Attachment 2: 2020 Whatcom County SMP Periodic Review Amendment – Public Comment Summary

The following comments were received during the joint public comment period between March 12, 2021 and April 22, 2021. In addition, public comments received at the joint public hearing are also included below:

Comment #	Commenter	Date	Section	Comment Summary	Whatcom County Response
MES43	Ed Miller, Miller Environmental Services	4/12/21	16.16.270 & 16.16.273	These sections are a complete rewrite of reasonable use procedures and would require a variance (minor and major variance) before reasonable use would apply. Current Code: Reasonable use provisions are currently considered prior to a variance application. A variance application is time-consuming, more expensive, and requires review/approval by the hearing examiner with a public hearing. Per 16.16.270.C.1 only reasonable use exceptions for single-family residential building or for other development proposals that would affect only buffers, but not critical areas themselves (e.g., wetlands and streams), shall be processed administratively. Other applications that directly impact critical areas, with the exception of single-family residential, currently have to apply for a variance application. If an applicant currently wants to propose a larger footprint than the allowed 4,000 square feet under reasonable use, they could also apply for a variance. *Suggested Change:* Strike the proposed changes to reasonable use and variance procedures. Return to the current language. Also, add bolded language to section 16.16.270.j. The project includes mitigation for unavoidable critical area and buffer impacts in accordance with the mitigation requirements of this chapter – **or if the mitigation requirements cannot be met, to the maximum extent feasible on the property**. *Rational for suggested change:* The proposed change is a significant alteration to the code and process. A significant number of previously designated reasonable use projects, processed administratively, would need to go to the hearing examiner. This will significantly increase costs and time to applicants for simple single-family construction or projects with only buffer impacts – as the current code requires an open public hearing for anything more complex. This will also create more uncertainty as to what will be allowed when a property is encumbered with critical areas and buffers. It should also be remembered, that reasonable use scenarios have increased significantly over the last four years as the result of larger buffers occurring on properties since 2017 – the result of utilization of updated Ecology wetland rating forms and guidance. Generally, critical areas, primarily wetlands, have not changed but buffers have become significantly larger. The change to section j is included so that applicants aren't required to purchase another property for mitigation – which has been required in some cases, precluding any development at all (even for buffer impacts).	Our Hearing Examiner has questioned our current schema, in particular why he isn't the final decision maker, as the current code allows an administrative determination to be made after a quasi-judicial decision, and in the hierarchy of permitting, applicants should have to exhaust any administrative remedies before seeking a quasi-judicial decision. Staff is proposing that reasonable use exceptions be the last method of altering standards to allow reasonable economic use of constrained property, and that they be decided upon by the Hearing Examiner (see 16.16.270 Reasonable Use Exceptions). In this schema, the degree to which one can vary standards while providing the least amount of mitigation moves up a level at each step, with the Hearing Examiner making the tougher decisions through a quasi-judicial process. This would return the reasonable use exception to truly the last effort of avoiding a taking. However, to counter the additional time and cost of this process, staff is also proposing to create a new category of variances, called minor variances (16.16.273 Variances). 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 of cases having to go to the Hearing Examiner and cost less to the citizens of Whatcom County overall.

MES44	Ed Miller, Miller Environmental Services	4/12/21	16.16.620(D) & 16.16.720(D)	*Draft Code:* Private Access. Access to existing legal lots may be permitted to cross Category II, III or IV wetlands or their buffers, provided the access meets the following... And. Private Access. Access to existing legal lots may be permitted to cross habitat conservation areas if there are no feasible alternative alignments. *Current Code:* Access to private development sites may be permitted to cross Category II, III or IV wetlands or their buffers, provided… *Suggested Change:* Strike the change and keep the current language, both wetland and HCA sections. *Rationale for suggested change:* This section as modified implies that no new lots could be created (subdivided) if a road would be needed to cross through a wetland or buffer or habitat conservation areas. Access to large areas of unencumbered property could be restricted if one small wetland or its buffer would need to be impacted to access a development area. For example, creating new lots in unencumbered areas (no critical areas) per the underlying zoning might not be allowed on a 40 acre property if the crossing of a non-fish stream or the outer portion of a buffer was required.	This formerly proposed language has already been stricken and reverted to the original language in the more recent versions of Exhibit F (4/5/21)
MES45	Ed Miller, Miller Environmental Services	4/12/21	16.16.640(A)(5)	*Draft Code:* Buffer Width Increasing: The Director may require the standard buffer width to be increased by the distance necessary to protect wetland functions and provide connectivity to other wetland and habitat areas for one of the following: (5) When a Category I or II wetland is located within 300 feet of: a. Another Category I, II or III wetland; or b. A fish and wildlife HCA; or c. A type S or F stream; or d. A high impact land use that is likely to have additional impacts. *Suggested Change:* Strike the new, added section (5). *Rationale for suggested change:* This added provision, not in the current code, allows staff to extend any Category II wetland buffers out to 300 feet – if another wetland or HCA is within 300 feet. HCA's include mature forest, priority snags (logs on the ground, 20 feet long, 12 inches wide), streams, etc. The intent of this appears to be to increase buffers if adjacent critical areas are present. However, this is already accounted for in the wetland rating form. The habitat score, which drives the buffer width, is scored higher if habitat conservation areas are within 330 feet. The proposed draft change seems redundant when these factors are already utilized in determining the buffers in the current code - based on the wetland rating form. If the intent is also to protect habitat corridors, then it is also redundant, as these are already protected in the habitat conservation section of the code – State priority habitat "Biodiversity areas and corridors".	Staff believes this addition better reflects DOE guidance and Council's direction to improve connectivity.
MES46	Ed Miller, Miller Environmental Services	4/12/21	16.16.640(B)(2) & 16.16.745(B)(2)	*Draft code.* 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. *Suggested Change:* Strike the proposed change.	This formerly proposed language has already been stricken and reverted to the original language in the most recent version of Exhibit F (4/5/21)

				Rationale for Suggested Change: This section effectively eliminates the intent of buffer averaging and converts it to buffer reduction by requiring mitigation in the form of added plantings. 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. Additionally, the Director already has the ability to require plantings in a wetland or HCA buffer where it lacks adequate vegetation under 16.16.630.D or 16.740.B.1, making this code addition redundant.	
MES47	Ed Miller, Miller Environmental Services	4/12/21	16.16.640(C)(1)(c)	*Buffer Width Reduction draft code:* <u>The buffer shall not be reduced to less than 75% of the standard buffer</u>. *Current Code:* Allows for a Category IV wetland buffer to be reduced by up to 50% or 25 feet, whichever is greater. *Suggested Change:* Restore prior language to allow for up to 50% reduction (or 25 feet) for Category IV wetlands. *Rationale for Suggested Change:* The existing code section allows for up to a 50% (or minimum of 25 feet) reduction of a Category IV wetland buffer, while higher category wetlands are restricted to a 25% reduction. Under the draft buffer averaging section, Category IV wetlands are still allowed up to a 50% reduction. This proposed change will remove flexibility for property owners for the lowest category of wetlands.	Staff believes this amendment better reflects DOE guidance.
MES48	Ed Miller, Miller Environmental Services	4/12/21	16.16.710(C)(1)(a)(v) & 16.16.740(B)	*Draft Code:* Type O waters include all segments of aquatic areas that are not type S, F, or N waters and that are physically connected to type S or F waters by an above-ground channel, system, pipe, culvert, stream or wetland. And 16.16.740.B. Type O Buffer = 25 feet. *Current Code:* Not present in the current code. *Suggested Change:* Strike this addition of Type O waters and associated 25-foot buffer. Return the prior designation of Natural Ponds to the buffer Table requiring a 50 foot buffer. *Rationale for Suggested Change:* The definition of Type O waters will include ditches and artificial ponds that eventually drain to a fish stream. This will include most of the ditching and artificial ponds in Whatcom County. This will in effect place 25-foot buffers in any front yard along a road with a County ditch – creating protected critical areas buffers along most property road frontage. Any time the County public works excavated new ditching, or extended existing new ditching, they would also be creating new critical areas and encumbering adjacent properties with a buffer for a resource that the County created. This seems problematic and overreaching. Ditching provides a function to control and direct stormwater. The department of Ecology has no recommendations designating artificial ditches as critical areas or for placing buffers on artificial ditching. This would create a new critical area, most of which are within County rights-of-way. Additionally, most of the ditches outside of road right of ways are agricultural in nature and created prior to the growth management act and the clean water act. Additionally, Type O waters do not correlate with Washington State water typing.	This formerly proposed language has already been stricken and amended in the most recent version of Exhibit F (4/5/21)

