

Exhibit K

TO: Cliff Strong, Senior Planner – Whatcom County Planning & Development Services
FROM: Chad Yunge, Senior Shoreline Planner - Washington Department of Ecology
Date: October 29, 2021
Subject: **Shoreline Master Program Periodic Review - Determination of initial concurrence**

Sent via email to: cstrong@co.whatcom.wa.us; jcha461@ecy.wa.gov

Brief Description of Proposed Amendment

Whatcom County (County) has submitted Shoreline Master Program (SMP) amendments to the Washington Department of Ecology (Ecology) for an initial determination of concurrence to comply with periodic review requirements of RCW 90.58.080(4). The County has elected to utilize the optional joint review process for SMP amendments available per WAC 173-26-104; therefore Ecology is required under WAC 173-26-104(3)(b) to make an initial determination of consistency with applicable laws and rules. The County proposes amendments to bring the SMP into compliance with requirements of the Shoreline Management Act (Act) or State Rules that have been added or changed since the County's comprehensive SMP update. In addition, the County is proposing numerous locally-initiated amendments to its SMP, Critical Areas Ordinance, Comprehensive Plan, and its Permit Procedures Ordinance to address changing local circumstances, reorganization of county code structure, and to address implementation challenges that have occurred since the comprehensive SMP update completed in 2008.

In addition, Whatcom County has elected to combine the final review steps associated with a 2018 locally-initiated SMP (Resolution No. 16-039) and Zoning Code amendments related to short-term rentals. On April 3, 2018, Ecology conditionally approved the SMP amendments subject to four recommended changes. In response, the County has incorporated the proposed SMP changes, along with select Ecology recommended changes into this review and plans to adopt the zoning changes concurrently with final adoption of this SMP amendment. The County has also elected to incorporate another locally-initiated SMP amendment transmitted to Ecology in 2019 (Ordinance No. 19-057) addressing updated hazard tree provisions.

FINDINGS OF FACT

Need for amendment

The County's comprehensive update to their SMP went into effect in 2008, although numerous locally-initiated amendments have been completed since that time. These proposed amendments are needed to comply with the statutory deadline for a periodic review of the County's Shoreline Master Program pursuant to RCW 90.58.080(4). The County has identified that this periodic review will result in amendments to the SMP to address updates to the Act or implementing State Rules, changed local circumstances, new information, and improved data.

Exhibit K

Whatcom County

SMP Periodic Review - Determination of Initial Concurrence

SMP provisions to be changed by the amendment as proposed

Note that the County concurrently processed amendments to its Comprehensive Plan and Critical Areas Ordinance, along with the amendment of its SMP. However, not all of the changes are applicable to shoreline jurisdiction. As such, the following is a list of substantive changes that apply to this SMP amendment.

Whatcom County Comprehensive Plan Chapter Ten - Environment

Administration and Regulation

Policy 10B-8, which currently refers back to the SMP to constitute the “Shoreline Element” of the Comprehensive plan has been deleted. Alternatively, the county created a stand-alone shoreline chapter to relocate policies from the SMP into the Comprehensive Plan.

Climate Change

A new policy has been added as follows:

Policy 10D-11 – Protect ecological functions and ecosystem-wide processes of Marine Resource Lands and critical areas in anticipation of climate change impacts, including sea level rise.

Marine Resources Management

The Shoreline Management Program section of this chapter has been removed and relocated to the new shoreline chapter of the Comprehensive Plan.

Whatcom County Comprehensive Plan Chapter Eleven - Shorelines

This is a completely new chapter of the Comprehensive Plan that relocates portions of Chapter Ten – Environment (as described above). In addition, the new chapter relocates and modifies the following sections, or portions of these sections, of the SMP to constitute the “Shoreline Element” of the Comprehensive Plan:

WCC 23.10.030 – Governing Principles

- Minor non-substantive revisions are included to provide clarity to fit within the structure of the Comprehensive Plan

WCC 23.20 – Overall SMP Goals and Objectives

- Changes include minor non-substantive revisions to provide clarity and to fit within the structure of the Comprehensive Plan.
- WCC 23.20.080 – Archaeological, Historical and Cultural Resources has been amended to include the Washington Department of Archaeology and Historic Preservation (DAHP) definition of “Cultural Resource”.
- Two new goals were added to the new Cultural Resources subsection of this new Chapter consistent with an existing memorandum of understanding between the County and DAHP as follows:

Goal 11-3 – Consult with the Washington State Department of Archaeology and Historic Preservation (DAHP) and affected Native American tribes when developing local policies and regulations for identifying, protecting, and preserving cultural resources.

Exhibit K

Whatcom County

SMP Periodic Review - Determination of Initial Concurrence

Goal 11-4 – Where appropriate, restore unique resources that have cultural, archaeological, historic, educational, or scientific value or significance to further enhance the value of the shorelines.

- WCC 23.20.100 Restoration and Enhancement language in Goal 11-2 has been modified to include a reference to the Shore Friendly Program developed by the Washington Department of Fish and Wildlife (WDFW), Washington Department of Natural Resources (WDNR) and the United States Environmental Protection Agency (USEPA).

WCC 23.30 – Shoreline Jurisdiction and Areas Designations

- Minor and non-substantive changes are included to provide clarity and to fit the structure of the Comprehensive Plan.

WCC 23.40 – Shorelines of Statewide Significance

- Minor non-substantive changes are included to provide clarity and fit within the structure of the Comprehensive Plan.
- The reference to RCW 90.58.020 has been clarified to follow the preferential order of uses on shorelines of state-wide significance per WAC 173-26-181.

WCC 23.90 – General Policies and Regulations

- Minor and non-substantive changes are included to provide clarity and to fit this section into the structure of the Comprehensive Plan.
- WCC 23.90.060 – Vegetation Conservation. A list of important functions that shoreline vegetation provides has been deleted to simplify existing Vegetation Conservation language at WCC 23.90.060.A.1 into new Policy 11X-1.
- WCC 23.90.070 – Archaeological, Historic and Cultural Resources. New preamble language added to this section to establish applicability and state authority. The following policy has been added based on language of an existing memorandum of understanding with DAHP and the Lummi Nation:

Policy 11X-9: In reviewing development proposals, the County shall take, or cause project applicants to take, all required actions to:

- 1. Minimize the risk of disturbing cultural resources within Whatcom County shorelines.*
- 2. Due to the limited and irreplaceable nature of the resources(s), prevent the destruction of or damage to any site having historic, cultural, scientific, or educational value as identified by the appropriate authorities, including affected Tribes and the DAHP.*
- 3. Consult with professional archaeologists, DAHP, and affected Tribes before permitting or otherwise approving the use or development of shoreline areas containing cultural resources. This consultation shall be accomplished through the regulations and procedures provided in WCC Title 23.*
- 4. Consult with DAHP and affected Tribes and coordinate with project archaeologists to establish site and project-specific procedures for protection and management of cultural resources.*
- 5. Make informed specific land use decisions based upon information provided by DAHP and Tribes.*
- 6. Ensure the use of the best available information, technology, and techniques in identifying, protecting, preserving, and restoring cultural resources.*

- The following new policies have been added to address climate change and sea level rise:

Exhibit K

Whatcom County

SMP Periodic Review - Determination of Initial Concurrence

Policy 11AA-1 – Coordinate with Tribal, Federal, State, and local agencies to address issues related to climate change and sea level rise as related to shoreline management.

