defined critical areas and their buffers. The language is vague, which will create unpredictable review and requirements. A corridor could be 10 feet wide or >300 feet wide, depending on which species we are seeking to maintain a corridor for. Additionally, corridors are already covered in the CAO, as a WDFW priority habitat covered under the HCA section.	The commenter is correct. However, this verbiage was added in response to the Council's direction in the adopted scoping document.
MES04	Ed Miller, Miller Environmental Services	Public Draft	F	16.16.225(D)	Was this section intended to apply to native plant communities within critical areas and buffers or within any native plant community "associated" with critical areas? What does "associated" mean? This could potentially imply that any native vegetation beyond the regulated buffer should be prioritized for protection. This new section seeks to extend authority over all vegetation (native and non-native) on a property.	The CAO only applies to critical areas and their buffers, and as adopted by reference in the SMP, only applies to the shoreline jurisdiction. This proposed language does not extend authority over all vegetation on a property.
MES05	Ed Miller, Miller Environmental Services	Public Draft	F	16.16.230(B)	We noted the verbiage change from the prior "exempt activities" title. With this modification, no activities would be exempt from the critical areas ordinance. Additionally, under subsection B of this section, the language was modified to remove the allowance to prune or plant ornamental or native trees within critical areas or buffers. This would take away any rights to prune or plant native or non-native trees in lawfully established gardens or landscaped areas, including fruit trees? Why? This seems to be taking away some existing established rights. This section is inconsistent with 16.16.235.B.4.a.i.	Per state law, <i>all</i> activities are subject to the CAO, including those listed here. They are not exempt; they just don't need a permit or review. We changed the title to make it clearer.  Pruning (and all vegetation management) still listed as an activity allowed in buffers with notification (16.16.230((B)(4)). We re-

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						moved <i>planting</i> so people don't think they can plant new non-native trees in the buffer. However, one can still maintain existing vegetation.
MES06	Ed Miller, Miller Environmental Services	Public Draft	F	16.16.235(B)(4)(b)(iv)(B)(2)	Evergreen trees may not be appropriate for all environments, particularly wetlands with high levels of seasonal ponding. We recommend removing the evergreen tree requirement.	This language is the same that is used in our tree protection regulations for our watersheds. Nonetheless, we agree that in certain circumstances evergreens may not be the best choice. Therefore we have added, "unless otherwise approved by the Director."
MES07	Ed Miller, Miller Environmental Services	Public Draft	F	16.16.235(B)(5)	What is the time scale when referring to "one-time"? The life of the tree? The duration of property ownership? Please clarify.	This was unclear. We have removed "a one-time," but added "a cumulative total of." We were trying to limit the total amount of buffer that could be cleared.
MES08	Ed Miller, Miller Environmental Services	Public Draft	F	16.16.255(C)(3)	"Habitat corridor" and "ecological connectivity" are general ecology terms, not defined in this code and not regulated as a critical area – unless they are a specific, identified HCA (such as old growth/mature forest, Oregon White Oak, etc.). Biodiversity areas and corridors are identified as a state "priority habitat" by Washington Department of Fish and Wildlife (WDFW)– with corridors defined as "relatively undisturbed and unbroken tracts of vegetation that connect fish and wildlife habitat conservation areas, priority habitat, areas identified as biologically diverse, or valuable habitat within a city or UGA." Critical areas reports are already required to cover biodiversity areas and corridors as an HCA. If the intent of this added section is to include other areas in addition to those currently regulated as critical areas, it seems to be an extension of and addition of a new regulated area.	The commenter is correct. However, this verbiage was added in response to the Council's direction in the adopted scoping document.
MES09	Ed Miller, Miller Environmental	Public Draft	F	16.16.265(A)(1)	What is the intent of the building setback? If it is to protect tree root zones and allow for building access and maintenance, a building set-	This setback was established by Council and staff is

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	Services				back is not always needed. For example, a new building within a grass field would not disturb root zones within a buffer or result in significant disturbance by a homeowner walking around the house. Assuming this 10-foot building setback area would or could be tabulated as impact, the setback will effectively reduce the allowed "reasonable use" footprint (which is proposed to be reduced back down to 2,500 square feet under this code). Forcing applicants to build smaller homes on reasonable use lots in order to accommodate a 10-foot building setback will significantly reduce the buildable area on a property. For example, a 50 x 50-foot building (2,500 SF) would have to shrink to 40 by 30-foot building (1,200 SF) if it is against a road setback in order to leave a 10-foot building setback around three sides of the structure.	not proposing to change it. We recognize, however, that there may be instances where the setback isn't warranted and have amended the section to allow for a reduction in such cases, modeled on the COB's similar regulation.
MES10	Ed Miller, Miller Environmental Services	Public Draft	F	16.16.265(B)(1)	Significant Trees" needs to be defined in the CAO.	The WCC has too many disparate definition sections, many of which define the same words differently. Staff is working toward ultimately having one definition chapter. But until that happens, we're trying not to add new definitions where words are already defined elsewhere, which is why we've added "Any words not defined herein shall be defined pursuant to Titles 20 (Zoning), 22 (Land Use and Development), 23 (Shoreline Management Program), or their common meanings when not defined in code" at the beginning of the definition section.
MES11	Ed Miller, Miller Environmental Services	Public Draft	F	16.16.270(C)(12)	<i>Reasonable Use Exceptions. For single-family residences, the maximum impact area may be no larger than 2,500 square feet. This impact area shall include the residential structure as well as appurtenant development that are necessarily connected to the use and enjoyment of</i>	Reasonable use as proposed would now be the last effort to avoid a constitutional taking and allow develop-

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					<p><i>a single-family residence. These appurtenant developments include garages/shops, decks, parking, and all lawn and nonnative landscaping.</i></p> <p>Why is reasonable use reduced from 4,000 SF to 2,500 SF? The County Council previously approved the larger area so that property owners could use a reasonable portion of their 5, 10, 20-acre properties with a house, shop, garden, etc. If the intent is to make it the same as the SMP reasonable use allowance (2,500 square feet), please explain why they need to be the same. Shoreline lots fall within 200 feet of the shoreline, a more highly protected area designated by the Shoreline Management Act. Additionally, shoreline lots are often smaller-sized lots. A majority of non-shoreline lots in the County are at least five acres in size. No specific reasoning is given on why the reasonable use allowance is being lowered, despite the recent critical areas code update in 2017 which brought it to 4,000 square feet.</p> <p>This is particularly concerning if a 10-foot building setback is required to be included within the reasonable use allocation area, severely reducing building size. Potentially, a property owner with five acres or more could be limited to a 1,000 SF house with a required 10-foot building setback and max out the reasonable use allowance with a small house footprint.</p>	<p>ment on very constrained lots and these cases should be rare. The new paradigm is to administratively allow up to 50% buffer reduction (with mitigation) through a minor variance (administrative) and a greater reduction with a public hearing (Hearing Examiner). This new approach should provide greater flexibility while cutting down on costs to applicants and cases going to the H/E. The shoreline code cited is what is allowed without a shoreline variance; an applicant always has the option to seek a larger footprint through a variance.</p>
MES12	Ed Miller, Miller Environmental Services	Public Draft	F	16.16.630(C) & 16.16.740(A)(1)	<p>This section of code was revised to remove the provision that buffers do not extend across substantially developed areas and/or across legally established roads. The language was changed to only include "existing, legally established substantially developed surface". This change would allow larger buffers to include disconnected area on the opposite side of roads or developed surfaces (such as buildings). Please explain the reason for this change. We are not aware of any Department of Ecology guidance that proposes including disconnected portions of buffer across roads or developed areas.</p> <p>While some wildlife species may cross roads (e.g. birds, mammals), it seems unlikely that water-dependent species (e.g., amphibians) would regularly access buffers across roads and buildings. Since the intent of the buffer is to protect the functions of the wetland, perhaps the analysis should focus on what functions a disconnected buffer would provide</p>	<p>Hydrologic or water quality functions are not the only reason for buffers. While small water-dependent species (e.g., amphibians) may not cross roads, many others do, or they nest, roost, or any number of other activities. DOE guidance does not provide provisions for reducing buffers because of minor (e.g., dirt driveways) intrusions.</p>