MES49	Ed Miller, Miller Environmental Services	4/12/21	16.16.710(C)(b)(i)	*Draft Code:* Ditches or other artificial water courses are considered streams for the purposes of this chapter when: i. used to convey <u>waters of the state</u> existing prior to human alteration; and/or… *Current Code:* Ditches or other artificial water courses are considered streams for the purposes of this chapter when: i. used to convey <u>natural streams</u> existing prior to human alteration; and/or… *Suggested Change:* Strike the change and replace the current language. *Rationale for suggested change:* This change seems to make the section more confusing. State definitions (italics added): "Waters of the state includes all lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and watercourses located within the jurisdiction of the state of Washington (RCW 90.48.020)." "WAC 220-660-030(153) Watercourse, river of stream means any portion of a stream or river channel, bed, bank, or bottom waterward of the ordinary high water line of waters of the state. Watercourse also means areas in which fish may spawn, reside, or pass, and tributary waters with defined bed or banks that influence the quality of habitat downstream. Watercourse also means waters that flow intermittently or that fluctuate in level during the year, and the term applies to the entire bed of such waters whether or not the water is at peak level. A watercourse includes all surface-water-connected wetlands that provide or maintain habitat that supports fish life. This definition does not include irrigation ditches, canals, stormwater treatment and conveyance systems, or other entirely artificial watercourses, except where they exist in a natural watercourse that has been altered by humans." Per state definition, waters of the state (that might be found in a ditch) have an ordinary high water mark and are not artificial – essentially a "natural stream". It seems the current language is consistent with state definitions and is clearer.	Based on public comment and direction from the P/C, staff has rewritten this section to be clearer and allow lesser buffers on modified waterways that are not regulated by WDFW. See 16.16.710(C) & (D)(2) in the most recent version of Exhibit F (4/5/21).
MES50	Ed Miller, Miller Environmental Services	4/12/21	16.16.745(A)(2)	*Draft Code:* Buffer Width Increasing. The Director may require the standard buffer width to be increased or to establish a non-riparian buffer, when such buffers are necessary for one of the following: 1) To protect priority fish or wildlife using the HCA 2) <u>To provide connectivity when a Type S or F water body is located within 300 feet of:</u> a. <u>Another Type S or F water body; or</u> b. <u>A fish and wildlife HCA; or</u> c. <u>A Category I, II or III wetland.</u> *Current Code:* 16.16.745.A.2 - language added, not in the current code. *Suggest Changed*: strike the new added section 16.16.745.A.2. *Rationale for suggested change:* This is a new provision to the code that allows the Director to extend 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	Staff believes this addition better reflects DOE guidance and Council's direction to improve connectivity.

				regulated areas that are not currently designated as critical areas or buffers in the existing or even the proposed amended code. 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. If the intent is also to protect habitat corridors, then it is also redundant, as these are already protected in the habitat conservation section of the code – State priority habitat "Biodiversity areas and corridors".	
RFW17	Karlee Deatherage (RE Sources), Rein Attemann (WEC), and Tim Trohimovich (Futurewise)	4/12/21		Incorporate regulations to prepare for accelerating sea level rise impacts. The SMA and SMP Guidelines require shoreline master programs to address the flooding that will be caused by sea level rise. RCW 90.58.100(2)(h) requires that shoreline master programs "shall include" "[a]n element that gives consideration to the statewide interest in the prevention and minimization of flood damages …" WAC 173-26-221(3)(b) provides in part that "[o]ver the long term, the most effective means of flood hazard reduction is to prevent or remove development in flood-prone areas …" "Counties and cities should consider the following when designating and classifying frequently flooded areas … [t]he potential effects of tsunami, high tides with strong winds, sea level rise, and extreme weather events, including those potentially resulting from global climate change …." The areas subject to sea level rise are flood prone areas just the same as areas along bays, rivers, or streams that are within the 100-year flood plain. RCW 90.58.100(1) and WAC 173-26-201(2)(a) also require "that the 'most current, accurate, and complete scientific and technical information' and 'management recommendations' [shall to the extent feasible] form the basis of SMP provisions." This includes the current science on sea level rise. Sea level rise is a real problem that is happening now. Sea level is rising and floods and erosion are increasing. In 2012 the National Research Council concluded that global sea level had risen by about seven inches in the 20th Century. A recent analysis of sea-level measurements for tide-gage stations, including the Seattle, Washington tide-gauge, shows that sea level rise is accelerating.5 Virginia Institute of Marine Science (VIMS) "emeritus professor John Boon, says 'The year-to-year trends are becoming very informative. The 2020 report cards continue a clear trend toward acceleration in rates of sea-level rise at 27 of our 28 tide-gauge stations along the continental U.S. coastline.'" "'Acceleration can be a game changer in terms of impacts and planning, so we really need to pay heed to these patterns,' says Boon." The Seattle tide gage was one of the 27 that had an accelerating rate of sea level rise. The report Projected Sea Level Rise for Washington State – A 2018 Assessment projects that for a low greenhouse gas emission scenario there is a 50 percent probability that sea level rise will reach or exceed 1.2 feet by 2100 around Sandy Point and the west side of the Lummi Peninsula. Projected Sea Level Rise for Washington State – A 2018 Assessment projects that for a higher emission scenario there is a 50 percent probability that sea level rise will reach or exceed 4.5 feet by 2100 for the same area. Projections are available for all of the marine shorelines in Whatcom County and Washington State. The extent of the sea level rise currently projected for Whatcom County can be seen on the NOAA Office for Coastal Management Digitalcoast Sea Level Rise Viewer available at: https://coast.noaa.gov/digitalcoast/tools/slr.html. Please see map images at the bottom of this	There isn't a requirement to address climate change/sea level rise in the SMA, though we could if Council desires. However, what we understand from the DOE is that any such regulations should be built on data, which is what PS-CoSMoS will be providing. Furthermore, once the data is available, we should perform vulnerability and risk assessments to see what kind and where the problems might be, and update our shoreline inventory and characterizations. Without such science, we would be open to challenges.

				letter detailing the changes in water elevation from the current mean higher high water (MHHW) to four feet of sea level rise. Projected sea level rise will substantially increase flooding. As Ecology writes, "[s]ea level rise and storm surge[s] will increase the frequency and severity of flooding, erosion, and seawater intrusion—thus increasing risks to vulnerable communities, infrastructure, and coastal ecosystems." Not only our marine shorelines will be impacted, as Ecology writes "[m]ore frequent extreme storms are likely to cause river and coastal flooding, leading to increased injuries and loss of life." Zillow recently estimated that 31,235 homes in Washington State may be underwater by 2100, 1.32 percent of the state's total housing stock. The value of the submerged homes is an estimated $13.7 billon. Zillow wrote: "It's important to note that 2100 is a long way off, and it's certainly possible that communities [may] take steps to mitigate these risks. Then again, given the enduring popularity of living near the sea despite its many dangers and drawbacks, it may be that even more homes will be located closer to the water in a century's time, and these estimates could turn out to be very conservative. Either way, left unchecked, it is clear the threats posed by climate change and rising sea levels have the potential to destroy housing values on an enormous scale." Sea level rise will have an impact beyond rising seas, floods, and storm surges. The National Research Council wrote that: "Rising sea levels and increasing wave heights will exacerbate coastal erosion and shoreline retreat in all geomorphic environments along the west coast. Projections of future cliff and bluff retreat are limited by sparse data in Oregon and Washington and by a high degree of geomorphic variability along the coast. Projections using only historic rates of cliff erosion predict 10–30 meters [33 to 98 feet] or more of retreat along the west coast by 2100. An increase in the rate of sea-level rise combined with larger waves could significantly increase these rates. Future retreat of beaches will depend on the rate of sea-level rise and, to a lesser extent, the amount of sediment input and loss." These impacts are why the Washington State Department of Ecology recommends "[l]imiting new development in highly vulnerable areas." Unless wetlands and shoreline vegetation can migrate landward, their area and ecological functions will decline. If development regulations are not updated to address the need for vegetation to migrate landward in feasible locations, wetlands and shoreline vegetation will decline. This loss of shoreline vegetation will harm the environment. It will also deprive marine shorelines of the vegetation that protects property from erosion and storm damage by modifying soils and accreting sediment. WEC and Futurewise's Sept. 16, 2020 letter included maps that show the extent of this amount of sea level rise in Whatcom County and wetland migration in part of the County if the wetlands are not blocked by development. Additional maps are also enclosed with this letter.	

				Flood plain regulations are not enough to address sea level rise for three reasons. Projected Sea Level Rise for Washington State – A 2018 Assessment explains two of them: "Finally, it is worth emphasizing that sea level rise projections are different from Federal Emergency Management Agency (FEMA) flood insurance studies, because (1) FEMA studies only consider past events, and (2) flood insurance studies only consider the 100-year event, whereas sea level rise affects coastal water elevations at all times." The third reason is that floodplain regulations allow fills and pilings to elevate structures and also allow commercial buildings to be flood proofed in certain areas. While this affords some protection to the structure, it does not protect the marshes and wetlands that need to migrate. Because of these significant impacts on people, property, and the environment, "[n]early six in ten Americans supported prohibiting development in flood-prone areas (57%)." It is time for Washington state and local governments to follow the lead of the American people and adopt policies and regulations to protect people, property, and the environment from sea level rise. We recommend the addition of the following regulations as part of the shoreline master program periodic update: X. 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. X2. 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. X3. 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.	
RFW18	Karlee Deatherage (RE Sources), Rein Attemann (WEC), and Tim Trohimovich (Futurewise)	4/12/21	16.16.270	Restore Reasonable Use impact area language in the Dec 4, 2020 draft Exhibit F, WCC 16.16.270 Reasonable Use Exceptions. We urge Whatcom County to restore the proposed change from the P/C to expand the maximum impact area for single-family residences from 4,000 square feet to 2,500 square feet in 16.16.270.C.12. The purpose of the reasonable use provision is to allow only the minimal "reasonable" use of property to avoid a constitutional taking when fully applying the standards of critical areas regulations. The courts generally decide the concept of reasonable; however, reasonable use is often interpreted as a modest single-family home. A home with a footprint of 4,000 square feet is excessive. A median size house built in 2019 has 2,301 square feet of floor area. We can assume that to be less than footprint 1,500 square feet.	Your comment will be provided to the P/C & Co/C for consideration.
RFW19	Karlee Deatherage (RE Sources), Rein Attemann (WEC), and Tim Trohimovich (Futurewise)	4/12/21	16.16.730 , Table 4	Incorporate the State of Washington Department of Fish & Wildlife's new riparian buffers guidance. As has been reported in media and scientific reports, the southern resident orcas, or killer whales, are threatened by (1) an inadequate availability of prey, the Chinook salmon, "(2)	Pursuant to 23.230.010(B)(4) floodways and contiguous floodplain areas landward two hundred feet from such floodways are within the shoreline jurisdiction.