Policy 11AA-2 – Whatcom County should plan and prepare for the likely impacts of climate change on County-owned facilities, infrastructure, and natural resources and ensure that projects for major maintenance or replacement of utilities, roads, and other public infrastructure consider the impacts of sea level rise in the location, design, and operation of the projects.

Policy 11AA-3 – Whatcom County should strive to increase resident and business resiliency to the anticipated impacts of climate changes by implementing land use regulations based on best available science, such as sea level rise, changes in rainfall patterns, changes in flood volumes and frequencies, and changes in average and extreme temperatures.

Policy 11AA-4 – Habitat protection and restoration projects in shoreline jurisdiction should consider implications of sea level rise and other climate change impacts to promote resiliency of habitats and species. Those that promote climate change and sea level rise resiliency should be considered priority actions.

Policy 11AA-5 – Whatcom County should 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 changes at least every periodic update, and revise the shoreline master program as needed. Whatcom County should 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.

Policy 11AA-6 – Public infrastructure such as transportation systems, utilities, flood hazard control, and instream structures and essential public facilities in shoreline areas should be built in a manner that accounts for increased sea level rise and storm surge and flooding that may accompany it

Policy 11AA-7 – Whatcom County should evaluate opportunities to protect shoreline environments and infrastructure from the impacts of climate change, as necessary and feasible. Specifically, the County should maintain shoreline protection and erosion control by:

- Facilitating the installation and maintenance of native vegetation along appropriate areas of shoreline;*
- Revisiting development policies with the objective of providing additional shoreline buffer areas between developed areas and the shoreline; and*
- Only consider structural shoreline stabilization structures when alternative options are unavoidable.*

WCC 23.90 – General Policies and Regulations

- Minor and non-substantive changes are included to provide clarity and to fit this section into the format of the Comprehensive Plan.
- WCC 23.100.050 – Boating Facilities, Marinas and Launch Ramps. The following new policy was added regarding live-aboard vessels:

Exhibit K

Whatcom County

SMP Periodic Review - Determination of Initial Concurrence

Policy 11DD-13 – Live-aboards should be regulated so as to prevent adverse impacts to public health and safety.

- WCC 23.100.210 – Cherry Point Management Area (CPMA). The policies of this section have been overhauled based on draft amendments regulating fossil fuels by the Whatcom County Council including new subsections to Policy 11JJ-1 as follows:

b. Existing legal fossil fuel refineries should be allowed to continue and maintain their operations within limited expansions subject to environmental review, greenhouse gas emission mitigation, and conformance with the Shoreline Master Program and other applicable land use designation.

c. It is the policy of Whatcom County to limit the number of industrial piers at Cherry Point to the existing three piers in operation or approved as of January 1, 1998, taking into account the need to:

- *Act conservatively in land use matters at Cherry Point to prevent further harm to habitat important to the Cherry Point herring stock and Southern Resident Orcas;*
- *Optimally implement the Shoreline Master Program policy regarding shorelines of statewide significance per WCC 23.40;*
- *Encourage the continued County use of best available science;*
- *Support and remain consistent with the state Department of Natural Resources' withdrawal of Cherry Point tidelands and bedlands from the general leasing program and the species recovery goals of the Cherry Point Aquatic Reserve designation and Management Plan;*
- *Recognize federal actions upholding treaty rights;*
- *Protect traditional commercial and tribal fishing; and*
- *Prevent conflicts with vessel shipment operations of existing refineries that could lead to catastrophic oil or fuel spills.*

The following new policy has also been added:

Policy 11JJ-2 – Whatcom County should ensure that shoreline development applicants demonstrate consistency with the State of Washington Department of Natural Resources' Cherry Point Aquatic Reserve Management Plan.

The County deleted the existing requirement that review of new uses and development activities within the CPMA are limited to the use regulations specific to the CPMA in the SMP.

- WCC 23.100.130 – Moorage: Docks, Piers and Mooring Buoys. More detail has been added to Policy 11MM-4 related to ways to improve protections for salmon and forage fish habitats.
- WCC 23.100.150 – Residential. The County added reference to a community access requirement for new developments of less than four lots to Policy 1100-9.
- WCC 23.100.200 – Utilities. New policy added as follows:

Policy 11TT-8 – Given the different scales of regional, local and accessory utilities and their potential impacts, the County may establish different regulations regarding each.

Exhibit K

Whatcom County SMP Periodic Review - Determination of Initial Concurrence

Whatcom County Code Title 22 – Land Use and Development

In an effort to consolidate all of the County's permitting procedures into a single location, the County has relocated some of its administrative provisions from its SMP into Title 22 – Project Permits. Revisions to SMP specific changes in this title are as follows:

- WCC 22.07.020.B.8 – The cost thresholds for exempt review of freshwater dock construction have been updated for consistency with the current Washington Office of Financial Management (OFM).
- WCC 22.07.020.B.16 – Restoration of native kelp, eelgrass beds and native oyster populations has been added to the activities that qualify for exempt review as a fish habitat enhancement project.
- WCC 22.07.020.B.1 – The general cost threshold for exempt review has been amended for consistency with the current OFM standards.
- WCC 22.60.040.2, 22.05.160.3, 22.07.060.F – Filing procedures have been updated to reflect rule changes by Ecology in 2011.
- WCC 22.07.20.B.17 – A new exemption category has been added for review for retrofitting existing development to comply with the Americans with Disabilities Act (ADA).
- WCC 22.05.130.1.c – A 90-day review target has been added for Washington Department of Transportation (WSDOT) projects per a legislative amendment in 2015.
- WCC 22.05.020 Table 1, 22.05.160 – Appeal procedures have been updated for consistency with 2012 legislative changes.