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					<p>to a wetland across a road or building. The disconnected buffer would not provide hydrologic or water quality functions for the wetland across the road.</p> <p>This change would substantially increase the amount of regulated buffer areas in Whatcom County, particularly in conjunction with the larger buffers proposed under this code change. As such, it seems there should be some reasoning provided as to why this change is needed or even valid.</p>	
MES13	Ed Miller, Miller Environmental Services	Public Draft	F	16.16.640(A)	<p>How will the Director determine what distance is necessary to increase the buffer if it's "poorly vegetated"? This appears subjective as there is no definitive science that provides clear buffer widths in these cases – they could vary depending on what function or which species you are seeking to protect. What would qualify as "poorly vegetated"? Bare dirt? Grass? Significant coverage of invasive species? This section of code could be interpreted and applied very differently among staff, decreasing predictability and consistency for landowners. The section has also been altered from the existing code to allow for buffer increases to "provide connectivity to other wetland and habitat areas". This seems to be an especially broad provision to increase buffers almost anywhere.</p>	Staff is proposing amendments to this section to provide better rationale (based on DOE guidance) for an already existing section.
MES14	Ed Miller, Miller Environmental Services	Public Draft	F	16.16.640(B)(2)	<p><i>Buffer Width Averaging. In the specified locations where a buffer has been reduced to achieve averaging, the Director may require enhancement to the remaining buffer to ensure no net loss of ecologic function, services, or value.</i></p> <p>This section effectively eliminates the intent of buffer averaging and converts it to buffer reduction by requiring mitigation. Buffer averaging is an important and simple way to allow more flexibility for property owners that need to make minor buffer adjustments. This section will also reduce consistency and predictability (each staff member could apply this differently), and will increase the cost for simple projects by requiring plantings, monitoring, bonding, etc. by thousands of dollars.</p>	The intent that if the remaining reduced buffer area is degraded, it is now narrower and lacks the vegetation to properly function. If it is well vegetated, enhancement would not be necessary (nor required).
MES15	Ed Miller, Miller Environmental Services	Public Draft	F	16.16.640(C)(1)(c)	<p><i>Buffer Width Reduction. The buffer shall not be reduced to less than 75 percent of the standard buffer.</i></p> <p>The existing code section allows for up to a 50 percent (or minimum of 25 feet) reduction of a Category IV wetland buffer, while higher catego-</p>	We are responding to comments from DOE regarding having to meet their latest guidance.

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					ry wetland or restricted to a 25 percent reduction. Why is this being changed? Is there guidance from the Department of Ecology supporting the change or data from Whatcom County showing that the current allowed reduction up to 50 percent for Category IV wetlands is not working? Category IV wetlands are generally low functioning wetlands – why are we further restricting buffer flexibility here?	
MES16	Ed Miller, Miller Environmental Services	Public Draft	F	16.16.640(C)(1)(e)(iii)	Does this mean the Director could require property owners to protect non-critical area and non-buffer areas with a conservation easement? This essentially gives the Director unlimited authority to restrict uses over non-protected uplands on properties, further limiting uses on properties without clear rationale, size limitations/restrictions, or predictability. Again, this section of code will create highly unpredictable review, requirements, and result in additional cost and critical areas assessment report revisions, depending on staff interpretations and personal beliefs. Additionally – allowed buffer reductions already require buffer mitigation to offset the impact. Please provide rationale for requiring additional mitigation that may include non-designated critical areas.	This is not intended to be in addition to mitigation, but one of the ways to achieve no net loss through the mitigation sequence while applying landscape ecology principals.
MES17	Ed Miller, Miller Environmental Services	Public Draft	F	16.16.640(C)(1)(g) & 16.16.640(C)(3)	<p><i>Buffer Width Reduction. All buffer reduction impacts are mitigated and result in equal or greater protection of the wetland functions and values. This includes enhancement of existing degraded buffer area and provide mitigation for the disturbed buffer area.</i></p> <p>Define “degraded”. This could result in the Director arbitrarily requiring acres of additional planting, above and beyond the 1:1 or 1.25:1 buffer mitigation. How is the amount of area determined? What if the area is an active hayfield or established pasture that is in use? The Director could remove the ability to use a legally established, non-conforming uses and require planting over such area. This again will add uncertainty, lack of predictability, and significantly increase costs without any clear limitations on how much planting could be required. Additionally, this sounds like two things are now required – enhancement of existing degraded buffer and conducting additional mitigation. Why are property owners penalized for the current condition of the property – that may have been in place for generations? Also, it should be noted that buffers are not static, and have been increasing with every update and version of the CAO. As a result, areas which now may be considered</p>	<p>Planting of degraded buffer has been a part of our CAO since 2005 and based on DOE guidance. We have only tried to clarify based on case history; we are clarifying that the area that might be enhanced is limited to the specific location being reduced.</p> <p>Per DOE guidance, degraded is any portion of a buffer that is not in a densely vegetated community.</p>

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					"degraded buffer," potentially requiring additional enhancement (per the draft change), may not have even been regulated as buffer a few years ago.	
MES18	Ed Miller, Miller Environmental Services	Public Draft	F	16.16.680(H)	<p><i>Mitigation Ratios. For impacts to wetland buffers, mitigation shall be provided at the follow ratios... (1) Where the mitigation is placed after the impact occurs, at a 1.25:1 ratio (area or function); and (2) where the mitigation is in place and functional before the impact occurs (i.e. advanced mitigation), at a 1:1 ratio (area or function).</i></p> <p>Planting mitigation prior to project construction is complicated because of access for equipment, permit issuance, and seasonal constraints (plants generally must be planted in winter or spring) – which doesn't always coincide with project construction. At the stage when the mitigation is designed and the critical areas assessment report is submitted to the County for review with the site plan, we don't know when or if planting could occur prior to project construction. This makes it impossible to assume applicants could achieve a 1:1 mitigation ratio unless they are using an established mitigation bank to offset their impacts. Why is this being changed? Is there a directive from the Department of Ecology or data in Whatcom County supporting this, and the higher ratio?</p>	It is being amended to meet DOE guidance.
MES19	Ed Miller, Miller Environmental Services	Public Draft	F	16.16.720(D)	<p><i>Private Access. Access to existing legal lots may be permitted to cross habitat conservation areas if there are no feasible alternative alignments.</i></p> <p>This section as modified implies that no new lots could be created (subdivided) if a road would be needed to cross through a habitat conservation area. This could include trumpeter swan loafing areas (which are roughly mapped on WDFW priority habitats and species maps), biodiversity corridors, bat habitat (which includes entire townships where bats are mapped), streams, Pileated woodpecker habitat (which is not mapped by WDFW and must be determined by the project biologist or County staff), and many other priority habitats.</p>	We have amended this section to clarify in such a way that subdivisions could still occur.
MES20	Ed Miller, Miller Environmental Services	Public Draft	F	16.16.630(F)	<p><i>Table 1 Standard Wetland Buffer Widths.</i></p> <p>Based on a sampling of numerous projects in Whatcom County, the most common wetland category is a Category III with a moderate habitat score (110 or 150-foot buffers for moderate or high intensity land</p>	Based on conversations with DOE staff, Table 1 is proposed to be updated to be consistent with their latest guidance. Mr. Miller provides

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					uses respectively). However, we also find that Category III wetlands with a high habitat score occur. This could easily occur in a wetland of small to moderate size (5,000 to 10,000 square feet), and partially in a pasture. The updated buffer for this type of wetland would be 225 feet or 300 feet (for moderate or high intensity development respectively). A 225-foot buffer would result in over 3.6 acres of land that would be protected as buffer. On a five-acre property, with multiple wetlands, this could easily create many more reasonable use properties, resulting in many more variances.	a good example as to why staff is proposing an (up to 50%) administratively approved minor variance.
MES21	Ed Miller, Miller Environmental Services	Public Draft	F	16.16.740(A)	<i>Buffer Widths</i>  This is the same concern as comment MES12, and would allow for buffers to extend to areas across roads.	Hydrologic or water quality functions are not the only reason for buffers. While small water-dependent species (e.g., amphibians) may not cross roads, many others do, or they nest, roost, or any number of other activities. DOE guidance does not provide provisions for reducing buffers because of minor (e.g., dirt driveways) intrusions.
MES22	Ed Miller, Miller Environmental Services	Public Draft	F	16.16.740(B)	<i>Table 4. Buffer Widths.</i>  What is a Type O water? No definition is given and there is no other correlation with any other part of the HCA section or Washington State water typing.  The buffer provision for natural ponds and lakes under 20 acres was previously 50 feet, but was removed. What are the buffers for small lakes and natural ponds? The added water typing buffers in the table include a 100-foot buffer for lakes. Assumedly natural ponds and small lakes would not be required to have the same buffer as large lakes in the County. Currently artificially created ponds (created prior to 2005) do not require a buffer, is this still the case?	A definition of the water types has been added.
MES23	Ed Miller, Miller Environmental Services	Public Draft	F	16.16.745(A)	<i>Buffer Width Increasing.</i>  There is a new provision to this section that allows the Director to ex-	This provision has been borrowed from Skagit County as a way to provide inter-