				legacy and new toxic contaminants, and (3) disturbance from noise and vessel traffic." "Recent scientific studies indicate that reduced Chinook salmon runs undermine the potential for the southern resident population to successfully reproduce and recover." The shoreline master program update is an opportunity to take steps to help recover the southern resident orcas, the Chinook salmon, and the species and habitats on which they depend. The SMP Guidelines, in WAC 173-26-221(3)(c), provides in part that "[i]n establishing vegetation conservation regulations, local governments must use available scientific and technical information, as described in WAC 173-26-201 (2)(a). At a minimum, local governments should consult shoreline management assistance materials provided by the department and Management Recommendations for Washington's Priority Habitats, prepared by the Washington state department of fish and wildlife where applicable." The State of Washington Department of Fish and Wildlife has recently updated the Priority Habitat and Species recommendations for riparian areas. The updated management recommendations document that fish and wildlife depend on protecting riparian vegetation and the functions this vegetation performs such as maintaining a complex food web that supports salmon and maintaining temperature regimes to name just a few of the functions. The updated Riparian Ecosystems, Volume 1: Science synthesis and management implications scientific report concludes that the "[p]rotection and restoration of riparian ecosystems continues to be critically important because: a) they are disproportionately important, relative to area, for aquatic species, e.g., salmon, and terrestrial wildlife, b) they provide ecosystem services such as water purification and fisheries (Naiman and Bilby 2001; NRC 2002; Richardson et al. 2012), and c) by interacting with watershed-scale processes, they contribute to the creation and maintenance of aquatic habitats." The report states that "[t]he width of the riparian ecosystem is estimated by one 200-year site-potential tree height (SPTH) measured from the edge of the active channel or active floodplain. Protecting functions within at least one 200-year SPTH is a scientifically supported approach if the goal is to protect and maintain full function of the riparian ecosystem." These recommendations are explained further in Riparian Ecosystems, Volume 2: Management Recommendations A Priority Habitats and Species Document of The Washington Department of Fish and Wildlife. Based on these new scientific documents, we recommend that shoreline jurisdiction should include the 100-year floodplain and that the buffers for rivers and streams in shoreline jurisdiction be increased to use the newly recommended 200-year SPTH and that this width should be measured from the edge of the channel, channel migration zone, or active floodplain whichever is wider. New development, except water dependent uses should not be allowed within this area. This will help maintain shoreline functions and Chinook habitat.	And pursuant to 16.16.730 Table 4, Type S – Freshwater HCAs are proposed to have a 200-foot buffer based on National Wildlife Federation v. FEMA (Federal District Court Case No. 2:11cv-02044-rsm; NMFS Doc. #2006-00472)
TSF01	Diani Taylor, General Counsel, Taylor Shellfish Farms	4/12/21	23.40.010	Table 1 of the draft proposes to revise the shoreline use table to prohibit general aquaculture (aquaculture other than commercial geoduck and salmon net pen facilities) in aquatic areas adjacent to the Natural shoreline environment designation (SED). This proposed revision should not be adopted. No scientific or technical information is identified in the Draft Amendment that would support this revision. As recognized by the GMHB, prohibiting	The purpose of the natural shoreline area is to "ensure long-term preservation of ecologically intact shorelines" and "preservation of the area's ecological functions, natural features and overall character must receive priority over any other potential use." The Natural SED is only applied in a few areas of the county, primarily the headwaters of the 3

				aquaculture in the Natural SED absent such support is impermissible. Allowing aquaculture in the Natural SED is consistent with the purpose and policies of the Natural SED.	upper Nooksack branches and around state or locally controlled nature preserves. None of these areas would likely be used for aquaculture.
TSF02	Diani Taylor, General Counsel, Taylor Shellfish Farms	4/12/21	23.40.050(A)(1)	Strike A.1. ~~Aquaculture that involves little or no substrate modification shall be given preference over those that involve substantial modification. The applicant/proponent shall demonstrate that the degree of proposed substrate modification is degree of proposed substrate modification is aquaculture operations at the site.~~ The first sentence of this provision is unsuitable for a regulation, as it merely expresses a preference for certain activities over others. Moreover, it is inadequately defined and unsupported by scientific and technical information. To the extent that it would disfavor common shellfish aquaculture practices that have been proven to have insignificant impacts on species and habitat (e.g., those covered by the Programmatic Consultation or analyzed by Washington Sea Grant), it runs directly counter to such information in violation of the SMA and Guidelines. It would also fail to give preference to and foster shellfish aquaculture contrary to state law. The second sentence appears to impose a substantive requirement that any substrate modifications must be the minimum necessary for feasible operations. This restriction is similarly unsupported by scientific and technical information and fails to give preference to and foster shellfish aquaculture. In an analogous context, the GMHB held that an aquaculture regulation requiring gear use be limited to the minimum necessary for feasible operations violated state law and must be stricken.	Though the language is existing, the commenter may be correct regarding the 1st sentence, as it does read more like a policy rather than a regulation. And Policy 11CC-3 basically says the same thing, so that 1st sentence could be deleted (though it wouldn't have much effect on the regulation). Regarding the 2nd sentence (again, existing language), staff sees no legal issue in requiring methods used minimize impacts to shoreline functions. The regulation only states that the applicant demonstrate that the degree of proposed substrate modification is the minimum necessary. We would think that Taylor Shellfish Farms already uses the least impactful methods given how environmentally friendly they purport to be. Nonetheless, your comments will be provided to the P/C and Co/C for their consideration.
TSF03	Diani Taylor, General Counsel, Taylor Shellfish Farms	4/12/21	23.40.050(A)(2)	Strike A.2 ~~The installation of submerged structures, intertidal structures, and floating structures shall be allowed only when the applicant/proponent demonstrates that no alternative method of operation is feasible.~~ Similar to the previous provision, this provision is not only unsupported by scientific and technical information, but such information demonstrates aquaculture structures do not have unacceptable impacts. This provision imposes unjustifiable use restrictions and fails to give preference to and foster aquaculture, and hence it should be deleted.	Again, existing language, and it's only asking that the applicant demonstrate that any proposed structures be the least impactful to shoreline functions. Nonetheless, your comments will be provided to the P/C and Co/C for their consideration.
TSF04	Diani Taylor, General Counsel, Taylor Shellfish Farms	4/12/21	23.40.050(A)(3)	Strike A.3 ~~Aquaculture proposals that involve substantial substrate modification or sedimentation through dredging, trenching, digging, mechanical clam harvesting, or other similar mechanisms, shall not be permitted in areas where the proposal would adversely impact critical saltwater habitat, or other fish and wildlife habitat conservation areas.~~ This provision is insufficient in scope and detail to ensure proper implementation, as several key terms are undefined. Moreover, this regulation appears to articulate a zero-impact standard inconsistent with the SMA and the Guidelines, which acknowledge that activities will have some impacts and calls for those impacts to be minimized. This provision is particularly inappropriate given commercial shellfish beds are themselves critical saltwater habitat.	Staff disagrees with the commenters conclusions. The key words are either defined or their common usage is understood, and the regulation does not articulate a zero-impact standard: It only limits certain types of practices that might have significant impacts on critical saltwater habitats.
TSF05	Diani Taylor, General Counsel, Taylor Shellfish Farms	4/12/21	23.40.050(B)(9)	"Where aquaculture activities are authorized to use ~~public~~ County facilities, such as boat launches or docks, the County shall reserve the right to require the applicant/proponent to pay a portion of the cost of maintenance and any required improvements commensurate with the use of such facilities."	Staff agrees with the commenter and has made this suggested edit.

				This revision provides important clarification that the authority to require a project proponent pay a portion of maintenance costs and required improvements applies to County, rather than any public (e.g., state or federal), facilities. Use and maintenance of non-County public facilities are properly addressed by the entities or agencies that own or control those facilities.	
TSF06	Diani Taylor, General Counsel, Taylor Shellfish Farms	4/12/21	23.40.050(F)(1)	In addition to the minimum application requirements specified in WCC Title 22 (Land Use and Development), applications for aquaculture use or development shall include all information necessary to conduct a thorough evaluation of the proposed aquaculture activity, including but not limited to the following, if not already provided in other local, state, or federal permit applications or equivalent reports: Aquaculture operations are subject to numerous laws and regulatory programs. Applicants for new aquaculture projects must obtain several federal and state approvals in addition to shoreline permits. The County should allow aquaculture applicants to utilize information provided in other local, state, or federal permit applications or equivalent reports in order to satisfy shoreline permit application requirements. This allowance will not hinder the County's interest in ensuring it has all information necessary to conduct a thorough evaluation of aquaculture proposals, and it is critical to avoid unnecessary burdens on applicants and streamline permitting consistent with the laws and policies discussed above.	Staff agrees with the commenter, but none of the language prohibits the applicant from submitting materials used in or produced by other permitting processes. Regardless of whether another agency has made a decision on a permit, the County is still required to maintain a record of our decision making and would need copies of those materials to come to a rational conclusion.
TSF07	Diani Taylor, General Counsel, Taylor Shellfish Farms	4/12/21	23.40.050(F)(2)	Applications for aquaculture activities must demonstrate that the proposed activity will be compatible with surrounding existing and planned uses. a. Aquaculture activities shall comply with all applicable noise, air, and water quality standards. All projects shall be designed, operated and maintained to minimize odor and noise. b. Aquaculture activities shall ~~be restricted to reasonable hours and/or days of operation when necessary to~~ minimize substantial, adverse impacts from noise, light, and/or glare on nearby residents, other sensitive uses or critical habitat. c. Aquaculture facilities shall not ~~introduce incompatible visual elements or substantially degrade~~ significantly impact the aesthetic qualities of the shoreline. Aquaculture structures and equipment, except navigation aids, shall be designed, operated and maintained to blend into their surroundings through the use of appropriate colors and materials. Taylor Shellfish, along with other responsible farmers, employ numerous practices to avoid and minimize potential noise and light impacts on other shoreline users. However, to help protect the safety of its crews and provide marketable products, shellfish operators frequently need to conduct activities during nights or on weekends when there are low tides. This is recognized in the Guidelines, which state: "Commercial geoduck aquaculture workers oftentimes need to accomplish on-site work during low tides, which may occur at night or on weekends. Local governments must allow work during low tides but may require limits and conditions to reduce impacts, such as noise and lighting, to adjacent existing uses." Restricting operations to certain hours or days may compromise the safety of farm crews and/or render operations infeasible. This requirement in 2.b is incompatible with the SMA and Guidelines, and it should be removed.	Staff agrees with the commenter and has amended this section as suggested.