Whatcom County Code Title 23 – Shoreline Management Program

The shoreline management program (SMP) has been substantially reformatted and reorganized, including relocation of all policy language into a new chapter of the Whatcom County Comprehensive Plan as detailed previously within this document. Title 23 now houses only the regulatory provisions of the County's SMP. Substantive changes to these regulations are summarized as follows:

WCC 23.05 Purpose and Intent (now referred to as General Provisions)

- The reference to Stipulated Judgment No. 93-2-02477 related to the development at Governor's Point has been deleted since the agreement has been extinguished by the all parties.
- The incorporation by reference of the Whatcom County Critical Areas Ordinance (CAO) has been amended to cite the most current update (currently under review).
- The effective date for application of the SMP has been updated for consistency with legislative changes made in 2010.

WCC 23.10 Administrative Procedures (now referred to as Administrative provisions)

- The process for review of use and development within the CPMA have been amended so that all applicable SMP policies and regulations now apply in addition to policies and regulations specific to this special area designation.
- The applicability of the SMP to lands under exclusive federal jurisdiction has been clarified in accordance with 2017 Ecology rule amendments.
- Statutory language from the SMA (RCW 90.58.350) has been added to clarify SMP applicability to areas subject to treaty rights.

Exhibit K

Whatcom County

SMP Periodic Review - Determination of Initial Concurrence

- The applicability of the SMP to remedial actions, boatyard improvements, select WSDOT projects, etc. have been added for consistency with Ecology rule amendments in 2017.
- The applicability of the SMP to the disposal of dredge material to a Dredged Material Management Program (DMMP) site has been added consistent with legislative amendments made in 2019.
- Enforcement provisions now include increased penalties for shoreline violations in the form of increased mitigation requirements.
- Authority to require a financial surety has been added to ensure compliance with conditions of approval when determined by the County.

WCC 23.20 Shoreline Jurisdiction and Area Designations (now referred to as Shoreline Jurisdiction and Environment Designations)

- A list of jurisdictional areas subject to the SMP has been added.
- The geomorphic floodway, as mapped by the County during its comprehensive SMP update is no longer being used to determine shoreline jurisdiction on the Nooksack and Sumas Rivers. In lieu of this, the County will now include the entire 100-year FEMA floodplain boundary as part of shoreline jurisdiction.
- The Official Shoreline Map has been updated to include the “H Street Wetlands” that include ponded areas that meet the size thresholds to be regulated as lakes under the SMA. The features were originally inventoried as part of the SMP Comprehensive Update in 2008 but for some reason were not included during that amendment.
- New standards to resolve errors of the Official Shoreline Map have been added.
- The CPMA is now listed as its own environment designation rather than applied as an overlay per the current SMP.

WCC 23.30 General Regulations

Ecological Protection

- A new provision allowing the buffer modification and alternative mitigation approaches in the CAO has been added.
- The conditional use permit requirement to use the alternative mitigation approaches in the CAO has been removed.

Water Quality and Quantity

- Additional detail has been added to the water quality and quantity regulations to reference the county stormwater regulations applicable to shoreline development.
- New language regulating stormwater and sewer outfalls has been added to the water quality and quantity regulations.

Views and Aesthetics

- The County can now require planting of vegetation to mitigate view impacts of new development from the water.
- “Retaining walls” are no longer limited to four-feet in height between the ordinary high water mark and structures.
- Where reductions in shoreline setbacks and buffers are allowed, view impacts must now be considered from shoreline view areas or from existing residences on adjacent properties.

Vegetation Management

- Vegetation removal for the purposes of establishing and maintaining view corridors are now regulated by the CAO as an activity allowed with notification.

Exhibit K

Whatcom County

SMP Periodic Review - Determination of Initial Concurrence

- The existing requirement that new development shall conform to natural contours and minimize disturbance has been modified to require the use of trails or stairs from parking areas on steep slopes if feasible. In addition, tiered foundations are no longer a requirement to meet this provision.

Cultural Resources

- This chapter has been completely rewritten and updated with input from the Lummi Nation Tribal Historic Preservation Office (LNTHPO) and the Department of Archaeology and Historic Preservation (DAHP).

Public Access

- Cost considerations have been removed as a factor in considering whether or not public access is required.
- Public access will no longer be required if:
 - The subject property is physically separated from the water by an existing developed road or an additional parcel.
 - “Reasonable and safe” opportunities already exist within a quarter of a mile from the subject property.
 - The site is part of a larger development that has previously provided public access as part of the permitting process.
 - Utility developments through shoreline jurisdiction to serve developments outside of shoreline jurisdiction.
- Consideration of public access is no longer exempt for: dredging, forest practices, landfill and excavation, mining, private docks serving four or fewer dwelling units, instream structures, shoreline stabilization and ecological restoration projects.
- Larger scale public access planning is now referenced as a tool that could be developed in the future for application in the SMP rather than via a site-by-site analysis; however no such public access planning has been conducted as part of this SMP amendment.
- The priority for water-dependent uses and public access over maintenance of views from adjacent properties has been added per the Shoreline Management Guidelines.
- All location and design, and other standards for implementing the public access requirements have been removed from the SMP (former section 23.90.080.B.8 through 23.90.080.B.17).

WCC 23.40 Shoreline Use and Modification Regulations

Shoreline Bulk Provisions – Buffers, Setbacks, Height, Open Space and Impervious Surface Coverage

Agriculture

- New agricultural uses are allowed in the CPMA shoreline environment designations, however liquid manure storage facilities/spreading and animal feeding operations/confined animal feeding operations (AFOs/CAFOs) are prohibited.

Aquaculture

- Siting standards for aquaculture operations near national wildlife refuge lands have been deleted as they rely on outdated guidance from 1986.
- New standards related to commercial geoduck aquaculture have been added in response to 2011 Ecology rule changes.
- Application requirements now include a vegetation habitat survey with consultation from the Washington Department of Fish and Wildlife (WDFW). In addition, an assessment of aquatic species, including forage fish, and spawning and other lifecycle use of, or adjacent to the proposed aquaculture site is now required.

Exhibit K

Whatcom County

SMP Periodic Review - Determination of Initial Concurrence

- Aquaculture is an allowed use within the CPMA with exception of commercial net pens which are prohibited. Geoduck aquaculture requires a CUP.

Marinas and Launch Ramps (formerly Boating Facilities)

- Standards for live-aboard vessels within marinas are now included.
- This section has been clarified to apply to public or quasi-public boat ramps and not to private residential boat ramps which are prohibited in all shoreline environment designations.
- Launch ramps that are part of a marina now require a conditional use permit in the urban conservancy and conservancy shoreline environment designations
- Marinas and associated launch ramps are now prohibited with the resource shoreline environment designation.
- Marinas and associated launch ramps are prohibited in the CPMA environment designation. Public launch ramps are allowed.