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					tend Type S or F buffers to resources within 300 feet – including Category III wetlands, other HCA's or other waters. Again, this is an exceptionally broad provision to add in additional regulated areas that are not currently designated as critical areas or buffers in the existing or even the proposed amended code. There is also no clear guidance on how this would be done. The amount of additional area in Whatcom County this could include is hard to imagine. The extension of every fish stream or lake buffer to another resource within 300 feet is essentially extending most of the buffer areas to 300 feet.	jurisdictional consistency, making it easier for our consultants working in multiple jurisdictions.
MES24	Ed Miller, Miller Environmental Services	Public Draft	F	16.16.745(B)	<i>Buffer Averaging.</i> Same concern as comment MES14.	The intent is that if the remaining reduced buffer area is degraded, it is now narrower and lacks the vegetation to properly function. If it is well vegetated, enhancement would not be necessary (nor required).
MES25	Ed Miller, Miller Environmental Services	Public Draft	F	16.16.745(C)	<i>Buffer Reduction.</i> Same concern as comment MES17 and MES18.	Planting of degraded buffer has been a part of our CAO since 2005 and based on DOE guidance. We have only tried to clarify based on case history; we are clarifying that the area that might be enhanced is limited to the specific location being reduced.  Per DOE guidance, degraded is any portion of a buffer that is not in a densely vegetated community.
MES26	Ed Miller, Miller Environmental Services	Public Draft	F	16.16.760(B)	<i>Buffer Mitigation.</i> Same concern as comment MES18.	It is being amended to meet DOE guidance.
NES01	Molly Porter, Northwest Eco-	Public Draft	F	16.16.270(C)(12)	Please provide additional clarification on what is included in the maximum allowed 2,500 sq. ft. impact area to provide consistency in appli-	Whatever fits in 2,500 sq. ft. We could set specific num-

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	logical Services				cation. The text states driveways shall be the minimum necessary but does not specify if any of this square footage shall be included in the allowed 2,500 sq. ft. impact area. Is there a minimum square footage of parking area that is required to be included? Is the 10-foot building setback counted towards this allowance?	bers, but that would provide less flexibility to a homeowner.
NES02	Molly Porter, Northwest Ecological Services	Public Draft	F	16.16.270(C)(12)	For projects that require a critical area buffer impact, it appears these will be reviewed in the following order: reduction of up to 25% administered by the Director; a minor variance (buffer reduction of 25-50%) administered by the Director; a major variance (buffer reduction beyond 50%) administered by the Director; and last, if major variance is denied or if all other code requirements including mitigation cannot be met, a reasonable use application is administered by the Hearing Examiner. A flow chart similar to Table 1. Project Permit Processing Table in 22.05, may be helpful to describe this process and requirements associated with each.  Please clarify if there are any specific criteria for minor and minor variances in regards to total allowed impact area. It appears variances have no maximum allowable footprint and can be permitted as long as mitigation sequencing is applied and impacts can be mitigated.	The commenter is correct; and a flow chart might be helpful; we'll try to develop one. As to variance criteria, see WCC 22.07.050. There are no criteria in regards to total allowed impact area (though one would have to mitigate).
NES04	Molly Porter, Northwest Ecological Services	Public Draft	F	16.16.640(C)(1)(g) & 16.16.640(C)(3)	Both sections appear to require mitigation, as well as additional enhancement of 'existing degraded buffer area' to provide mitigation for the 'disturbed buffer area.' Please define 'degraded buffer area' and 'disturbed buffer area,' and provide additional clarity on how much additional enhancement may be required beyond the standard 1:1 and 1.25:1 mitigation ratios. Further defining these terms and the amount of enhancement that is expected will help clarify the application of this code section to specific projects.	Per DOE guidance "degraded" is the difference between existing conditions and a densely vegetated community. As each site is different, it would be difficult to have a code that accounts for every variation. We are trying to balance having a code that is a "cookbook" verses providing flexibility to homeowners and their consultants.
NES05	Molly Porter, Northwest Ecological Services	Public Draft	F	16.16.640(B)(1)(a) & (C)(1)(a)	Buffer averaging is preferred to buffer reduction [16.16.640(C)(1)(b)]. Sections 16.16.640(B)(1)(a) and (C)(1)(a) imply a development proposal cannot use a combination of buffer averaging in one area and buffer reduction in another. Clarification could be added to state buffer	Clarification has been added.

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					averaging is not allowed if the portion of impacted buffer has already been reduced. This would allow mitigation plans to use buffer averaging where feasible (preferred) and buffer enhancement to compensate for the remainder of buffer reduction.	
NES06	Molly Porter, Northwest Ecological Services	Public Draft	F	16.16.740, Table 4	Provide definition of a Type O stream. This stream type does not appear to be defined in the Washington Administrative Code (WAC 222.16.030), Washington Department of Natural Resources (WDNR) water typing system, or anywhere in the Code update.	A definition of the water types has been added.
NES07	Molly Porter, Northwest Ecological Services	Public Draft	F	16.16.710(C)(1)(b)(i)	Throughout 16.16.710(C)(1) the term "natural streams" has been revised to "natural waters." The term "waters" leaves ambiguity which could be interpreted to mean wetlands or water flowing out of wetlands. Under this definition, 16.16.710(C)(1)(b) would regulate any artificial man-made ditch that receives water from a wetland and categorize the ditch as a stream that would require a stream buffer. Many ditches, including roadside ditches, receive water from wetlands and could be regulated as streams. Is this the intent of this change? If not, for clarity, the term "natural waters" could be replaced "waters of the state" which is defined in (16.16.900).	Based on this comment we have amended the section to say "waters of the state" rather than "natural waters."
NWC01	Katrina Jackson, Northwest Wetlands Consulting	Public Draft	F	16.16.680	As written, it isn't clear that the area of substantial surface and the area beyond the substantial surface is no longer functioning as a part of the buffer protection. As I read it, the provision only seems to address the substantial surface itself.	Correct.
NWC02	Katrina Jackson, Northwest Wetlands Consulting	Public Draft	F	16.16.273	Can we presume that the minor variance is in addition to the standard buffer reduction? Otherwise the minor variance would force many more projects to the Hearing Examiner than under the current reasonable use.  For example a 100' buffer would go to 75' minimum; then with minor variance the buffer could then be modified to 25% to 50% of that number or 56.25 or 37.5. When the 10' building setback is added, the relief is no way near what reasonable use is allowing currently especially on smaller lots where the separation is many times only 10' to 20' between the wetland and the foundation. As I describe the minor variance would still require a 66.25 foot to 47.5 foot separation between the foundation and the wetland. It is our belief that even a variance on the standard buffer reduction would overburden the Hearing Examiner if reasonable use would under the revisions be required to go to the hearing exam-	The proposed new approach would allow the applicant to request, and the County to vary, any numerical or dimensional standard to provide reasonable development. It would be the duty of the Hearing Examiner to determine if a legally permissible project has been recommended.

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					<p>er. You state "They would be limited to variances for a 25% to 50% reduction of critical area buffers (when mitigated and they meet certain criteria) but would address most of the instances that reasonable use exceptions are currently applied for. We believe that overall, these changes would significantly reduce the number cases having to go to the Hearing Examiner." Perhaps you have better statistic than I do about the narrow buffers we have been needing under reasonable use. I do a lot of work in Sudden Valley and for the most part many of the projects can stay about 35 feet from a critical area, but those would under the revisions be moved to the hearing examiner.</p>	
NWC03	Katrina Jackson, Northwest Wetlands Consulting	Public Draft	F	16.16.265(B)(4)	<p>Is the intent that the conservation easement shall only apply to the specific altered buffer on properties containing critical areas and/or associated buffers? If so then it should so state. It seems since Notice on title is expected for properties that have critical areas and/or assoc. buffers that are not altered. My thoughts go to the properties that have an established house, want to put a shop in one corner and may need to alter a buffer to do so, but the permittee should not be asked to then identify all of the non-altered wetlands or buffers on the rest of the acreage. So then the applicant would do a conservation easement for the altered buffers and or wetlands, and then also a notice on title to cover any of the other critical areas that are unaltered. If all wetlands and buffer on the property are required to be placed in a CE when only one wetland and/or wetland buffer is altered, this would result in excessive wetland delineation, surveying of wetland boundaries, and reporting costs.</p> <p>Also alteration to buffers on a property should be allowed in the future modified to the full extent of the code provisions and not forced locked into a conservation easement when the first project might only be a minor modification.</p>	<p>The commenter raises a good point. We have revised the section to refer to the "review area."</p> <p>As to the 2<sup>nd</sup> point, our conservation easements do allow for future development as permitted by code.</p>
NWC04	Katrina Jackson, Northwest Wetlands Consulting	Public Draft	F	16.16.680	<p>It seems that some effort has been made in part of the code to use the label of compensatory mitigation. Thank you. When a violation occurs clearing or overlayment, once repaired the reparation area should not be then placed in a conservation easement. Because the word mitigation is still somewhat interchangeable in the code or in the minds of those enforcing the code, it needs to be clear than only compensatory mitigation areas are to be placed in conservation easements.</p>	Comment noted.