				The requirement in 2.c that aquaculture facilities not introduce incompatible visual elements or substantially degrade the aesthetic qualities of the shoreline is inconsistent with the Guidelines, which instead require that that aquaculture not significantly impact aesthetic qualities. The requirement that aquaculture activities not introduce incompatible visual elements is insufficient in scope and detail to ensure proper implementation. This subsection should be aligned with state law.	
TSF08	Diani Taylor, General Counsel, Taylor Shellfish Farms	4/12/21	23.40.050(H)(2)	In the Natural shoreline environment, aquaculture activities that do not ~~require structures, facilities, or mechanized harvest practices and that will not result in the alteration of~~ substantially degrade natural systems or features are permitted. The prohibition on structures, facilities, or mechanized harvest in the Natural environment is unsupported by scientific and technical information and is accordingly inconsistent with the SMA and Guidelines. As discussed above, there is extensive scientific and technical information that demonstrates shellfish aquaculture activities, some of which include these proscribed items, have minimal impacts that are consistent with the Natural environment. The revised language shown here remedies these failures and aligns this regulation with the management policies in the Guidelines for the Natural environment.	Staff disagrees with the commenter. The Natural SED is intended to remain natural and is the only SED where such structures are prohibited. It is not a general prohibition, just one for one certain SED. The Natural SED is only applied in a few areas of the county, primarily the headwaters of the 3 upper Nooksack branches and around state or locally controlled nature preserves. None of these areas would likely be used for aquaculture.
BIAWC08	Robert Lee, BIAWC	4/12/21	16.16.273	**Reasonable Use and Variances:** Staff has proposed major changes to the procedures and criteria for both. The current 2017 CAO allows PDS staff to grant reasonable use (RU) permits for one single family house under very strict criteria if CAO rules alone would deny "all reasonable and economically viable use" of the property. **A. Variances:** They now require a public hearing and approval by the Hearing Examiner (HE). The applicant must demonstrate "undue hardship" due to CAO "dimensional requirements". Frankly, it's not clear what the difference is between the scope of these and RU applications in current code. Per draft Section 16.16.270.A, p 30-31, Exh. F, if a person only needs a 25 to 50% CAO buffer reduction, they would apply for a Minor Variance, instead of a RU Exception per current code. The draft does not say whether this value is total area, width, or both. Staff decides these permits; notice to neighbors is required. We do appreciate the new minor variance idea allowing staff approval, but why they also have to provide notice to adjacent land owners? A Major Variance is required for any other CAO exceptions. See Section 16.16.273, p 34. Either level of variance will be a costly process; the fee is $2750, plus critical area reports, possibly consultants and any legal costs. One could only apply for a Reasonable Use Exception RU if their variance app is denied. This means if you don't get adequate relief with a variance approval, one must repeat the permit process to apply for an RU, and pay double fees and costs. A person may also face an appeal to Superior Court from someone.	Please see the responses provided for Comments GCD14, NES02, NWC02, NWC05, BIA04, MES11, MES29, MES31, MES43, RFW12, & RFW18. In addition, variances have always required a public hearing and approval by the H/E using the same criteria. We have now introduced a "minor" variance (the creation of which has already been approved by Co/C) for minor buffer reductions. An all variances always require public notice, as we're potentially letting applicants use lesser standards than what the code prescribes, which might have impacts on neighbors. We have also put in a request to have a much lower fee for minor variances.
BIAWC09	Robert Lee, BIAWC	4/12/21	16.16.270(C)(12)	**B. Reasonable Use Exception (RU)** 1. Footprint Size:	Please see the responses provided for Comments BIA04, GCD09, GCD14, MES09, MES11, MES31, NES01, RFW12, RFW13, & RFW18.

				Re draft Sections 270, Item C, p 31, we support the increase in the allowed "impact area" for a house via the RU process to 4,000 sq. ft., from 2,500, recently accepted by the P/C. This limit is a minimally reasonable value when you consider most of the sites will be 2 acres or larger, and many rural land owners will want barns, corrals, shops, etc. Also, these and all other CAO rules apply in the county's two Urban Growth Areas: Birch Bay and Columbia Valley, where lot sizes are usually much smaller, and on public sewer and water systems. However, "impact area" is not defined in the draft CAO. We suggest this term be defined to include only artificial impervious surfaces. We support the driveway exception as written, and ask that drainfield areas be listed as excepted too. There appears to be no scientific basis for either value. The 4,000 sf value will often be generally reasonable in this context for smaller lots, e.g., 1 to 5 acres. But several large rural areas are zoned 10 acre minimum. We think consideration should be given to a "sliding scale" proposal, for parcels 5 acres and larger, based on zoning, platting options, availability of drinking water, soils for septics, etc. Many rural residents are horse enthusiasts, and want training rings, which will push the total footprint over the 4,000 sf limit.	And remember, RUEs are for lots totally constrained by critical areas. Lots that aren't so constrained can build to whatever size the code allows for their zone. We would think that someone who wants barns, training rings, and other large structures would choose a lot not so constrained.
BIAWC10	Robert Lee, BIAWC	4/12/21	22.05.020	**2. RU Process:** We believe the RU decision should be made by staff instead of the Hearing Examiner (HE), a far less costly, time consuming and legalistic process. We believe these decisions should be based mainly on a scientific analysis of the particular situation; that is: the functions and values of the resource, and adjacent site character, mainly its natural features: e.g., soils and geology, topography, native vegetation etc. An important question: is there any state law, court decision or code that requires that RU's be decided by the HE, a quasi-judicial official? Or that bars professional and qualified staff from making these mainly technical and science kind of decisions?	Please see the responses provided for Comments GCD14, NES02, NWC02, NWC05, BIA04, MES11, MES29, MES31, MES43, RFW12, & RFW18.
BIAWC11	Robert Lee, BIAWC	4/12/21	16.16.270(C)	**3. RU Criteria:** a. We also have concerns over the fairness of some of the key words/phrases/values related in the RU code, such as: 16.16.270 A, C.2, C.3, etc.: "all reasonable and economically viable use of a property". The words "all" and "viable" seem more arbitrary and subjective than logical and objective. Does staff have a reliable, credible source for this language? The current, 2018, State Department of Commerce guidance on critical areas and this topic states, in part: The reasonable use permit criteria should allow for "reasonable" uses. If the criteria state that the applicant must demonstrate that no other use "is possible," or that there are "no feasible alternatives," it would conflict with the concept of a "reasonable" use as other "possible" alternatives may be so costly as to be unreasonable.	The RUE criteria are basically the same as the existing criteria (old (B)(2)), which come from state law and courts cases on this matter. And if you're going to quote the CAO handbook, might as well quote more of it, for it also says, "Unlike variances, the purpose of a reasonable use exception permit is not to allow general development within critical areas, but to allow only the minimal "reasonable" use of the property so as to avoid a constitutional taking. Four scenarios are provided to illustrate situations where a reasonable use exception might or might not be applicable: A – No reasonable use exception would be granted because there is sufficient space outside the critical area clearing limits. B – A reasonable use exception might be granted since there is insufficient space for a reasonable use. The development area would