Commercial

- Water-oriented commercial development is allowed within the CPMA environment designation. Non-water oriented commercial development requires a CUP.

Dredging and Dredge Material Disposal

- Dredging is now permitted to obtain fill for approved MTCA/CERCLA projects, and allowed as a CUP for other types of restoration projects.
- This section now clarifies that regular maintenance of approved barge landing sites shall not be considered dredging.
- Dredge disposal on shorelands, wetlands or a river's channel migration zone is only allowed for restoration or enhancement of shoreline ecological functions and processes through review of a CUP.
- This section clarifies that dredge disposal at an approved DMMP site no longer requires a shoreline permit consistent with legislative actions taken in 2019. As such, previous language related to the DMMP review process has been stricken.
- Dredging is prohibited for new development in the CPMA shoreline environment designation, but otherwise allowed through review of a CUP.

Fill and Excavation (formerly Landfill and Excavation)

- Language added to emphasize any necessary fill in shoreline jurisdiction must be located, designed and constructed to protect shoreline ecological functions, including channel migration.
- Fill and excavation waterward of the OHWM is no longer allowed for the following purposes:
 - Maintenance of lawfully established developments
 - Development of shoreline stabilization projects, flood control, and instream structures.
- Fill associated with the cleanup and disposal of contaminated sediments as part of an environmental cleanup plan is now allowed below the OHWM with a CUP.
- Fill for the purposes of creating land for residential development is prohibited.

Flood Hazard Reduction and Instream Structures (formerly Flood Control Works and Instream Structures)

- Flood hazard reduction standards from the SMP Guidelines [WAC 173-26-221(3)] have been added to this section.
- The use of revetments now only applies to public flood hazard reduction projects.
- The use of weirs or current deflectors are only permitted when necessary to protect public infrastructure.

Forest Practices

- The SMP no longer prohibits new road construction on marine or lake shores where slopes exceed 35 percent.

Exhibit K

Whatcom County

SMP Periodic Review - Determination of Initial Concurrence

- The current limitation on timber harvest along feeder bluffs and landslide hazard areas is no applicable.
- Timber harvest to convert forest land to other uses is allowed on shorelines of statewide significance to the minimum necessary to accommodate the change of use.
- Per 2017 Ecology rule changes, this section has been clarified that timber cutting alone does not represent “development” under the SMA and that only those forest practices that involve development require review via a shoreline permit.
- Forest practices are no longer prohibited within the urban, urban resort, urban conservancy or shoreline residential shoreline environment designations.
- Forest practices within shorelines of statewide significance now require a CUP.
- Forest practices within a conservancy shoreline environment designation no longer have to comply with critical area buffers/setbacks.
- The caveat that forest practices within a natural shoreline environment designation must be consistent with the purposes of such an SED have been removed. The CUP requirement remains.

Industrial and Port Development

- This section now applies to industrial and port developments within the CPMA.
- This section has been clarified to require consideration of public access for both water-oriented and non-water-oriented development.
- New siting criteria for marine rail systems has been added.
- The expansion of existing legal fossil fuel refinery operations and/or transshipment facilities are now only permitted in the Urban and Rural SEDs. A CUP is required in the Resource, Aquatic and the CPMA SEDs. Such expansions are prohibited in all other areas.
- New or expanded, existing legal renewable fuel refinery operations and/or transshipment facilities are now permitted only in the Urban and Rural SEDs. A CUP is required in the Resource, Aquatic and CPMA SEDs. These uses are prohibited in all other areas.

Cherry Point Management Area

- New standards for “Fuel Uses – Shoreline Permits and Requirements” has been included as a placeholder until the Whatcom County Council adopts final amendments related to fossil fuel development and expansion. Existing fossil fuel refinery/transshipment facilities may be expanded, and new or expanded renewable fuel refinery/transshipment facilities require review through a CUP within the CPMA.
- Liquid manure storage facilities, spreading of liquid manure and animal feeding operations are prohibited within the CPMA.
- New piers within the CPMA are now limited to those in operation as of January 1, 1998.
- Any fill or excavation waterward of the OHWM requires review of a CUP.

Land Division

- This is an entirely new section that was moved from the residential use sections of the existing SMP.
- All land divisions must be configured to avoid significant vegetation removal and shoreline modification when developed in the future.
- Clustering and other low impact development techniques to minimize physical and visual impacts on shorelines “may” now be required. The existing SMP uses the term “shall” be required.

Mining

- A prohibition on the use of siphon technologies for in-water mining activities per RCW 90.48 have been added to this section.

Exhibit K

Whatcom County

SMP Periodic Review - Determination of Initial Concurrence

- The requirement to demonstrate that mining must be dependent upon a shoreline location prior to authorization has been removed.
- The applicability of shoreline jurisdiction to lakes created by mining operations that exceed twenty-acres in size as been removed.
- Specific requirements for mining applications have been deleted and replaced with a general reference to requirements found in RCW 90.44 (Surface Mining) and RCW 77.55 (Construction Projects in State Waters).
- New standards for mining below the OHWM of rivers and streams has been added consistent with the SMP Guidelines.
- Specific standards for open pit mining within floodplain areas has been deleted. The includes requirements that such mining take place outside of channel migration zones, design requirements for mining ponds to eliminate fish stranding and eutrophication, the demonstration that channel avulsion or stream flow changes will not occur as a result of mining, a requirement that equipment be floodproofed, and a demonstration that mining will not have adverse impacts on fish resources, water quality, recreation resources or adversely impact a streams natural capacity to erode, shift, accrete, and/or flood.
- Mining in the CPMA requires a CUP.