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NWC05	Katrina Jackson, Northwest Wetlands Consulting	Public Draft	F	16.16	<p>Administratively, through reasonable use, wetlands are being filled. This action does not show up as an administrative option under minor variance. As written it looks like wetland fill would need to go to hearing examiners as well. This again would send several more of the single family small residential lots to the hearing examiner. Basically I like the idea of administrative variance or minor variance, but with changes it looks significantly more restrictive than the current practices for what can be handled without going to the hearing examiner.</p> <p>You might also talk with the City of Bellingham. I was working on a stream buffer reduction below minimum standards, very soon after the hearing examiner had told the City to start handling these as an administrative variance and to quit sending them to the hearing examiner. I found this interesting.</p>	Staff's recollection is that staff has only been approving wetland fill for a SFR through administratively processed reasonable use exceptions (RUE) for the last 2 years, and that has only happened once. However, we do not believe that wetland fill (or other uses approve through an RUE ought to be approved by staff; thus the reason for the proposed change.
PA01	Paul Anderson	Public Draft	F	16.16.225(B)(8)	I recommend that this provision be listed "as excepted in WCC § 23.05.065," since it is not applicable for shoreline associated wetlands. Interpretation and enforcement of this section within shoreline jurisdiction is problematic as shoreline associated wetlands by definition (WAC 173-22-030(1)) have proximity and influence with the shoreline water and therefore, are not "functionally disconnected".	Based on this and discussions with DOE staff, we have deleted "functionally disconnected" from this provision. Additionally, based on communication with DOE staff, we have added that the wetlands have to have a habitat score of less than 6 to qualify.
PA02	Paul Anderson	Public Draft	F	16.16.260(G)(1)	Three years is not adequate to establish whether a mitigation site will successfully compensate for lost critical area functions, especially where that mitigation includes the planting of shrubs and trees. In terms of wetland mitigation, state and federal agencies have required a minimum of five years monitoring for several years and I recommend that five years be the minimum monitoring required in the SMP.	Though staff had not proposed to amend this section, based on this comment we realized that the existing code does not reflect current practices. We have updated this section to do so, and to address Mr. Anderson's comment.
PA03	Paul Anderson	Public Draft	F	16.16.640(C) & 16.16.720(D)	<p><i>[Wetland] Buffer Width Reduction</i></p> <p>Allowing an outright reduction in buffer width will not protect critical area (wetland or fish and wildlife habitat) functions or shoreline ecolog-</p>	We have added language to this section from DOE guidance, clarifying that buffer reductions are not allowed

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					<p>ical functions. The only time a reduction in adopted buffer widths should be allowed (no &gt; than a 25% reduction) is when it is used with buffer averaging (see Buntzen et al. 2016). To ensure that there be no net loss of shoreline ecological functions, I recommend that this provision be stricken within shoreline jurisdiction. This same concern and recommendation applies to 16.16.720.D. (Buffer Width Variance).</p>	<p>outright, but only under certain (DOE approved) circumstances.</p>
PA04	Paul Anderson	Public Draft	F	16.16.710(C)(2)	<p><i>Habitat Conservation Areas – Designation, Mapping, and Classification: “Areas in which federally listed species are found, have a primary association with, or contain suitable habitat for said listed species, as listed in the U.S. Fish and Wildlife’s Threatened and Endangered Species List or Critical Habitat List...”</i></p> <p>Within shoreline jurisdiction, this section needs to be edited to also include the National Marine Fisheries Service (NMFS), the federal agency responsible for managing marine species listed under the Endangered Species Act that includes Puget Sound Chinook salmon (<i>Oncorhynchus tshawytscha</i>) and Southern Resident killer whales (<i>Orcinus orca</i>). These two iconic species are of significant cultural, commercial and recreational importance for the Pacific Northwest and not acknowledging their importance and presence within the SMP is a substantial oversight. Due to its critical importance for Chinook salmon rearing and migration, NMFS designated the marine and estuarine nearshore (extreme high water to approx. 30 meters depth), including most of the Whatcom County coast, as critical habitat for the recovery of Puget Sound Chinook in September 2005 (see Federal Register, Vol. 70, No. 170, 9/2/05). NMFS is acknowledged as a regulatory agency in WCC §16.16.900 (Definitions; “Critical habitat”).</p> <p>The marine and estuarine nearshore within the County meets the definition of a Fish and Wildlife Habitat Conservation Area in WAC 365-190-130 and, more importantly for the SMP, the definition of Critical Saltwater Habitat in WAC 173-26-221(2)(C). I respectfully recommend that the County include reference to NMFS-managed listed species in the SMP and that the marine and estuarine nearshore is designated critical habitat for Puget Sound Chinook. To simplify the permitting process and assist staff and applicants in understanding this update, I would also recommend that the salmonid habitat maps be updated to show the marine and estuarine nearshore as a regulated critical area.</p>	<p>We have amended 16.16.710(C)(2) to included NMFS listings and critical habitat.</p>

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PA05	Paul Anderson	Public Draft	F	16.16.720 & 16.16.740	<p><i>Habitat Conservation Areas – Use and Modification and Habitat Conservation Area Buffers</i></p> <p>Since shorelines and shorelands (associated wetlands) include more than just streams and the SMP protective standards apply to those other waters, I recommend changing “stream(s)” to “water(s)” in Table 3 (§16.16.720) and in §16.16.740. Also, since tidal waters include a number of species and habitats of cultural, commercial and recreational importance (e.g., shellfish areas; Chinook salmon), what is the rationale and science to support requiring a wider buffer on marine versus freshwater habitats; 150 and 200 feet, respectively? To ensure no net loss of ecological function, I recommend that the upland buffer on marine habitats be increased to 200 feet, which is well within the buffer range reported in the scientific literature (see Protecting Nearshore Habitat and Functions in Puget Sound; Protection of Marine Riparian Functions In Puget Sound, Washington; available from WDFW: <a href="https://wdfw.wa.gov/">https://wdfw.wa.gov/</a>).</p>	<p>Amended per this suggestion (though in Table 3 only for the performance standards that apply to all waters.)</p> <p>And while the buffer is proposed to be 150’ in the marine areas, we are still managing for NNL in the entire shoreline jurisdiction.</p>
WCPW01	Atina Casas, W/C Public Works	Public Draft	E	22.05.020	Shoreline Substantial is included in both the Type II and Type III sections of the table. The footnote (c) in the Type II section explains the circumstances when a Shoreline Substantial will be processed as a Type III. This footnote should also be in the Type III section for further clarity.	Comment noted.
WCPW02	Atina Casas, W/C Public Works	Public Draft	E	22.07.020(B)(1)	How will the applicant know what the dollar amount is when OFM changes it every 5 years? Will updated values be shown on the permit application form so applicants know if their project qualifies based on the current value at the time of application submittal?	Correct, the application is changed when OFM updates the amount.
WCPW03	Atina Casas, W/C Public Works	Public Draft	E	22.07.030(A)	<p><i>A. Shoreline substantial development permits are considered Type II applications pursuant to WCC 24 22.05.020 (Project Permit Processing Table).</i></p> <p>For clarity, add a sentence that this permit could be considered a Type III application pursuant to 22.05.090(2) (Open Record Public Hearing).</p>	We have modified the sections to clarify.
WCPW04	Atina Casas, W/C Public Works	Public Draft	F	16.16.680(H)(1)	Consider keeping the wetland buffer impact mitigation ratio 1:1 for public road and bridge projects. Mitigation is not possible before impacts. And between clear zone requirements for vehicle safety and limited right-of-way, there often isn’t onsite area available to accommodate a	The mitigation ratios are proposed to be amended to meet DOE guidance. Nonetheless, Public Works could choose to enhance publicly