				Their 3-page excerpt on RU is attached, and a link to the complete report. The Department of Commerce has primary regulatory authority over all GMA elements, including all 5 critical areas. In reviewing the long list of complex criteria, all 12, for approval of a RU application (Section 270.C, almost all of p 31), we note the links in several of "reasonable" with "economics", and use of "all". Why is economics a critical factor here? The test is supposed to be "reasonable". See items C.2, 3, 4 and 5. It appears staff is trying to make it as difficult as possible for a person to obtain a RU exception, and obtain fair relief from the arbitrary buffers per Department of Ecology guidance on wetlands and habitat buffers. We say the buffers are arbitrary because they are not based on a staff accepted scientific assessment of a site's critical area resources and relevant local conditions.	need to be limited or scaled back in size and located where the impact is minimized. The jurisdiction might consider a variance to the required setback to minimize intrusion into the protection area. C – A reasonable use exception would be granted for a minimal development if the property is completely encumbered and mitigation methods are applied. D – The jurisdiction might consider modifications to the required setback to prevent intrusion into the protection area. The criteria for reasonable use permits need to be consistent with case law to reduce the potential for appeals and overturned decisions. Key to being consistent with case law is careful use of the term "reasonable." Generally, the concept of "reasonable" has been left to the courts to decide, thereby making it difficult for cities to rule on whether or not a project qualifies. A reasonable use is often thought to be a modest single-family home, although some other structure might be "reasonable" depending on zoning, adjacent uses, and the size of the property. Some jurisdictions have allowed a reasonable use exception in only those situations where *all* economic use of a property would be denied by the critical areas regulations. Criteria that might be used to allow approval of a reasonable use exception include: • No other reasonable economic use of the property has less impact on the critical area; • The proposed impact to the critical area is the minimum necessary to allow for reasonable economic use of the property; • The inability of the applicant to derive reasonable economic use of the property is not the result of actions by the applicant after the effective date of this regulation, or its predecessor; • The proposal does not pose an unreasonable threat to the public health, safety, or welfare on or off the development proposal site; • The proposal will result in no net loss of critical area functions and values consistent with the best available science; or • The proposal is consistent with other applicable regulations and standards."
BIAWC12	Robert Lee, BIAWC	4/12/21	Articles 6 and 7	2. Wetland and Habitat Conservation Area Buffers: A. General Comments: Such buffers are usually the most constraining, and thus costly, elements of compliance with local CAOs for landowners and land users. They often end up consuming more usable land	In July 2018 the Washington Department of Ecology (DOE) modified the habitat score ranges and recommended buffer widths in their wetland buffer tables in the DOE guidance, with some minor text changes to ensure consistency. Some citizens, local environmental consulting firms, and ***the Building Industry Association of Whatcom***

				than the area of the wetland they are supposed to protect. We have seen many examples of this, large and small. We're familiar with many situations where buffer requirements appear arbitrary and excessive. In one situation, where a qualified private scientist classified a 6 acre area that has been hayed for at least 75 years a Category IV wetland, the lowest value. He used the 2014 DoE Rating form, 17 pages of detailed questions, some a bit subjective. The PDS staff person said he thought it was a Cat. III. This meant the buffer increased from 60 ft. to 110 ft. of hayfield, almost doubling! Per the draft, DoE and staff don't think that's enough. The new Wetland Buffer table, Sec. 630.E, p 67, based on DoE guidance, will require more than a doubling, from 110 to 225 ft., for a Cat. III of any size, whether the parcel is 10,000 sf or 100 acres. We think this is excessive regulation, and it's quite commonplace in the CAO. The County does not have to adopt DoE staff's arbitrary and excessive buffers. They are not based on the WACs. Remember, the state Department of Commerce is the only state agency with rule making authority on GMA obligations, including critical areas. DoE's main authority on wetlands is limited to controlling the filling or alterations of wetlands through the federal Clean Water Act.	***County*** then requested that we amend our code to meet this new guidance, and it was docketed as PLN2019-00008. The project was brought before the Planning Commission on March 14, 2019. But there was confusion as to what we actually had to do at that time and what impacts it would have on development. DOE had informed staff that, while we didn't need to amend our code at that point (having just updated Ch. 16.16 (Critical Areas) (Exhibit F) that they would review our code for consistency with their guidance when Ch. 16.16 was opened for amendment again, noting that that would occur during the 2020 SMP Periodic Update. So at the Commission's request, staff worked with the local wetlands consultants to review the issue and try to determine what effects it might have. Three consulting firms provided analyses based on data from projects they had worked on. From these analyses, it appears that many of Whatcom County's lower quality wetlands (e.g., small Category IV wetlands in agricultural fields) would end up with smaller buffers, but that our higher quality wetlands (Categories II and III) would end up with larger buffers. (But even this is speculation, as ATSI noted that the comparison results are not statistically significant.) Thus, farmers may benefit but developers/ builders may suffer, as many of our lower quality wetlands are those found in agriculture fields, while our higher quality wetlands are typically found in non-agriculture rural areas. Nonetheless, given the Department of Ecology's statements that they'll be monitoring the SMP Update to ensure that we meet their latest guidance (which is based on Best Available Science), and given that Comprehensive Plan Policy 10M-2 directs the County to "Develop and adopt criteria to identify and evaluate wetland functions that meet the Best Available Science standard and that are consistent with state and federal guidelines," staff is proposing to amend §16.16.630 (Wetland Buffers) Table 1 (Standard Wetland Buffer Widths) to meet DOE guidance. As indicated, these changes would lessen buffers on lower quality wetlands, and increase them on higher quality ones.
BIAWC13	Robert Lee, BIAWC	4/12/21	Articles 6 and 7	**B. Buffer Details in the Draft:** We have reviewed the Wetland and Habitat drafts and the detailed comments on them submitted February 19 and 25, 2019, for Jon Maberry by Ed Miller and Liliana Hansen, both Professional Wetland Scientists (PWS). GAC members discussed these issues with Ed recently. We firmly agree with the scope and substance of all 14 comments in their firm's 8-page February 19 letter, including its recommendation to delete 12 of the draft changes/additions	Your comment will be provided to the P/C and Co/C for consideration.

				(attached). The Miller firm is highly regarded by many BIAWC members for their professional approach to complex environmental issues. We also agree with the reasonable and constructive suggestions in Jon Maberry's Prepared Motions submitted to the Planning Committee February 25, attached. Finally, it appears to us there's a pattern in these and other parts of the draft CAO of making the rules more restrictive and less balanced between the government's legitimate police power authority and the constitutional rights of private land owners and land users.	
P6601	David Klanica, Phillips 66	4/12/21	10D-11	Policy 10D-11 was added that addresses climate change: "Protect ecological functions and ecosystem-wide processes of Marine Resource Lands and critical areas in anticipation of climate change impacts, including sea level rise." Phillips 66 is requesting further explanation and clarification whether upland property owners who propose bulkheads, armoring, or bank stabilization to prevent shoreline erosion or sloughing due to sea level rise will be subject to new limitations or requirements that could affect the current or future use of their property.	The amendments regarding shoreline stabilization regulations are found in Exhibit D (Title 23). You would want to look at both 23.40.010, Table 1, and 23.40.190.
P6602	David Klanica, Phillips 66	4/12/21	Governing Principle (C)(2)	The Shoreline Management Act was adopted in 1971 to protect the shorelines of the state of Washington. Certain shorelines were designated as "shorelines of statewide significance" including those areas of Puget Sound and the Strait of Juan de Fuca and adjacent salt waters north to the Canadian line and lying seaward from the line of extreme low tide. The Act established a system where local governments would ensure that certain developments in shoreline areas would be reviewed and protected. More specifically, these agencies would review "substantial developments" which were those that would have a "significant adverse" impact on the environment including, but not limited to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values. Whatcom County has proposed in its Governing Principles (GPC2)) that it will include "policies and regulations that require mitigation of adverse impact in a manner that ensures no net loss of shoreline ecological functions." Phillips 66 is concerned about how this revised policy will be implemented as a practical matter. First, it appears to go beyond the County's statutory authority outlined in the SMA. Second, Phillips 66 is concerned that, without further clarification, it may be used inconsistently across the County. For instance, what is meant by "adverse" versus the original "significant adverse"? Must all land use permits affecting the shoreline now indicate what, if any adverse impacts might occur? Phillips 66 requests that the P/C provide more information as to how the removal of the word "significant" will change day-to-day shoreline management activities.	As explained in the comment bubble tagged on this change, the word "significant" is proposed for deletion as there is no such threshold under SMA. Under the SMA, all adverse impacts must be mitigated in order to help achieve NNL. (The term "significant impact" comes from SEPA.)
P6603	David Klanica, Phillips 66	4/12/21	Policies 11G-3 & 11G-4	Regarding Policy 11G-3 and Policy 11G-4 addressing the County's MOU with DAHP and Lummi Nation require the County to consult with DAHP and the Tribes. Phillips 66 is requesting additional clarification for applicant/property owner responsibilities.	Please read 23.30.050 (Cultural Resources) in Exhibit D, as that should provide the additional clarification you seek.
P6604	David Klanica, Phillips 66	4/12/21	Overall Goals & Policies	Regarding Overall SMP Goals and Objectives for the Restoration and Enhancement Element were revised as follows: "This element provides for the timely restoration and enhancement of ecologically impaired areas in a manner that achieves a net gain in shoreline ecological functions and processes above baseline conditions as of the adoption of this program."	The baseline condition was set by the comprehensive update done in 2007. As part of that update the County developed: • Vol. 1 - Inventory and Characterization Report • Vol. II - Scientific Literature Review • Vol. III - Restoration Plan