Moorage Structures (Formerly Moorage, Docks, Piers and Mooring Buoys)

- Marine rail systems are now allowed when no other moorage structures exist and with minimal use of pilings. Marine rails are limited to 20-feet in length from the OHWM.
- The dimensional standards for new moorage structures has been substantially overhauled. For docks, the length is no longer capped at 40 to 60 feet but rather the minimum necessary to reach a maximum water depth of 5.5 feet below the OHWM.
- Ells are now allowed with a maximum width of six feet.
- Fingers are now allowed with a maximum width of 2 feet.
- All moorage structures now have a maximum overall surface area limitation based on whether the structure is for individual or shared use. This limitation can be exceeded only when necessary to reach specific depths.
- Floats are now required to have 30 to 50 percent functional grating depending on size.
- Marine docks must be located at least six feet above the bed at the landward end of the structure.
- Standards for the type and orientation of required grated decking have been added.
- A 10% or 48-square foot threshold for dock repairs now triggers the need to replace solid decking with grated decking within the area of the proposed repair.
- Riprapped or bulkheaded fills are now only allowed for public projects through review of a CUP.
- Pilings must now be spaced no closer than 20-feet.
- Float tubs must now be fully enclosed to prevent breakup of float materials to the water.
- Floatation components shall not be placed below required grated decking.
- New standards associated with piling replacement have been included.
- Moorage pilings are now addressed in the SMP and are limited to two for vessels that exceed the length of the float.
- Overhead wiring or plumbing on docks is prohibited.
- New maximum width requirements for landings, stairways, or steps are now capped at 4 to 6 feet depending on the number of dock users.
- New standards specific to marine docks have been added related to float anchoring, allowance of an access float limited to 6 by 10 feet to allow access during tidal cycles when the moorage

Exhibit K

Whatcom County

SMP Periodic Review - Determination of Initial Concurrence

float is perpendicular to the pier/ramp, limitation of floats above +5 MLLW and use of float stops to avoid grounding during low water conditions.

- Standards for mooring buoys have been updated to include a requirement to identify the location of the buoy anchor as part of the permit review, a requirement for a midline float to avoid anchor lines contacting the bedlands, specifics on the types of anchors allowed, requirements for minimum swing distances to other structures, and limitations on new mooring buoys in threatened or closed shellfish harvesting areas.
- Platform lifts are now specifically allowed in the SMP in lieu of a standard accessory float.
- Applicants must now demonstrate that alternative moorage, such as mooring bouys or a dock sized to accommodate a tender, are not adequate or feasible before a new individual dock can be authorized in freshwater. The requirement already exists within marine waters.
- Shared use dock standards have been clarified to allow multiple accessory structures depending on the number of users.

Residential

- The standards associated with single-family development on nonconforming lots has been overhauled and is now a new section within this chapter. Changes include the following:
 - The maximum 2,500 square foot building area no longer includes the entire area that will be disturbed to construct the residence and appurtenant developments. It now includes only the constructed developments including the house, sidewalks, driveway and other appurtenant developments.
 - The 2,500-square foot building area no longer includes lawn and landscaping. Now an additional 500-square feet of lawn and landscaping is allowed if located as far from the shoreline as feasible
 - This provision can now be utilized within alluvial fan hazard areas.
 - Prescriptive mitigation standards for buffer enhancement through this process have been removed and replaced with general standards that state that all areas outside of the approved building area shall be “optimized to provide the maximum shoreline ecological functions and ecosystem wide functions.”
 - “Accessory utilities” may be allowed within buffer areas according to applicable critical area provisions incorporated by reference into the SMP.
- Consideration of public access no longer applies to all multi-unit residential development. Instead, public access is required for only multi-family developments greater than 4 units. Specific standards for public access in this situation have also been added.

Restoration and Enhancement

- A reference to the SMP relief mechanism associated with select shoreline restoration projects has been added consistent with WAC 173-27-215.

Shoreline Stabilization

- WDFW’s Marine Shoreline Design Guidelines are not referenced for design of new shoreline stabilization.
- A conditional use permit is no longer required to consider new shoreline stabilization in support of non-water-dependent development, including single-family residences. The requirement that such stabilization be allowed only when erosion threatens reasonable use of the property has also been deleted.
- The requirement that publicly financed or subsidized shoreline stabilization provide appropriate public access has been revised for consistency with the SMP Guidelines.
- Shoreline stabilization in the form of revetments are now prohibited with the exception of water-dependent and public infrastructure projects which required review via a CUP.

Exhibit K

Whatcom County

SMP Periodic Review - Determination of Initial Concurrence

- The existing prohibition on use of gabion baskets has been lifted on all freshwater shorelines. Such forms of stabilization now require review via a CUP.
- The clarification that bluff stabilization walls also require a demonstration of need through a geotechnical report has been deleted.
- New standards for who can design new shoreline stabilization measures has been added.
- Clarifications have been added on other agency permit requirements/conditions, and the interaction between shoreline stabilization and shoreline restoration have been added.
- A prohibition on the stabilization of vacant lots without an existing primary structure, and use of waste materials has been added.
- A new threshold for when repair of an existing stabilization structure constitutes replacement has been added.
- Replacement of existing stabilization shall now be reviewed as new stabilization, however such structures can still be replaced with similar structures based on a demonstration of need through a geotechnical report. In addition, soft shoreline stabilization must be considered before in-kind replacement.

Signs

- Redundant standards with sign requirements found in the zoning ordinance have been removed with a reference to WCC Title 20- Zoning.

Utilities

- Clarification added that the utility regulations not apply to certain “accessory utilities” as defined in WCC 23.60.

WCC 23.50 Nonconforming Uses, Structures, and Lots (formerly Applicability and Nonconforming Uses)

Nonconforming Uses

- The ability to change from one nonconforming use to another nonconforming use is now prohibited.
- Nonconforming structures that are not maintained in a usable condition, or in situations where the OHWM has established landward of the structure, are now considered abandoned/derelict and can no longer be continued.
- The reconfiguration of existing nonconforming docks through review of a CUP has been removed.
- The permit process to replace a nonconforming structure containing a nonconforming use following unintentional damage/destruction must now be commenced within 12-months instead of 18-months.
- A new section addressing replacement of nonconforming structures that are intentionally demolished has been added.
- The expansion of nonconforming single-family residences no longer requires review through a CUP; however now such expansions cannot result in a total building area greater than 2,500 square feet. Nonconforming residences that are larger than the maximum 2,500 square foot building area, may seek a one-time expansion of the building footprint up to 500-square feet if additional demonstrations can be met.

WCC 23.60 Definitions

- Some definitions throughout this section have been eliminated if they are already defined in the CAO, as adopted by reference as part of the SMP, or are already defined and applicable through Title 20 – Zoning..