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					1.25:1 mitigation ratio.	owned property now and apply the mitigation to future projects (i.e., advance mitigation).
WCPW05	Atina Casas, W/C Public Works	Public Draft	F	16.16.760(B)(8)	Consider an HCA buffer impact mitigation ratio of 1:1 for public road and bridge projects. Mitigation is not possible before impacts. And between clear zone requirements for vehicle safety and limited right-of-way, there often isn't onsite area available to accommodate a 1.25:1 mitigation ratio.	The mitigation ratios are proposed to be amended to meet DOE guidance. Nonetheless, Public Works could choose to enhance publicly owned property now and apply the mitigation to future projects (i.e., advance mitigation).
WCPW06	Atina Casas, W/C Public Works	Public Draft	F	16.16.900	Add a definition for Critical Facilities, which is referenced in 16.16.322.	A definition has been added.
WCPW07	Chris Elder, W/C Public Works	Public Draft	B	C/P Ch. 11	Under the Council approved scope of possible amendments, topic #6 highlights Climate Change/Sea Level Rise with the recommended action of "Develop and/or strengthen policies regarding climate change/sea level rise, including the incorporation and use of new data (as it becomes available), to review and revise, if warranted, shoreline use regulations". The proposed amendments to the Shoreline Master Program have not sufficiently addressed this topic based on available data including projected impacts of climate change and have not incorporated best management practices developed to address the projected impacts of climate change.	Policies regarding climate change/ sea level rise have been developed and/or strengthened and are proposed to be included in Chapter 11 of the CompPlan (pg. 11-30).
WCPW08	Chris Elder, W/C Public Works	Public Draft			Related to climate change, the most significant projected climate impacts related to the SMP update include sea level rise and increases in coastal and riverine flooding, both in magnitude and frequency. I have included the several regional and state scientific climate data reports and data informed recommendations on how to incorporate projected climate change impacts such as sea level rise and increased coastal and riverine flooding into planning processes. The list of resources supplied is located at the end of this memo.  It should be noted that Whatcom County is currently participating in development of a local Coastal Storm Modeling System (CoSMoS)	Before adopting specific regulations, it seems like we'd need to know the details of likely sea level rise (location, elevation, magnitude, etc.) and anticipate the development of the CoSMoS model (on which the COB and WCPW are working), which should provide the best data for Whatcom

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					<p>which will further inform the extent of potential impacts of sea level rise combined with storm surge, wind currents, barometric pressure, and other environmental factors. Data from this effort will inform the magnitude and area of impact and will support selection of an actual sea level rise elevation and/or shoreline impact zone, but existing data already highlights that sea level rise has occurred and will continue to occur at an increasing rate.</p>	<p>County. The policies being introduced would set us up for developing such regulations once this model is completed.</p> <p>It should also be noted that in reviewing development proposals, PDS already requires structures to be built above the anticipated flood stage through the County's critical area (i.e., geohazard/tsunami) and flood regulations.</p> <p>Nonetheless, this is a policy decision and all comments will be forwarded to the P/C and Council.</p>
WCPW09	Chris Elder, W/C Public Works	Public Draft			<p>While this periodic update to the Shoreline Master Program may not spur development or adoption of an actual sea level rise projection for Whatcom County shorelines, staff recommends developing new code language that clearly identifies the projected impacts of sea level rise and increased impacts of riverine and coastal flooding within Title 23. Furthermore code improvement must require applicants pursuing development within the shoreline jurisdiction to perform a climate vulnerability assessment for the proposed action and highlight mitigation measures proposed to address projected climate impacts. This language will support applicants in mitigating climate risk to their private investment and will support local government in protecting public safety, private property, and environmental health.</p>	<p>Your comments will be forwarded to the P/C for their consideration.</p>
WCPW10	Chris Elder, W/C Public Works	Public Draft			<p>The resources described below have been attached to this comment letter to support the above comments and recommendations:</p> <ul style="list-style-type: none"> <li>The University of Washington's Climate Impacts Group Shifting Snowlines and Shorelines (2020) highlights this significant climate changes occurring within our region and does provide summary projections of potential changes in sea level.</li> </ul>	<p>Thank you.</p>

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					<ul style="list-style-type: none"> <li>• The Extreme Coastal Water Level in Washington State (Guidelines to Support Sea Level Rise Planning) (2019) provides valuable guidance regarding incorporation of sea level rise projections into local planning.</li> <li>• Maps of Climate and Hydrologic Change for the Nooksack River Watershed (2017) highlights the projected changes in seasonal precipitation in the Nooksack River which projects an increase in winter precipitation over the next 30 years of between 9.5% and 20.8% which will contribute to increased magnitude and frequency of flooding.</li> <li>• Incorporating Sea Level Change in Civil Works Programs is a US Army Corps of Engineers regulation requiring consideration of sea level impacts on all coastal projects as far inland as the extent of estimated tidal influence and providing guidance for incorporating the direct and indirect physical effects of projected future sea level change across the project life cycle in managing, planning, engineering, designing, constructing, operating, and maintaining projects and systems of projects.</li> <li>• Integrating Climate Resilience into Flood Risk Management (2010) provides significant policy guidance and considerations.</li> </ul> <p>Additional online resources that may support development of climate change related improvements can be found at the following sites.</p> <ul style="list-style-type: none"> <li>• <a href="https://toolkit.climate.gov/">https://toolkit.climate.gov/</a></li> <li>• <a href="https://toolkit.climate.gov/tool/adaptation-tool-kit-sea-level-rise-and-coastal-land-use">https://toolkit.climate.gov/tool/adaptation-tool-kit-sea-level-rise-and-coastal-land-use</a></li> </ul>	
RES01	Ander Russell, ReSources	Public Draft	D	23.30.020	<p><i>SMP Scoping Document Item 5 : Consistency with Shoreline Management Act (RCW 90.58) and 2003 SMP Update Guidelines (WAC 173-26) – Thank you for adding language referencing WCC Title 23 Shoreline Regulations 23.30.020 as it pertains to mitigation. We feel that in order to adequately address item 5b from the Scoping Document further clarification is needed on exactly what mitigation actions are needed for development. Please add clarification and reference WCC 16.16.</i></p>	<p>5b from the scoping document is “Clarify development mitigation requirements.” We feel we have done this in many sections of both Title 23 &amp; WCC 16.16. While most of the “clarifying” has been done to the text of WCC 16.16, it pertains to shoreline permits since the CAO is adopted as part of the SMP.</p>

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RES02	Ander Russell, ReSources	Public Draft	D	23.40.020(G)	<p><i>Shoreline Bulk Provisions – Buffers, Setbacks, Height, Open Space and Impervious Surface Coverage</i> – Thank you for adding in language about the need for mitigation under G (Development activities allowed in buffers and setbacks). Please clarify and strengthen that language. Any impacts from activities happening within the critical area buffer must be mitigated please show how this will be done.</p>	<p>The text of that section clearly states, “provided...that they comply with all the applicable regulations in WCC Chapter 16.16, including mitigation.” Please note that mitigation requirements are in WCC 16.16, a part of the SMP, and that both need to be read together.</p>
RES03	Ander Russell, ReSources	Public Draft	B & D	C/P Ch. 11 & Title 23	<p><i>Climate Change/Sea Level Rise</i> – Thank you for the updated language concerning climate change and sea level rise that was added to the Chapter 11 of the CompPlan (Exhibit B). We strongly support the recommended changes outlined by Futurewise and WEC for this scoping item. A comprehensive approach to addressing the impacts of climate change by protecting natural shorelines and other natural systems will help our community withstand and recover from the increase in those impacts over time.</p> <p>Please add language to reflect a focus on climate change and sea level rise impacts to Exhibit D. The SMP and CompPlan must do a better job at addressing sea level rise and other climate change impacts. We understand that the bulk of the revisions in this area have been added to Exhibit B. However, the words climate change and sea level rise do not appear at all in Exhibit D.</p> <p>Climate change impacts on sea levels, storm surges and riverine and marine flooding are extensively documented and must be planned for and addressed in all County regulations and planning documents. The County need not look any further than its own report on climate change impacts to have the data needed to develop and strengthen policies around climate change, flooding and sea level rise. Just this past winter Whatcom County was inundated with unprecedented flooding from heavy rains that breached dikes and submerged houses. The cost of the damage from the flooding between late January through early February was over \$4 million, \$2.5 million of which was related to road and infrastructure damage.</p>	<p>Before adopting specific regulations, it seems like we’d need to know the details of likely sea level rise (location, elevation, magnitude, etc.) and anticipate the development of the CoSMoS model (on which the COB and WCPW are working), which should provide the best data for Whatcom County. The policies being introduced would set us up for developing such regulations once this model is completed.</p> <p>It should also be noted that in reviewing development proposals, PDS already requires structures to be built above the anticipated flood stage through the County’s critical area (i.e., geohazard/tsunami) and flood regulations.</p> <p>Nonetheless, this is a policy</p>