				Phillips 66 requests additional clarification and definition for "baseline condition" (e.g. baseline conditions at the time of application?).	• Vol. IV - Cumulative Effects Analysis all of which can be found on our SMP Update webpage.
P6605	David Klanica, Phillips 66	4/12/21	Policies 11AA -1 through 11AA-7	Regarding General Policies for Climate Change/Sea Level Rise (Policies 11AA -1 through 11AA-7): please explain/provide detail for shoreline development applicant's responsibilities pertaining to climate change and sea level rise. Will development applications be required to address climate change and sea level rise as part of the SMP application or will there be separate analysis and document requirements (e.g. when will a study addressing sea level rise be required)?	These are only general policies; we are not developing CC/SLR regulations at this time.
P6606	David Klanica, Phillips 66	4/12/21	Policy 8T-1	Regarding Policy 8T-1, Phillips 66 requests clarification of the methods by which the County will coordinate with landowners to protect marine resource lands.	Well, we generally do that through email, though sometimes letters, phone calls, or meetings.
P6607	David Klanica, Phillips 66	4/12/21	Policy 8U-2	Regarding Policy 8U-2, Phillips 66 requests clarification of the types of non-regulatory programs, options, and incentives that owners of marine resource lands can employ to meet or exceed County environmental goals.	We can't provide you a precise list, as they haven't been developed yet, but they could include tax incentives, educational programs, volunteer groups, etc.
P6608	David Klanica, Phillips 66	4/12/21	Policy 8V-2	Regarding Policy 8V-2, Phillips 66 requests clarification of the process by which the County will work cooperatively with local, State, Federal and Tribal agencies, adjacent upland property owners, and the general public, as applicable, to address community concerns and land use conflicts that may affect the productivity of marine resource lands.	How would we work cooperatively? Here are 10 simply ways from entrepreneur.com to cultivate team cohesion: • Create a clear and compelling cause • Communicate expectations • Establish team goals • Leverage team-member strengths • Foster cohesion between team members • Encourage innovation • Keep promises and honor requests • Recognize, reward and celebrate collaborative behavior
P6609	David Klanica, Phillips 66	4/12/21		The General Provisions of Title 23 indicate that shoreline development must be consistent with the SMA of 1971, the County's shoreline regulations and "other County land use regulations" (See Title 23 draft at lines 11-13). Title 23 then references certain requirements for "existing legal fossil-fuel refinery operations, existing legal transshipment facilities, expansions of these facilities, and new or expansions of renewable fuel refineries or transshipment facilities". Related definitions are also provided on page 241 at lines 20-36. Expansions of existing fossil fuel and renewable fuel facilities are required to obtain conditional shoreline permits. (See Title 23, page 137 at lines 3-10). As the Planning Department is aware, industry, labor and environmental organization stakeholders have been working together to develop recommended changes to the County Council's October 2019 proposed Comprehensive Plan amendments. Many of the terms and definitions included in this proposal assume that the 2019 proposed Amendments will be adopted as is. Phillips 66 requests that terms borrowed from the 2019 proposal not be adopted at this time. Considerable progress has been made by the stakeholders and is being presented to the County Council for its consideration in the near future. We request that this proposal be delayed until the final work from the ongoing stakeholder effort is accepted or rejected and the "final" definitions and framework for when conditional use permits is finalized.	Yes, staff is well aware of this work and understands that changes have been made to Council's original proposal. However, at the time these documents were 1st edited, their original proposal was all we had on which to rely, which is why the comment bubbles indicate that we will have to substitute in any changes based on Council's final adoption of the Cherry Point fossil fuel amendments.

P6610	David Klanica, Phillips 66	4/12/21		Article 7 Fish and Wildlife Habitat Conservation Area was amended to now include Type 0 waters. Phillips 66 requests the addition of a definition of Type O waters in the Whatcom County guidance.	This proposal has already been dropped. We suggested you look at the most recent version of Exhibit F, dated 4/5/21.
WH01	Wendy Harris	4/13/21		This is in response to the question that was asked at the last Planning Commission meeting regarding "waters of the state." That is not a term used in the Shoreline Management Act. Rather, it refers to all waters under its jurisdiction as "shorelines of the state" or "shorelands of the state" and these are the appropriate terms to use for waters and exposed land under SMA jurisdiction. Under RCW 90.58.030, "Shorelines" means all of the waters of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (i) shorelines of statewide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes. https://apps.leg.wa.gov/RCW/default.aspx?cite=90.58.030. In other words, only waters with minimum quantifiable measurements (size, type, velocity, etc.) are a regulated state shoreline. This is often forgotten when we hear complaints about over-regulation and unreasonableness. Shorelines of the state are specifically set out in the WAC. In Whatcom County, all rivers and streams that are shorelines of the state are set out in WAC 173-18-410. https://apps.leg.wa.gov/WaC/default.aspx?cite=173-18-410. Lakes are listed in WAC 173-20-760 and 770. https://apps.leg.wa.gov/WaC/default.aspx?cite=173-20-770; https://apps.leg.wa.gov/WaC/default.aspx?cite=173-20-760. There are two kinds of shorelines of the state. The most common shoreline under SMA jurisdiction imposes a no net loss standard of review to prevent any degradation beyond baseline conditions, informed by review of best available science. However, particularly large and significant rivers and lakes, as well as marine waters, are designated "Shorelines of Statewide Significance" (SSWS). These have increased protection through a prioritized preference of use, similar to how we apply mitigation standards. These are set out in statute, with preferred use for natural conditions that support the long-term interests of all state residents. RCW 90.58.020(f); https://app.leg.wa.gov/RCW/default.aspx?cite=90.58.020 . The Whatcom County SSWS are the Nooksack River, Lake Whatcom, Baker Lake, and marine waters, including Birch Bay. R CW 90.58.030. The SMA also discusses "shorelands" or "shoreland areas", which includes lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes,	The commenter is correct, and these are all laid out in 23.20.010 (Shoreline Jurisdiction).

				and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology. RCW 90.58.030(2)(d), https://app.leg.wa.gov/RCW/default.aspx?cite=90.58.030. I recommend the SMP Handbook, which is linked on DOE's website and explains how the SMP process works. Specific issues and provisions are separate chapters in the Handbook. https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Shoreline-Master-Plan-handbook; https://apps.ecology.wa.gov/publications/SummaryPages/1106010.html. P.S. If you are wondering why I have written this, it is because I do not believe that the Planning Commission and citizen committees generally are being provided with relevant and timely information on the laws and policies they are asked to review and this fails to serve public needs and public input requirements. Unless citizen-appointed committees have a comprehensive and complete understanding of the purpose and intent of the policies and laws they are asked to review, they will remain tools of the Planning Department. Please continue to ask questions and ensure that you are provided with all the information you need upfront, before beginning a large review project.	
PB04	Pam Borso	4/21/21	16.16.270	Restore Reasonable Use impact area language in the Dec 4, 2020, draft Exhibit F, WCC 16.16.270 Reasonable Use Exceptions. I urge Whatcom County to reject the proposed change from the Planning Commission to expand the maximum impact area for single-family residences from 2,500 sf to 4,000 sf. The purpose of the reasonable use provision is to allow only the minimal "reasonable" use of property to avoid a constitutional taking when fully applying the standards of critical areas regulations. A 4,000 sf home is excessive.	Your comments will be forwarded to the P/C & Co/C for their consideration.
PB05	Pam Borso	4/21/21		Incorporate the State of Washington Department of Fish & Wildlife's new riparian buffers guidance. The buffer requirements contained in the SMP are less than adequate to ensure no net loss of riparian and stream functions vital to fish, wildlife and our water supply.	Please see the response to comment #FW/WEC09.
PB06	Pam Borso	4/21/21		Incorporate regulations to prepare for accelerating sea level rise impacts. Whatcom's SMP does not incorporate protections form this peril. Not only our marine shorelines will be impacted, as Ecology writes "more frequent extreme storms are likely to cause river and coastal flooding, leading to increased injuries and loss of life." 31,235 homes in Washington State may be underwater by 2100; the value of the submerged homes is an estimated $13.7 billon.	See responses to comments FW/WEC01, FW/WEC12, WCPW08, WCPW09, RES03, RFW07, RFW11, & RFW17.
WSPA01	Holli Johnson, Western States Petroleum Association	4/21/21		The most recent staff memorandum contains several important explanations and clarifications regarding what is meant by the "baseline" condition upon which no net loss project mitigation requirements are measured and recognizes important distinctions between what is appropriate to require for project mitigation obligations and what must be voluntary or incentive-based for restoration. These principles should be built into the language of the code itself or, at a minimum, into the language of the adopting ordinance, so as not to disappear into history once the code amendments are adopted.	Staff doesn't feel this is necessary, as this explanation is based on DOE's guidance and explanatory handouts so it true throughout the state. Nonetheless, your comment will be provided to the P/C and Co/C for consideration.