Exhibit K

Whatcom County

SMP Periodic Review - Determination of Initial Concurrence

- The definition of “Accessory development” has been deleted and now defaults to the zoning definition of the Zoning Ordinance.
- “Accessory structure” has been clarified to not include developments that share a common wall with an existing primary residential structure. Such developments are now considered part of the primary structure.
- The definition of “Agricultural activities” has been clarified to state that new structures or activities that bring a new area into agricultural use are not part of this definition.
- “Anadromous fish” definition has been removed since there is no reference to this term in the SMP.
- The definition of “Appurtenance” has been clarified to include on-site septic systems. The definition also clarifies that grading and fill waterward or the OHWM or within wetlands is not consistent with this definition.
- The definition of “Aquaculture” has been amended for consistency with the definition found in the SMP Guidelines.
- “Aquaculture practices” has been deleted as the term is not used within the body of the SMP.
- The terms “Archaeological object” and “Archaeological resource/site” have been removed and replaced as part of new definitions for “Cultural resource” and “Cultural resource site” per recommendations by DAHP and LNTPO.
- The term “Archaeology” has been removed as it is already defined in the Zoning ordinance.
- The definition of “Average grade level” has been rewritten for clarify.
- The definitions of “Backshore” and “Barrier Beach” have been rewritten to add more detail.
- The definition of “Bioengineered shoreline stabilization has been replaced with a new definition for “Shoreline stabilization, soft treatment” and “Shoreline stabilization, bioengineered”.
- The terms “Boathouse”, “Boat ramp”, “Boat lift”, “Canopy”, “Dock”, “Ells”, “Gangway”, “Launch rail” and “Launch ramp”, “Moorage buoy”, “Moorage structure”, “Lift”, “Moorage pile or piling”, and “Pier”, “Recreational floats”. have been consolidated into the definition of “Moorage Structures”.
- The definition of “Bulkhead” has been modified to remove revetments and seawalls as examples of such structures.
- The definition of “Commercial development” has been modified to no longer include bed and breakfasts and short term rentals. These uses are now part of the amended definition of “Residential development”. The definition changes relate to a 2016 County Council action associated with short-term rentals. An SMP amendment was conditionally-approved but never adopted by County Council. Instead, the County elected to incorporate those changes into this amendment. Also included are new definitions for “Bed and breakfast”, “Short-term rentals”, and “Vacation Rental Unit” as part of the 2016 amendments.
- A definition for “Critical saltwater habitat” has been added.
- “Date of filing” is now defined consistent with Ecology rule changes made in 2017.
- New definitions for “Department” and “Department of Ecology” have been added.
- The definition of “Development” has be reworded and clarified to not include the dismantling or demolition of structures only.
- A new definition of “Director” replaces the term “Shoreline Administrator”.
- The definition of “Dredging” has been modified to no longer apply to regular maintenance of approved barge landing sites.
- “Drift sill” is now defined.
- The definition of “Emergency activities” has been revised to include more detail consistent with WAC 173-27-040.

Exhibit K

Whatcom County

SMP Periodic Review - Determination of Initial Concurrence

- The definition of “ Essential public facilities” now includes secure community transition facilities per RCW 71.09.020.
- The definition of “Fill” has been amended to include placement of material below the OHWM or within wetlands for consistency with the SMP Guidelines.
- The definition of “Float” has been expanded to include stand-alone structures for boat moorage, swimming and diving.
- New definitions have been added for “Fossil fuels”, Fossil Fuel Transshipment Facility”, “Fossil Fuel Refinery”, “Renewable biomass”, Renewable fuel”, “Renewable Fuel Refinery” and “Small Fossil or Renewable Fuel Storage and Distribution Facilities” pursuant to the Whatcom County Council’s pending draft fossil fuel zoning amendments.
- The terms “Forest Land” and “Forest Practices” have been removed as they are defined in Title 20- Zoning.
- The definition of “Geotechnical report or geotechnical analysis” has been replaced by “Geotechnical assessment” and now just refers to where it applies to select CAO provisions.
- “Gross floor area” has been removed as it is no longer used in the SMP.
- The definition of “Hazard tree” has been deleted with a reference to the CAO definition. This was originally proposed through a locally-initiated SMP amendment submitted to Ecology in 2019. The revision is now being incorporated into this SMP Periodic Review.
- The definition of “Height” has been expanded to clarify that antennas, chimneys, etc. are not subject to the definition unless obstruction of views from neighboring residences would result. The revised definition also clarifies that moorage structure heights be measured from OHWM.
- The definition of “Hydric soil” has been updated for consistency with the CAO.
- “Impervious surface” has been removed since it is defined by Title 20 – Zoning.
- The definition of “Industrial development” and “Port development” have been modified to exclude fossil or renewable fuel refineries or transshipment facilities per the Whatcom County Council’s draft fossil fuel amendments.
- The definition of “Lot” and Lot area or lot size” have been removed as they are already defined in Title 20- Zoning.
- The term “Major development” has been deleted as it is no longer used.
- Multi-family dwelling” and “Native vegetation” have been removed as it is defined in Title 20 – Zoning.
- The definition of “Nearshore habitat” has been replaced with a new definition of “Nearshore or nearshore zone”.
- The definition of “Nonconforming lot” eliminates the 20,000 square foot requirement and is now defined as any lot that contains less than the required width, depth or area due to subsequent changes in the SMP.
- The definitions of “Nonconforming use” and “Nonconforming structure” have been revised to be consistent with Ecology rule amendments in 2017.
- “Responsible party or party responsible” is now defined.
- The definition of “Revetment” has been rewritten and now has a more specific meaning than the previous, more general definition.
- New definitions related to shoreline stabilization have been added including “Shoreline stabilization, bioengineered”, “Shoreline stabilization, nonstructural”, “Shoreline stabilization, replacement”, “Shoreline stabilization, soft treatment”, “Shoreline stabilization, hard structure”, “Shoreline stabilization, hybrid structure”, “Shoreline stabilization, new” and “Shoreline stabilization, structural”.
- A definition for “Standing” is now included in the SMP.

Exhibit K

Whatcom County

SMP Periodic Review - Determination of Initial Concurrence

- The definition of “Substantial development” has been amended to reference exceptions to the SMA per legislative amendments made in 2016 and 2017.
- New definitions for “Accessory utilities”, “Local utilities”, and “Regional utilities” have been added.

Whatcom County Code Title 16.16 – Critical Areas Ordinance

Concurrent with the periodic review of its SMP, Whatcom County proposed changes to its Critical Areas Ordinance. Note that not all of the changes to WCC 16.16 are incorporated as part of the SMP, and as such, only the following substantive changes are applicable within shoreline jurisdiction:

WCC 16.16.225 General Regulations (formerly Regulated Activities)

- Alterations of Type III and IV wetlands with low habitat scores is now allowed for new commercial developments within urban growth areas.
- New language requiring consideration of ecological connectivity and habitat corridors be considered has been added.
- General language associated with mitigation sequencing has been expanded to include an order of preference associated with vegetation clearing avoidance.

WCC 16.16.235 Activities Allowed With Notification

- This section has been clarified that if any of these activities within shoreline jurisdiction required a shoreline permit or statement of exemption, as applicable.
- New standards associated with approved vegetation pruning and removal, as well as hazard tree removal and mitigation have been added.
- Standards for clearing and thinning for the purposes of view enhancement have been added and revised. The updated standards require consideration of pruning and limbing in areas dominated by non-native vegetation and now prohibit tree removal regardless of size.