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					<p>Further recommendations on how to incorporate climate change impacts on rising sea levels, storm surges, and riverine and marine flooding in to Exhibits B and D:</p> <ul style="list-style-type: none"> <li>• Make the changes recommended by Futurewise/WEC to Exhibit B, policy 11 AA-5 and include new policy 11 AA-8 outlined in their letter.</li> <li>• We strongly support the addition of a Sea Level Rise section to Exhibit D. We support the language proposed for a new Section 23.30.080 by Futurewise and WEC in their letter.</li> <li>• Shoreline maps should be updated to include Best Available Science (BAS) and reflect any additional areas that are now considered within the 200' of the OHWM as a matter of shoreline jurisdiction.</li> <li>• Given the impacts of sea level rise on property and life, please prevent construction in areas that will be underwater in the next 30 years. The Washington Coastal Hazards Resilience Network has the best available science on this with various sea level rise projections depending on various greenhouse gas scenarios.</li> <li>• Whatcom County has over 50 Toxic Cleanup Sites in marine shoreline areas.<sup>3</sup> Please add language about what steps can be taken to plan for Sea Level Rise impacts on those sites. Proactive steps to protect communities, water and habitat now will prevent high costs down the road.</li> <li>• Science around climate change, sea level rise, storm surges and their impacts is dynamic and evolving - often at a faster pace than required SMP update timelines. Strengthen the language around assessing and incorporating Best Available Science. Be specific about the intervals at which BAS will be assessed and what the process for incorporating BAS will look like. <ul style="list-style-type: none"> <li>○ Examples from local jurisdiction that incorporate climate impacts: <ul style="list-style-type: none"> <li>▪ The City of Tacoma has included many updates in their 2019 Periodic Update regarding climate change impacts. Below are the additions they are proposing which Whatcom County could incorporate:</li> <li>▪ A new general policy of "Evaluate sea level rise data</li> </ul> </li> </ul> </li> </ul>	<p>decision and all comments will be forwarded to the P/C and Council.</p>

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					<p>and consider sea level rise risks and implications in the development of regulations, plans, and programs." (p. 66)</p> <ul style="list-style-type: none"> <li>▪ New site planning policies: <ul style="list-style-type: none"> <li>○ "Development should be located, designed, and managed both to minimize potential impacts from sea level rise and to promote resilience in the face of those impacts, by such actions as protecting wetland and shoreline natural functions, incorporating green infrastructure, retaining mature vegetation, and considering soft-shore armoring wherever possible." (p. 69)</li> <li>○ "Assess the risks and potential impacts on both City government operations and on the community due to climate change and sea level rise, with special regard for social equity." (p. 70)</li> <li>○ "Promote community resilience through the development of climate change adaptation strategies. Strategies should be used by both the public and private sectors to help minimize the potential impacts of climate change on new and existing development and operations, including programs that encourage retrofitting of existing development and infrastructure to adapt to the effects of climate change." (p. 70)</li> </ul> </li> <li>▪ A new general policy for Critical Areas and Marine Shoreline Protection: "Protect natural processes and functions of Tacoma's environmental assets (wetlands, streams, lakes, and marine shorelines) in anticipation of climate change impacts, including sea level rise."</li> </ul>	

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RES04	Ander Russell, ReSources	Public Draft	B	C/P Ch. 11	<i>Scoping Document Item 8: Habitat</i> – Please address Scoping Document item 8a. We understand it is not necessary to have references to the WDFW and DNR Shore Friendly Program in the code in order for the County to mirror the program but referring to it adds weight and legitimacy for the use of practices outlined in the WDFW and DNR Shore Friendly Program.	8a is, “Reference WDFW and DNR’s Shore Friendly Program.” And you’re right; the code need not reference all the helpful programs the state (or feds or County) manages. However, we have added reference to that program in C/P policy 111-2, and we do provide such references to applicants here at PDS.
RES05	Ander Russell, ReSources	Public Draft	F	16.16.225(C)	Please make the following changes to strengthen weak language:  <u>Development proposals shall seek to maintain ecological connectivity and habitat corridors whenever possible. Restoration of ecological connectivity and habitat corridors shall be considered a priority restoration and mitigation action.</u>	See response to RES07. Further, until actual wildlife corridors are identified, mapped, and adopted, trying to maintain a variable corridor width dependent on the species one’s trying to manage would not be possible through piecemeal development review.
RES06	Ander Russell, ReSources	Public Draft	F	16.16.255(B)(3) & (5)	We support the addition of 16.16.255 B #’s 3 and 5	Comment noted.
RES07	Ander Russell, ReSources	Public Draft	D		Please add a wildlife corridor overlay to shoreline maps in Exhibit D or wherever else is relevant.	The only wildlife corridor that the Council has adopted is the Chuckanut Wildlife Corridor, which is shown on our critical areas maps. Our understanding is that the Council’s Wildlife Advisory Committee is looking into recommending others (based on a scientific review), but until the Council acts to adopt any new ones we have nothing to map.

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RES08	Ander Russell, ReSources	Public Draft	D		We are generally opposed to expansions of nonconforming overwater structures, and will make recommendations to Planning Commission and County Council on revisions to Chapter 23.50.	Comment noted (however, the code does not allow this).
RES09	Ander Russell, ReSources	Public Draft	D	23.40.160	<i>Recreation</i> – Item 13d: The language around trails within critical area buffers must be strengthened. Any impacts to any portion of the critical area buffer from recreational trails must comply with all applicable regulations in WCC 16.16 and be mitigated.	In general we have tried not to repeat every requirement of one code in another (i.e., those of 16.16 in T-23, and vice versa), as there is a general rule that shoreline permits are subject to 16.16. Nonetheless, we have added subsection 23.40.160(A)(6) to remind folks.
RES10	Ander Russell, ReSources	Public Draft			<i>Cherry Point Management Area and heavy impact industrial zone</i> – We support the Aug 17 <sup>th</sup> draft revisions to the Cherry Point Management Area section of Chapter 11. Going further, to fully implement the Comprehensive Plan policy amendments for the Cherry Point industrial zone adopted by the County in May 2017, and to maintain consistency with the proposed Cherry Point Amendments—if adopted—additional amendments to other sections of the SMP are warranted. We intend to propose additional revisions, and will seek feedback from PDS and stakeholders before submitting specific language for consideration by the Planning Commission this Fall. Particularly, specifications for where shoreline conditional use permits are required and conditional criteria should be updated further.	Comment noted.
RES11	Ander Russell, ReSources	Public Draft	F	16.16.745	<i>Scoping Document Item 18: Shoreline Setbacks/Riparian Management</i> – We were unable to see where language around Scoping Document item 18b had been added. Please provide specific language to show what incentives will be provided to enhance Fish and Wildlife Habitat Conservation Areas.	18b reads, “Provide incentives to enhance Fish and Wildlife Habitat Conservation Areas (FWHCA).  Staff had added this to the scope as we had originally considered developing a site-specific shoreline buffer program wherein incentives to enhance would allow

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						buildings be built closer to the shoreline. However, while exploring this option we determined that additional analyses of shoreline characterization would be required, and doing so was not part of the overall scope of a periodic update.
RES12	Ander Russell, ReSources	Public Draft	A & B		<i>Scoping Document Item 19: Water Quality</i> – Lake Whatcom is the drinking water source for 100,000 Whatcom County residents. Scoping Document item number 19 addresses Lake Whatcom water quality. However, no recommendations about Lake Whatcom have been added to this or any section in Exhibits A or B. Please add policy language about the importance of Lake Whatcom as the source of drinking water for most County residents and about the current water quality improvement plan (TMDL). We understand that this language is referenced in Exhibit A, however that language is only in the narrative. Please add policy language (in Exhibit A and Exhibit B) about how the County will improve water quality specific to the TMDL for Lake Whatcom.	Ch. 10 of the CompPlan already contains an entire narrative regarding this (pg. 10-22), as well as multiple policies (Goal 10-J and its policies, pg. 10-36, as well as multiple other policies throughout). We didn't think this all needed to be repeated.
RES13	Ander Russell, ReSources	Public Draft			<i>Scoping Document Item 22: No Net Loss</i> – Thank you for providing clarification in the Guide to Reviewing Draft SMP Amendments document, about the creation of a Not Net Loss Technical (NNL) memo. We support the creation of the memo and understand that it will be completed at an unspecified date after, "public review of draft amendments," is completed.  We agree with the statements made by Futurewise and WEC in their letter. It is very likely that until the County can show that it achieves NNL of shoreline ecological functions it may not be in compliance with the Shoreline Management Act and the Shoreline Master Guidelines. <sup>4</sup>  Throughout the update clarification is needed on how no net loss (NNL) will be met and monitored. Please provide clarification in the memo of how the County will monitor activities such as forest practices, mining, construction of structures and trails, shoreline stabilization and all oth-	Comment noted. A draft will be provided to the P/C prior to their final action. The draft will need to be finalized once the Co/C has completed their review.