WSPA01	Holli Johnson, Western States Petroleum Association	4/21/21		The County Council is currently in the final stages of review of comprehensive plan and code amendments for fossil and renewable fuel facilities and expansions. This work is the result of many months of effort and good faith negotiations between the County and interested stakeholders, including WSPA. As noted by staff in several places in the draft shoreline master program amendments, it is imperative that these shoreline master program amendments be fully consistent with the outcome of that other County Council effort. WSPA asks for an additional opportunity to review and provide input on future revisions made by staff to achieve that consistency before these amendments to the shoreline master program are adopted.	Please refer to the response to comment P6609. The P/C's recommended amendments will be forwarded to the Co/C for their review, public hearing, and adoption (during which they may make their own amendments). We would urge you to pay attention to the SMP update page (or Council's agenda page), where new drafts are posted as decisions are made.
WSPA01	Holli Johnson, Western States Petroleum Association	4/21/21	23.40.010	The Shoreline Use and Modification Use Table establishes a shoreline conditional use permit requirement for expansions of existing legal fossil fuel refinery and transshipment facilities and new or expansion of existing legal renewable fuel refinery operations or renewable fuel transshipment facilities. Conditional use permit review requirements for these facilities are being addressed in the zoning code amendments currently under review by the County Council. A separate, duplicative and potentially inconsistent shoreline conditional use permit review for the same facilities that will undergo thorough zoning code conditional use permit review is unnecessary and should be eliminated. In particular, it is not appropriate to apply shoreline conditional use permit requirements to upland activities that will be fully evaluated under the zoning code requirements applicable to those upland activities. At a minimum, this provision should clarify that such fossil fuel facilities located outside of the shoreline jurisdiction should be evaluated under the zoning code conditional use permit criteria and not pursuant to shoreline conditional use permit requirements.	What is shown in the draft Title 23 regarding this issue is what staff was provided over a year ago. Once Council makes a final decision on their separate Cherry Point amendments staff will rectify the differences. You should understand, though, that if both Title 20 and Title 23 require a CUP for a certain activity, the permits would be combined under WCC 22.05.030 (Consolidated Permit Review). Shoreline requirements would not be applied outside of the shoreline jurisdiction.
DK01	David Kershner	4/22/21	N/A	I have served on the Whatcom County Climate Impact Advisory Committee since its inception in 2018. While I am not writing in my capacity as a committee member, I have familiarized myself with the research on sea level rise related to climate change. The financial costs to Whatcom County taxpayers and property owners of not adequately planning for sea level rise are likely to be substantial. As you may know, the real estate company Zillow estimates that nearly $14 billion worth of housing in Washington State could be submerged in the next 80 years under some climate change scenarios. The ecological costs will also be substantial, if we plan to prevent flooding of structures but not to allow migration of shoreline habitat. That habitat not only supports wildlife populations, it also provides economic benefits, such as recreation and fisheries. To reduce the economic toll of sea level rise and truly protect shorelines consistent with the intent of the Shoreline Management Act, I urge you to recommend revising regulations to ensure that newly-created lots only allow construction in areas that are not likely to be inundated in this century. Where existing lots are large enough to still allow residential, commercial, or industrial uses compatible with the zoning, I urge you to recommend a similar revision. In addition, I support revising the regulations to ensure that new or substantially changed structures be elevated above the likely sea level rise elevation for the life of the structure. Waterfront property that I own on Lummi Island would likely be constrained in its use due to these regulations. Nevertheless, new protections are the only responsible approach to shoreline planning, given what we know about sea level rise.	See responses to comments FW/WEC01, FW/WEC12, WCPW08, WCPW09, RES03, RFW07, RFW11, & RFW17.

DK01	David Kershner	4/22/21		As a former commercial salmon fisher, I also support strengthening riparian buffer restrictions consistent with recommendations of the Washington Department of Fish and Wildlife Riparian Ecosystems Volumes I and II. Salmon populations have declined in part due to riparian habitat degradation. We need to protect this habitat to restore healthy salmon populations.	Your comment will be forwarded to the P/C & Co/C for their consideration.
AC01	Alan Chapman	4/22/21		I have been involved in fisheries management, and watershed resource issues in Whatcom County for over 30 years. Regardless of the level of belief one might have in projections of climate change and sea level rise and associated storm surges, it does not make sense to allow development in areas of high risk. I urge the county, in the interests in avoiding significant damage to life, property and natural resources to not allow creation of lots where reasonable use would be subject to a high risk of damage from climate change effects, sea level rise, or reduce public trust ecological benefits within the foreseeable future. Where existing lots are large enough to still allow residential, commercial, or industrial uses compatible with the zoning, I urge you to recommend or require a similar risk avoidance approach. In addition, I support revising the regulations to ensure that new or substantially changed structures be elevated above the likely sea level rise elevation for the life of the structure.	See responses to comments FW/WEC01, FW/WEC12, WCPW08, WCPW09, RES03, RFW07, RFW11, & RFW17.
AC02	Alan Chapman	4/22/21		In the interest of protecting and achieving a net ecological gain of shoreline functions through consideration of locational relevant riparian buffer requirements that might be identified in the Washington State Department of Fish and Wildlife recent guidance on riparian guidance.	Your comment will be forwarded to the P/C & Co/C for their consideration.
PR01	Paula Rotondi	4/22/21	16.16.270	As you consider changes to the Shoreline Master Plan (SMP), I urge you to make decisions based upon what will be best for those living here twenty years from now – rather than what is best for corporations' short term profits. Please draft more stringent SMP standards. First, regarding Reasonable Use Exceptions, please reject the proposed change to expand the maximum impact area for single family residences from 2,500 square feet to 4,000 square feet. "Reasonable Use" means there must be some minimal use such as a 2,500 square foot house. If those living here twenty years from now are to have natural treasures such as salmon fishing, crabbing, the sight of Orcas, the SMP cannot afford extravagances such as a 4,000 square foot house that will do more damage to our already damaged shorelines.	Please see the responses provided for Comments BIAWC04, BIAWC09, GCD09, GCD14, MES09, MES11, MES31, NES01, RFW12, RFW13, & RFW18.
PR03	Paula Rotondi	4/22/21		Second, the buffer requirements in the SMP do not adequately protect riparian and stream functions which are essential for sustaining fish, wildlife and protecting our water supply. If people living here twenty or more years from now are to have the fish and wildlife treasures we enjoy today and have adequate supplies of clean water, then the SMP must incorporate the State of Washington Department of Fish & Wildlife's new riparian buffers guidance.	Please see the response to comment #FW/WEC09.
PR03	Paula Rotondi	4/22/21		Third, please do not add to the challenges of those living here twenty years or more from today who will be dealing with increasingly severe ramifications of climate change. Climate change causes sea level to rise and also causes more extreme storms with tide surge coastal flooding and also river flooding. The Washington State Department of Ecology, the Federal Emergency Management Agency, private investment companies, insurance companies, and real estate companies (Redfin most recently) warn that many thousands of homes worth billions of dollars will be lost due to climate change exacerbated flooding. Please include regulations in the SMP to prepare for accelerating sea level rise.	Please see the responses provided for Comments FW/WEC01, FW/WEC02, FW/WEC12, WCPW07, WCPW08, WCPW09, RES03, RFW02, RFW03, RFW04, RFW06, RFW07, RFW11, RFW17, & PB06.

P6611	Dave Klanica, Phillips 66	4/22/21		*Extent of Jurisdiction.* Given the recent Department of Ecology's revocation of the Port of Kalama and Northwest Innovation Works Shoreline Conditional Use Permit, questions have been raised as to overall shoreline management authority. Whatcom County, as well as other Counties and Ecology must lawfully apply its shoreline management program requirements, particularly when seeking to require mitigation for activities that occur outside the jurisdictional shores of the State. It appears that Ecology unlawfully applied certain mitigations when the only activities within the shoreline were dredging for a new dock berth, portions of the security fence, an infiltration pond, a first-flush pond, fire suppression water storage and a containment berm for certain storage tanks. We ask that Whatcom County commit to act within its jurisdictional boundaries.	We are. Shoreline jurisdiction is addressed in §23.20.010.
P6612	Dave Klanica, Phillips 66	4/22/21		*Consistency with Ongoing Comprehensive Plan and Code Amendments.* Both WSPA and Phillip 66's previous comments request that the shoreline master program amendments be consistent with the outcome of the ongoing good faith negotiations between the County and interested stakeholders that has occurred over many months related to the Comprehensive Plan and Code Amendments. We request consistency primarily as to definitions as the development of the relevant definitions was a significant effort and even slight differences in wording across county programs could add uncertainty and confusion. Phillips 66 does not believe that all activities which will require a conditional use permit under the Code Amendments should also require a conditional use permit under the shoreline management act. The shoreline program only affects activities that are within the jurisdictional shores of the State. The Zoning requirements cover much broader non-shoreline areas. Additionally, shoreline conditional use permit requirements should not be applied to upland activities that will be fully evaluated under the zoning code requirements applicable to those upland activities. The programs also involve different decision makers and appeal paths. The differences can warrant different permitting approaches.	Please see the responses provided for Comments FW/WEC16, RES10, P6609, WSPA01
BH01	Bill Haynes, Ashton Engineering	4/22/21	23.50.140	Regarding the Table for Dimensional Standards (page 147), the minimum length required to reach a moorage depth of 5' below ordinary high water. Ordinary High Water (OHW) elevation 314.5' has been well established on the Lake Whatcom - at least for the multiple projects I've been involved with. The proposed change results in a low water depth at the outer end of the dock (float) of 2'. Design low water has been established at an elevation of 311.5'. In a Jan. 29, 1999 letter from the WA Dept. of Ecology (DOE) to WCPDS and the WC Hearing Examiner, the DOE determined "…an in-water depth of 2.5 feet at 311.5 feet MSL is the minimum necessary draft to accommodate a standard powerboat on Lake Whatcom." The proposed update lowers the design depth from 2.5' to 2.0'. That depth is at the watered end of the dock only. Presumably, depths towards shore are shallower and at low water level a power boat will have less than 2' to moor in. In addition, the landward end of the float may go aground depending on the bottom contours if the outer end is at 2'. If the site is exposed to waves, the dock/boat may be tossed up and down on the lake bed.	We agree; our math was wrong. It has been amended to be 5.5 feet now.