WCC 16.16.250 Critical Areas Review Process (formerly Submittal requirements and Critical Areas Review Process)

- Review of critical areas within 300-feet of a proposed project is now required.

WCC 16.16.255 Critical Areas Assessment Reports

- Habitat Management Plans have been added to the list of elements required in a critical area site assessment when applicable.
- Critical area assessment reports shall now require the identification of impacts on habitat corridors, ecological connectivity, and habitat for salmon and forage fish.
- Greater detail has been added to what should be considered in an alternatives analysis.

WCC 16.16.260 General Mitigation Requirements

- New standards have been added to allow off-site and in-kind, and on-site and out-of-kind forms of mitigation within the same watershed in addition to the preferred form of mitigation which is on-site and in-kind.
- Mitigation monitoring reports are now a minimum of five-years with the ability of the Director to reduce down to three years following review of the year-three monitoring report.
- Mitigation monitoring is now at the discretion of the Director and no longer an outright requirement.

WCC 16.16.265 Critical Area Protection Measures

- Building setbacks from critical areas and/or buffers have been modified to allow reduction by the Director when a shorter distance is determined to accomplish the same intent to avoid conflict with tree branches and/or critical root zones of existing and/or planted trees within the

Exhibit K

Whatcom County

SMP Periodic Review - Determination of Initial Concurrence

buffer. Decks allowed within the setback areas now must be less than 30-inches in height, and utilities including wells, septic systems, and propane tanks up to 500 gallons are now allowed within the building setback.

- Standards for protection of existing trees during construction activities have been added.

WCC 16.16.320 Geologically Hazardous Areas – Protective Standards (formerly General Standards)

- Stormwater management requirements must use low impact development techniques unless demonstrated to be infeasible.

WCC 16.16.325 Landslide Hazard Areas - Use and Modifications (formerly Landslide Hazard Areas – Standards)

- The Director can now prescribe a minimum landslide hazard area setback in accordance with adopted building codes. This would be in addition to setbacks recommended by a qualified professional.

WCC 16.16.355 Erosion Hazard Areas – Use and Modifications (formerly Erosion Hazard Areas – Standards)

- The Director can now prescribe a minimum erosion hazard area setback in accordance with adopted building codes. This would be in addition to setbacks recommended by a qualified professional.

WCC 16.16.375 Geologically Hazardous Areas – Review and Reporting Requirements

- More detail has been added regarding what must be addressed in a geologic hazards assessment report.

WCC 16.16.430 Frequently Flood Areas – Review and Report Requirements

- The requirement for a critical areas assessment report can now be waived when both the Director and the Public Works Department determine that FEMA requirements for a habitat assessment are not triggered.

Article 6 Wetlands

- An alternatives analysis is now required to determine the least impactful construction or installation method when utility development is proposed within wetlands or their buffers.

Article 7 Fish & Wildlife Habitat Conservation Areas (HCAs)

- An alternatives analysis is now required to determine the least impactful construction or installation method when utility development is proposed within HCAs or their buffers.
- On-site septic systems are now allowed anywhere within a Fish and Wildlife Habitat Conservation Area (FWHCA) buffers. The existing SMP restricts OSS to the outer 50% of FWHCA buffers.
- Trail construction within HCAs and their buffers may now exceed the maximum widths if necessary to meet Americans with Disabilities Act requirements. Trails must also be designed to avoid the removal of significant trees. The limitation of trails to the outer 25% of buffers has been relaxed if the trail segment is necessary to provide educational opportunities.
- Residential accessory structures that are water-oriented may now be located within the HCA buffer up to 10% of the buffer area or 500-square feet whichever is less, and may occupy up to 20% of the linear length of shoreline. In order to be eligible for this buffer encroachment, 75% of the existing buffer must either be vegetated or planted with native species to a minimum depth of 15-feet landward of the OHWM.
- New buffer standards have been added specific to timber harvest proposals through a Conversion Option Harvest Plan (COHP) or a Class IV General Forest Practices Application (FPA). The system eliminates prescriptive buffer requirements for a flexible system based on a functional analysis and shore type.

Exhibit K

Whatcom County

SMP Periodic Review - Determination of Initial Concurrence

- Buffers have been increased on shoreline stream systems from 150-feet to 200-feet based on National Wildlife Federation v. FEMA (Federal District Court Case No. 2:11cv-02044-rsm; NMFS Doc. #2006-00472). Non shoreline streams located within shoreline jurisdiction have also increased from 100-feet to 150-feet if fish bearing.
- Mitigation standards now refer to the Army Corps of Engineers Regional General Permit 6 for projects with impacts to inland marine waters.
- Mitigation ratios are now set by the timing of installation. If installation occurs within one year, the ratio is 1:1. If installation occurs after one year, the ratio is 1.25:1. Mitigation ratios of after-the-fact review of project impacts may be up to 2:1.

Article 9 Definitions

- The definition of “Accessory structure” has been clarified to not include structures that share a common wall with a primary structure.
- The definition of “Clearing” has been modified to include cutting, felling, thinning, flooding, killing, poisoning, girdling, uprooting and burning.
- A new definition for “Critical facilities (essential facilities)” has been added.
- The definition of “Development” has been amended to match the definition found in the SMP.
- The definitions of “Floodplain” and “Floodway” have been updated to be consistent with the SMP Guidelines.
- The definition of “Low-intensity land use” and “Moderate intensity land use” have been modified for consistency with Ecology’s guidance related to wetlands.
- A new definition for “Retroactive permit” has been included.
- A new definition for “Special Flood Hazard Area (SFHA)” has been added.
- “Substantially developed surface” is now defined.
- The term “Technical administrator” has been deleted as it is now been replaced with “Director”.
- The definition of “Waters of the state” or “state waters” has been revised for consistency with RCW 90.48.020.

Public Comment

The County and Ecology held a joint local/state comment period on the proposed periodic review amendment following the procedures outlined in WAC 173-26-104. The comment period began on March 12, 2021 and continued through April 12, 2021. A joint public hearing before the Planning Commission was held virtually via Zoom on April 22, 2021.

A total of seventeen (17) written comments were received during the comment period and seven (7) verbal comments were made at the public hearing. Comments were received by Miller Environmental Services, RE Sources, Taylor Shellfish Farms, Building Industry Association of Whatcom County, Phillips 66, Western States Petroleum Association, Ashton Engineering, Whatcom County Marine Resource Committee, Petrogas and eight (8) members of the public.