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					<p>ers in a way that will result in NNL of shoreline ecological functions.</p> <p>In order to restore salmon, orca and the shoreline ecological functions we all depend on we must think beyond bare minimum requirements. We know the NNL standard is not fully protecting shorelines and wetlands from degradation and we cannot afford to wait another 8 or 9 years for the next update.</p> <p>Please provide clarity on when the technical memo will be completed, allow for public input on the memo and if the memo or resulting actions, show that the SMP is not achieving NNL outline how NNL or net ecological gains, will be achieved and how those new standards will be incorporated in to the SMP, CompPlan and Critical Areas Ordinance.</p>	
RES14	Ander Russell, ReSources	Public Draft	C	C/P Ch. 8	Thank you for including the new Whatcom County Comprehensive Plan Chapter 8: Mineral Resource Lands in this recommended update draft.	Comment noted (though we believe you're referring to the <i>Marine</i> Resource Lands section).
RES15	Ander Russell, ReSources	Public Draft	D	23.30.050	<i>Vegetation Management</i> – Add language requiring the restoration of native vegetation and vegetation conservation standards (lawns and turf are prohibited) for any new building permits, expansions or change of use in the following areas: within 50' of the OHWM for Lake Whatcom or impaired water bodies on the 303(d) list.	Thank you. We had inadvertently left out some of the existing language of the vegetation management section, but have now reinserted it.
RES16	Ander Russell, ReSources	Public Draft	D	23.30.060	<i>Cultural Resources</i> – We support the suggestions added by Lummi Nation. Accept and approve all changes added by Lummi Nation in this section.	Comment noted.
RES17	Ander Russell, ReSources	Public Draft	D	23.40.040	<i>Agriculture</i> – We support staff's recommendation during scoping around manure holding facilities. We plan to make comments to the Planning Commission and County Council during this update process to, again, request that requirements be added that any manure holding facility permitted within the shoreline jurisdiction be in the form of above ground tanks or towers instead of earthen lagoons. In order to be protective of our waterways and groundwater, please make manure holding facilities a shoreline conditional use.	Comment noted (though we believe you brought this issue up during scoping, staff did not).
RES18	Ander Russell, ReSources	Public Draft	D	23.40.040	<i>Agriculture</i> – Along the same lines, to reduce the risk of contaminant run-off from flooding and seepage, consider making it mandatory for any new or replaced manure lagoons to be above ground in tanks or towers.	Comment noted.

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RES19	Ander Russell, ReSources	Public Draft	D	23.40.140	<i>Mining</i> – We oppose the amendments to WCC 23.40.140, Mining. We support the language proposed by Futurewise and WEC in their letter. Please update this section with their language for 23.40.140(D).	Comment noted.
RES20	Ander Russell, ReSources	Public Draft	D	23.40.140	<i>Mining</i> – We recommend that the SMP Update prohibit motorized or gravity siphon aquatic mining and discharging effluent from this type of mining in shorelines that are the critical habitat for salmon, steelhead, or bull trout and that salmonids use for spawning, rearing, and migration. This is necessary in order to follow RCW 90.48.615(2).	We have added such language.
RES21	Ander Russell, ReSources	Public Draft	D	23.40.150	<p><i>Docks, Piers and Mooring Buoys</i> – Overwater structures, including docks, cause direct and indirect impacts to shoreline functions and habitat for salmon and forage fish like Cherry Point herring during the construction process and over the useful life of the dock. The cumulative impacts of overwater structures are:</p> <ul style="list-style-type: none"> <li>• “Increase in pollutants and habitat disturbance associated with boat operations and dock and piling maintenance”,</li> <li>• “Increased travel distance and time for juvenile salmon and extended time in deeper water, increasing predation risk”,</li> <li>• “Decrease in eelgrass and plant habitat and overall photosynthesis in intertidal zone”,</li> <li>• “Alteration in juvenile salmon prey base and predation pressure”, and</li> <li>• “Change in wave energy and longshore drift patterns, and resulting changes in upper intertidal sediment distribution”</li> </ul> <p>Please make these changes concerning Overwater Structures:</p> <ul style="list-style-type: none"> <li>• Add a clear preference for the use of mooring buoys.</li> <li>• Applicants must demonstrate conclusively that use of a moorage buoy, nearby marina, public boat ramp, or other existing shared facility is not possible. This includes providing evidence of contact with abutting property owners and evidence that they are not willing to share an existing dock or develop a shared moorage. For commercial/industrial facilities, this would include evidence that existing commercial facilities can't be shared or are inadequate for the proposed use.</li> <li>• Minimum grating requirements to allow for light.</li> <li>• Any dock, pier, and moorage pile must include an evaluation of the nearshore environment and the potential impact of the facility on</li> </ul>	Please review 23.40.150 again, as we believe we have accomplished these.

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					the environment.	
RES22	Ander Russell, ReSources	Public Draft	F	16.16.235(B)(4)	<i>Mitigation requirements for hazard trees</i> – Currently there's no requirement to mitigate, or replant, a hazard tree. We suggest adding a requirement to replant a native tree in an appropriate location on site for every hazard tree removed in the shoreline.	Please refer to 16.16.235(B)(4)
RES23	Ander Russell, ReSources	Public Draft	D	23.40.150	<i>Lake Whatcom</i> – The City of Bellingham's SMP (Title 22, BMC) makes many mentions of Lake Whatcom and discourages certain new uses and activities like docks (a whole section in BMC 22.09.060 "Piers, floats, pilings – Lake Whatcom and Lake Padden) and the spraying of herbicides (BMC 22.05.020(B)(1)(n)). Please consider mirroring the City's SMP regulations for Lake Whatcom.	We have reviewed Bellingham's sections of code that you reference and do not see any discouragement as you say; in fact, there's has the same components as ours.
RES24	Ander Russell, ReSources	Public Draft	D	23.40.190	<i>Bulkheads and Shoreline Armoring</i> – Bulkheads and other forms of hard armoring should be conditional uses because of their adverse impacts on the shoreline environment.	Comment noted. Please note that in the use table most of the hard armoring measures are either prohibited or require a CUP. For bulkheads specifically we did not change existing text. Furthermore, we did add text that prioritizes soft-stabilization measures, and that hard measures are of last resort.
PB01	Pam Borso	P/C Draft 1	C	C/P Ch. 8	I would like to urge you to include the amendment to Whatcom County's comprehensive plan to include Marine Resource Lands as a way to recognize marine and tidal lands in Chapter 8 of the Comprehensive plan. Marine and tidal lands are as important as forestry, mining and agricultural lands. These lands are significant resources and along with the upland areas adjacent to them need to be protected for their cultural, social and economic values.	Your comments will be forwarded to the P/C for their consideration.
MS01	Mike Sennett	P/C Draft 1	C	C/P Ch. 8	Whatcom County's geography stretches from the coasts of the Salish Sea to the Cascades, and all the watersheds of the three forks of the Nooksack River are gathered and delivered to the Salish Sea. It seems to me that the unique areas where land and ocean meet have been undervalued by the settler culture. The original functioning ecosystems that supported the indigenous peoples have been severely degraded.	Your comments will be forwarded to the P/C for their consideration.