The County compiled these comments and prepared a comment summary and response matrix included as Attachment 2. Also included in Attachment 2 are the county’s responses to public comments received during a 2018 locally-initiated SMP amendment that has now been incorporated within this periodic review amendment. The amendment was related to a change in the definition of “Hazard Tree” for consistency between the CAO and SMP.

Exhibit K

Whatcom County

SMP Periodic Review - Determination of Initial Concurrence

The summary demonstrates the County considered all comments, and as a result made several changes to the SMP amendment as referenced in Appendix B. Additional discussion is provided below on a subset of topics raised:

Non-applicable CAO Provisions

A bulk of the comments submitted were related to concerns with amendments to CAO provisions that do not apply within shoreline jurisdiction (reasonable use, administrative variance review, 4,000 square foot buffer impact allowance, regulation of Type O waters, etc.). These CAO sections are specifically barred from incorporation into shoreline jurisdiction and as such, these comments were not addressed by Ecology.

Sea Level Rise

Several commenters brought up the need for the County to address climate change, and specifically sea-level rise within its updated SMP. In response, the County identified several changes addressing sea level rise within the SMP at the policy level, but does not plan to add regulatory provisions addressing this topic within this amendment. In its response to comments, the County explains that they are a participating agency in a United States Geological Survey (USGS) Coastal Storm Modeling System (CoSMoS) study for the region. The CoSMoS study will help inform predicted sea level rise in coastal areas of Whatcom County as well as its impacts to flooding on the Nooksack River. Whatcom County plans to use this information to conduct a formal sea-level rise risk and vulnerability assessment prior to developing regulations and is currently seeking grant funds to conduct such a study.

Ecology agrees climate change and related effects are important topics. The agency is actively engaged at the statewide level in work being done on climate change and sea level rise. The Shoreline Management Act (SMA) and the Shoreline Master Program (SMP) Guidelines contain no explicit requirements for SMPs to address climate change or sea level rise. However, they require local jurisdictions to take into account scientific and technical information pertinent to shoreline management issues. The Guidelines require local governments use “the most current, accurate and complete scientific and technical information available” [WAC 173-26-201(2)(a)]. The Guidelines also encourage local governments to consult Ecology’s guidance for applicable new information on emerging topics such as sea level rise [WAC 173-26-090(1)].¹

Ecology finds addressing these topics within the community, and more specifically in a local SMP, is currently left to the discretion of each city and county. Nonetheless, Ecology is seeing increased interest in discussing these issues. Some communities have chosen to address these issues through their comprehensive plan or through other regulatory codes, such as flood hazard ordinances. In most cases, the addition of climate change policies and regulations to a shoreline master program are a result of a community-wide effort, considering the entire geography of the place, and not limited to the comparatively narrow shoreline jurisdictional area. This comprehensive approach has led to more fully integrated responses to these risks within and outside of shoreline jurisdiction in those communities.

Ecology finds that the County has considered the comments related to climate change and sea level rise and has chosen to postpone making regulatory changes while technical studies are still being completed. SMP policies have been included within the SMP within this amendment and establish a firm framework in which future regulations will implement.

¹ See SMP Handbook Appendix A <https://apps.ecology.wa.gov/publications/parts/1106010part19.pdf>

Exhibit K

Whatcom County

SMP Periodic Review - Determination of Initial Concurrence

Riparian Buffers

Numerous commenters expressed concerns that the County's riparian buffers should be increased to be consistent with recent guidance published by the Washington State Department of Fish and Wildlife (WDFW). The WDFW riparian ecosystem management recommendations prescribe that buffers should be based on the 200-year Site Potential Tree Height (SPTH).

The current riparian buffer provisions of the SMP were adopted during the County's Comprehensive SMP Update after extensive public review and comment, supported by a technical review committee and Shoreline Inventory and Characterization. Currently, habitat conservation area buffers apply a prescriptive 150-foot buffer to all shoreline streams and a 50 to 100-foot buffer, based on fish presence, for all non-shoreline streams that flow through shoreline jurisdiction. These buffers presume the presence of a dense vegetated community adequate to protect the ecological functions and values at the time of the proposed activity. In situations where existing buffer areas lack adequate vegetation, the County has the authority to increase the standard buffer or require buffer enhancement. Buffers in Whatcom County are measured from the OHWM, however where a channel migration zone (CMZ) is identified, the buffers are applied from the CMZ.

Through this amendment, the County has amended its buffer scheme for consistency with the decision in *National Wildlife Federation v. FEMA* (Federal District Court Case No. 2:11cv-02044-rsm; NMFS Doc. #2006-00472). The County has also adopted the Washington Department of Natural Resources stream typing system, and will now apply 200-foot buffers for all shoreline streams, 150-foot buffers for all other fish-bearing streams, and maintain the 50-foot buffer requirement for all non-fish-bearing streams flowing through shoreline jurisdiction. Whatcom County has also incorporated the entire 100-year floodplain into shoreline jurisdiction based on recently updated mapping completed by FEMA.

In its response to comments, the County points out that its amended buffers are overall consistent with WDFW's riparian guidance as applied in Whatcom County. The County's responses were completed while WDFW's guidance was still in draft form, and based on that version, the County concluded that their proposed 200-foot buffers on shoreline streams were just under WDFW's recommendation at 208-feet.

Ecology finds that the County considered these comments but made no changes at the time of this initial determination. The County's revised approach to protecting riparian buffers increases protections already in place and will achieve no net loss of shoreline ecological functions consistent with the SMA and SMP guidelines.

INITIAL DETERMINATION

Ecology is required to review all SMPs to ensure consistency with the Shoreline Management Act (SMA) and implementing rules including WAC 173-26, State Master Program Approval/Amendment Procedures and Master Program Guidelines. WAC 173-26-186(11) specifies that Ecology "shall insure that the state's interest in shorelines is protected, including compliance with the policy and provisions of RCW 90.58.020."

Based on review of the proposed amendments to the SMP for consistency with applicable SMP Guidelines requirements and the Shoreline Management Act, and consideration of supporting materials, including public and agency comments in the record submitted by the County, Ecology has determined

Exhibit K

Whatcom County

SMP Periodic Review - Determination of Initial Concurrence

that the proposed amendments, subject to Ecology's required and recommended changes (itemized in Attachment 1), are consistent with the policy standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions.

Next Steps

- Consider the changes recommended by Ecology as required and recommended to resolve the issues identified within Attachment 1. Please let me know if you would like to discuss alternative language or different approaches for resolving these issues.
- If these issues are resolved prior to local adoption, we anticipate being able to approve your SMP Periodic Review amendment "as submitted" promptly after formal submittal is provided consistent with WAC 173-26-110.