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					<p>Estuaries and wetlands have been filled in, and development has sprawled along the shores in Sandy Point, resulting in shoreline armoring. Birch Bay, Drayton Harbor and The Lummi Nation's tide flats have been contaminated by dairy industry pollution. The lack of protection for our coast has resulted from a lack of recognition of its singular importance by the various governments that have oversight over those areas.</p> <p>It is time to correct that myopia, and to recognize the important status of our marine lands. By adding the Marine Resources Lands Amendment to Chapter Eight of the Comprehensive Plan, joining Forestry, Agriculture, and Mining as codified land uses.</p>	
KC01	Kim Clarkin	P/C Draft 1	C	C/P Ch. 8	I support calling out, recognizing and protecting Marine Resource Lands specifically in Ch. 8 of the Comprehensive Plan. I do not understand parts of the new section:	Your comments will be forwarded to the P/C for their consideration.
CPAPCSC01	Cherry Point Aquatic Reserve Citizen Stewardship Committee	P/C Draft 1	C	C/P Ch. 8	The CPAR CSC supports policies and regulations that further protect and enhance marine shoreline areas, such as the Cherry Point Aquatic Reserve. Therefore, the CPAR CSC writes this letter to express support for the Chapter 8 Marine Resource Lands addition to the Whatcom County Comprehensive Plan. This addition to Chapter 8 recognizes marine resource lands and designates long overdue protection of these marine resource lands that are vital economically, culturally, recreationally and environmentally.	Your comments will be forwarded to the P/C for their consideration.
BIA01	Jacquelyn Stryna, BAIWC	P/C Draft 1	D, F		Terminology – There is initial concern about terminology that requires clarification, including terms such as “Type O water,” “functionally disconnected,” “habitat corridors,” and “ecological connectivity,” among others. Please clarify and specify where these terms are codified.	All terms are defined in Ch. 23. 60 (Definitions) of Title 23 or Article 9 (Definitions) of Ch. 16.16.
BIA02	Jacquelyn Stryna, BAIWC	P/C Draft 1	F	16.16.265(A)(1)	Building setbacks – It is unclear why there is a need for building setbacks to be a minimum of 10 feet from the edge of a CA buffer (WCC 16.16). As currently written, the building setbacks further reduce the “reasonable use” footprints from a mere 4,000 square feet to 2, 500 square feet.	The 10' building setback from critical area buffers is an existing rule (only moved in the amended version). It was adopted by Council to minimize impacts when maintaining structures (e.g., when putting a ladder up against a 2-story structure the bottom would need to

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						stick out 5-10 feet) and to provide a "fire safe" area where combustible materials can be removed.
BIA03	Jacquelyn Stryna, BAIWC	P/C Draft 1	D, F		SMP and CAO changes lend increased authority to the County over development, which restricts the freedom and business autonomy of home builders and homeowners alike. Private property rights are infringed upon with less autonomy for land owners and more authority for County government to determine garden and landscape decisions. Restated, the SMP and CAO updates specifically narrow the choices of home builders and homeowners for no reasonable benefit. These proposed updates extend County authority.	Your comments will be forwarded to the P/C for their consideration.
BIA04	Jacquelyn Stryna, BAIWC	P/C Draft 1	F	16.16.270(C)(12)	Reasonable Use Exceptions/Reduction: Why is the County proposing a reasonable use reduction to such a small footprint of 2,500 square feet?	Staff will answer this when the P/C discusses Ch. 16.16
BIA05	Jacquelyn Stryna, BAIWC	P/C Draft 1	F	16.16.630(E)	Increased Buffers only further restrict land availability and choke the potential for a home to be built.	Your comments will be forwarded to the P/C for their consideration.
BIA06	Jacquelyn Stryna, BAIWC	P/C Draft 1	D, F		Mitigation requirements cost burden projects and mitigation ratio changes impede autonomy in the construction schedule.	Your comments will be forwarded to the P/C for their consideration.
BIA07	Jacquelyn Stryna, BAIWC	P/C Draft 1	D, F		All of the proposed land use modifications add to the overall project cost of building a house. This type of over-regulation directly contributes to the high cost of housing Whatcom County is experiencing, plus constricts the availability of land supply.	Your comments will be forwarded to the P/C for their consideration.
LSK01	Lesa Starkenburg-Kroontje, on behalf of John and Leanne Olson, Larry and Barbara Nims, and John and Gladys Van Boven	P/C Draft 1	G	Shoreline Environment Designation Map	This letter is written on behalf of John and Leanne Olson and Larry and Barbara Nims, the owners of APN 390302 428076 0000 and 390302 485039 0000, and on behalf of John and Gladys Van Boven, the owners of APN 390302 440200 0000. Their property is located at the corner of East Pole Road and Everson Goshen Road and is depicted on the attached Assessor section map.  My clients' property was designated as a shoreline of the state under the Shoreline Management Program during the 2008 Comprehensive Plan update. However, this entire property is part of the mineral resource overlay under the Whatcom County Code with permits to mine and the ability to change the configuration of the water body.	Before a determination can be made, staff has requested of their attorney an approved reclamation plan.

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					<p>In 2008 after the completion of the Shoreline Management Program update, the property owners were made aware of the designation. Whatcom County staff at the time believed that the owners had requested the designation. This was not the case. In fact, it was the Department of Ecology who mistakenly noted this area as requiring designation in their correspondence with Whatcom County in January of 2007. Had the property owner's been notified they would have explained the temporary configuration of the water body that is still actively mined.</p> <p>The property owners were told to correct the erroneous shoreline designation, they needed to wait until the next Shoreline Management Program Periodic Update. Since the periodic update time is upon us, it is now time to correct the designation. However, I see the error is continuing forward as the maps still note the area is designated as "shoreline".</p> <p>The Washington State Department of Ecology and Whatcom County have not made it a practice to designate mineral extraction sites as shorelines because the size and configuration of the shoreline is not certain until mineral extraction is complete and the mineral resource land zoning overlay removed from the property.</p> <p>In fact, as mineral extraction, and its accessory uses, are considered the highest and best use for the property within the mineral resource land overlay it is presumed that expansion and contraction of the water body will continue over the course of many decades. To create a non-conformity for the preferred zoning use and the existing permits for a waterbody that may to temporary in nature is not good planning.</p> <p>This situation has been discussed many times in different permit settings with the County with the understanding that at this time of this periodic update the error would be corrected.</p>	
RFW 01	Ander Russell & Eddy Ury (Re-Sources), Rein Attemann (Washington Environmental Council),	P/C Draft 1	A, B, C, E, G	C/P Ch. 10, Ch. 11, Ch. 8 & Title 22, & Shoreline Environment Designation Map	<p>We recommend that the P/C tentatively approve all Comprehensive Plan amendments proposed in Exhibits A, B, and C, as well as all proposed amendments to WCC Title 22 shown in Exhibit E, as well as the Shoreline Environmental Designations map.</p> <p>However, as our previous comments stated, we are recommending</p>	Your comments will be forwarded to the P/C for their consideration.

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	and Tim Trohovich (Futurewise)				additional policies be added into the Comprehensive Plan, with corresponding development regulations updated in Title 22.	
RFW 02	Ander Russell & Eddy Ury (Re-Sources), Rein Attemann (Washington Environmental Council), and Tim Trohovich (Futurewise)	P/C Draft 1	B	C/P Ch. 10	Modify Policy 11AA-5 be modified to read as follows:  Policy 11AA-5: <u>Whatcom County shall monitor the impacts of climate change on Whatcom County's shorelands, the shoreline master program's ability to adapt to sea level rise and other aspects of climate change at least every periodic update, and revise the shoreline master program as needed. Whatcom County shall</u> <del>should</del> periodically assess the best available sea level rise projections and other science related to climate change within shoreline jurisdiction and incorporate them into future program updates, as relevant.	The P/C accepted this recommendation, though retained "should" (instead of "shall") in both the 1 <sup>st</sup> and 2 <sup>nd</sup> sentences.
RFW 03	Ander Russell & Eddy Ury (Re-Sources), Rein Attemann (Washington Environmental Council), and Tim Trohovich (Futurewise)	P/C Draft 1	B	C/P Ch. 11	Add a new Policy 11AA-8 reading: <u>New lots and new and expanded development should be located so they will not interfere with the landward expansion and movement of wetlands and aquatic vegetation as sea level rises.</u>	Your comments will be forwarded to the P/C for their consideration.
RFW 04	Ander Russell & Eddy Ury (Re-Sources), Rein Attemann (Washington Environmental Council), and Tim Trohovich (Futurewise)	P/C Draft 1	A	C/P Ch. 8	Add an additional policy, possibly under Goal 10D: <u>Protect natural processes and functions of Marine Resource Lands and critical areas in anticipation of climate change impacts, including sea level rise.</u>	Your comments will be forwarded to the P/C for their consideration.
RFW 05	Ander Russell & Eddy Ury (Re-Sources), Rein Attemann (Washington Environmental Council), and Tim Trohovich (Futurewise)	P/C Draft 1	D, F	Title 23, Ch. 16.16	We recommend that the Planning Commission table all changes to WCC 16.16 and WCC 23.40 until a No Net Loss memo is prepared.	A draft NNL addendum is anticipated in December 2020. The P/C will have it prior to any final action.

Total # of comments: 163