				Assuming a 6'x20' floating dock aligned with its approach ramp, I would propose the overall minimum length required to reach an inshore depth of 5' at OHW (2' depth at 311.5'). That assumes depths offshore increase.	
KC04	Kim Clarkin	4/22/21		I am concerned about the current document's lack of land use restrictions on areas that will be affected by sea level rise. I do not agree that waiting to strengthen regulations till more information is available is a good idea. In the meantime, many decisions will be made that may harm critical areas along the changing shoreline. Those decisions may also harm the people who invest in shoreline developments that storm surges could damage. This is the kind of foresight and protection citizens expect from their government—not a laissez-faire attitude such as led to the Oso disaster. Other commenters have given strong references for up-to-date scientific information the Planning Dept. can use to write pertinent and reasonable rules to distance new developments from the shoreline.	Please see the responses provided for Comments FW/WEC01, FW/WEC02, FW/WEC12, WCPW07, WCPW08, WCPW09, RES03, RFW02, RFW03, RFW04, RFW06, RFW07, RFW11, RFW17, & PB06.
KC05	Kim Clarkin	4/22/21		I do not see a reason for expanding the reasonable use exception to 4,000 ft2 in critical areas. That is a trophy home, not a reasonable exception. Critical areas are critical to wildlife, water and other things that we are trying to protect. Let's actually protect them.	Please see the responses provided for Comments BIAWC04, BIAWC09, GCD09, GCD14, MES09, MES11, MES31, NES01, RFW12, RFW13, & RFW18.
KC06	Kim Clarkin	4/22/21		I strongly encourage you to use WDFW's most recent recommendations for riparian buffer widths for new developments. They are based on a thorough knowledge of rivers, valleys, and in-stream habitat development over the long term, and they should be incorporated in our long-term planning. No one is saying that existing developments have to be retired. New development should be completely different; recognizing our expanding understanding of the damage we wreak on ecosystems, we should aggressively seek to avoid that damage. I congratulate you and the Planning Department for making otherwise reasonable updates to a huge document and working toward making regulations more understandable. It has been a long slog for you, and I'm grateful for your attention to this extremely important roadmap to our future relationship with our environment. Please make it as strongly protective as you can.	Please see the response to comment #FW/WEC09.
JM01	Janet Migaki	4/22/21		The SMP, CAO, City and County Comprehensive Plans mention or refer to a quagmire of environmental agencies + regulations, as well as mention or refer to multiple intersecting jurisdictions, permits, ordinances, exemptions and waivers—all used for 'managing' waters of the State. Lake Whatcom, a significant water of the State, is not a healthy or protected source of water, yet it is used for Bellingham's drinking water. The Lake's well documented decline is troublesome since many of the lake's contaminants resist the treatment processes used by the City treatment plant and pass into public drinking water supplies. Where in the SMP and accompanying documents does it mention or discuss the primary and ultimate regulatory agency held fully accountable for protecting the water quality of Lake Whatcom water? The Lake is violating several water quality parameters +contaminants, and the water has not been tested for a full toxicology analysis since late 1990s. Does the SMP address protecting the Lake's total water quality? I know the 50-year TMDL tries to address low DO levels, with not encouraging reports to date. What about so many more	Lake Whatcom's water quality is managed through the Lake Whatcom Management Program, under the direction of the Lake Whatcom Policy Group. You can find what you're looking for at https://www.lakewhatcom.whatcomcounty.org/.

				lake water quality issues- who is accountable and responsible for protecting and keeping the lake healthy enough to be a drinking water source?	
MRC01	Marine Resources Committee	4/22/21		Thank you for taking the time to review the Whatcom County Marine Resources Committee's (WCMRC) comments on marine land protection. One role of the WCMRC is to work with county leadership and other key constituencies to help protect marine and enhance nearshore habitat through local and state ordinances and regulatory plans. The WCMRC supports regulations and policies that further protect and enhance marine shoreline areas that are vital economically, culturally, recreationally, and environmentally. The Whatcom County Marine Resources Committee supports the inclusion of the proposed amendment to Chapter 8: Marine Resources Lands policy section, as developed by the WCMRC, to the Comprehensive Plan.	Your comment will be provided to the P/C and Co/C for consideration.
BIAWC14	Rob Lee, BIAWC Executive Officer	4/22/21		We want to say thank you for: • recommending the 4,000 sq. ft. RU area, we request excluding septic systems from this square footage if covered with native landscaping. • For creating the minor variance for buffer reduction of the 25% to 50%. We request that you lower the fee for minor variances. • We request that any buffer reductions under Reasonable Use are decided administratively through a minor variance, Critical areas included.	Your comment will be provided to the P/C and Co/C for consideration.
BIAWC15	Rob Lee, BIAWC Executive Officer	4/22/21	16.16.270 & 16.16.273	Reasonable Use and Variances: We will comment separately on the permit process, "impact area" size, and criteria issues. A. Permit Procedure: 1) *Present Process:* PDS staff has proposed major changes to the procedures. The current 2017 CAO allows staff to grant reasonable use (RU) permits for one single family house under very strict criteria if CAO rules alone would deny "all reasonable and economically viable use" of the property. The next step is a variance requiring Hearing Examiner (HE) approval. We were surprised to learn recently that these RU permits have become a major part of local wetland scientist's workload. This is due mainly to high buffer standards and tight limits on adjustment options. These conflicts between strict environmental rules and permitted, customary land uses are obviously not unusual. 2) *Staff Proposed Process:* As we understand it, the current draft Exh F/CAO proposal, dated 4/2/2021, offers a 3-level process: a) Minor Variance: if a person only needs a 25 to 50% CAO buffer reduction, they will apply for this approval. The draft does not say whether this value is total area, width, or both. Staff decides these permits; an application and notice to neighbors is required. We do appreciate this new minor variance idea allowing staff approval. The concept should be used for other CAO issues. No further CAO permits are needed. See Section 16.16.273, p 34. b) A Major Variance is required if the Minor Variance is denied. One would apply to PDS, and the H/E would decide after a hearing. This is an expensive and slow process; the fees are now $2,750 each, plus critical area reports, probably consultants doing the applications, a	Regarding the commenter's point A.2.b: A major variance wouldn't be required if the minor variance is denied; a major variance would be applied for if one wants to reduce a buffer more than 50%. They're not sequential: one just applies for the permit one needs. Similarly, regarding the commenter's point A.2.b: With staff's assistance, an applicant should know whether a major variance is attainable, given the required findings (§22.07.050). Thus, if one understood one's chances to be nil, one would just apply for an RUE; so again, they don't have to be sequential. The biggest difference is that through a variance, whether minor or major, one must still mitigate for impacts. Under an RUE the H/E can allow impacts without requiring mitigation. This would apply on a property that is so encumbered by critical areas that nothing could fit on the lot without causing impacts and there's no room to mitigate.

				consultant or attorney at the hearing, and possible legal costs if you or an opponent appeals the decision. Anyone testifying, or you, can appeal the decision to Superior Court, also costly and slow. See Section 16.16.273, p 34. c). A Reasonable Use Exception is the last resort, virtually identical to the Major Variance process and possible outcomes. It would also be decided by the HE, with high similar costs, and potential litigation. See 16.16.270. A and B. One may apply for an RUE only if their Major Variance app is denied. If you do not get adequate relief with a major variance, you must repeat the process to apply for and hope to be granted an RUE by the HE, paying like fees and costs again. You or an opponent may appeal this decision too to Superior Court from someone, at either stage. 3) BIAWC/GAC Proposal: a simpler, less costly, and more practical alternative for all sides: a) Minor Variance (informal staff decision): expand the options to allow buffer adjustments above 50%. This would be determined mainly on a valid scientific analysis of site and vicinity functions and values of the affected wetland(s) and/or habitat(s), acceptable to qualified staff. Also, adjustments should be possible in both total buffer area and width. Can be appealed via RU process. b) Major Variance (formal HE decision): eliminate it, as redundant with the RU option, adding unneeded costs, complexity and time demands on both public and private parties. c) RUE: Use the draft as written; consider simplifying criteria per comments, information, and proposal below, per Item C.	
BIAWC16	Rob Lee, BIAWC Executive Officer	4/22/21	16.16.270(C)(12)	B. *"Impact Area" size limit:* For reasons stated in our April 12 2021 letter, we support the 4,000 sq. ft. value for the "impact area" to be allowed as the upper limit for buildings and other impervious surfaces, except for a minimal standard driveway. We suggest "impact area" be defined for certainty, and exclude landscaped areas using native plants and water features, and septic mounds or areas. The term "footprint" has a different meaning in the construction and real estate worlds. Also, there is no scientific basis for any fixed value, 2,500 or 4,000. Also, some landowners who already have a "pre-CAO" house or other building on their parcel would be severely penalized by the 2,500 value.	Please see the responses provided for Comments BIAWC04, BIAWC09, GCD09, GCD14, MES09, MES11, MES31, NES01, RFW12, RFW13, & RFW18. And the commenter is correct about the impact area having no scientific basis; rather, it is a legal basis. The courts have consistently interpreted a reasonable use (in SFR zones) to be an averaged sized house in that jurisdiction. In Whatcom County, PDS records indicate that an averaged sized house is 1,820 sf, meaning the footprint would be around 900-1,000 sf (2-story). We would expect that someone wanting a larger home or more appurtenant improvements wouldn't choose a lot that is so encumbered by critical areas that they couldn't fit it on the property.
BIAWC17	Rob Lee, BIAWC Executive Officer	4/22/21		C. RU Criteria: In our April 12 2021 statement, we raised several substantive questions on the "reasonableness" of some of the many RU criteria (12! see p 2-3). And we attached the full text of guidance on Reasonable Use from the state Department of Commerce again. We did omit the small p1 diagram because it was not clear how it related to the text on it or overall context.	Your comments will be provided to the P/C and Co/C.

				In general, this guidance advises "careful use" of terms such as "alternative or possible uses, etc."; and care with "economic use" etc.; see p 2-3. In the Synopsis of Public Comments updated April 14, 2021, staff commented at length on this guidance (pp 110-113). We have no disagreement with most comments. But in D, p 111, if you as the government are going to say: "the criteria ... need to consistent with case law…", then you have an obligation to impacted citizens to cite at least the more recent and relevant cases and point out the claimed support. Somewhere in the Synopsis, staff also referred to Department of Ecology guidance on this topic. I searched their site and found: "Wetland Guidance for CAO Updates"; 65p, 2016 (attached). The subject is cited on 4 pages: 8, 13 and 31-32. This excerpt is the only substantive guidance in the document, p 8: "Exceptions are typically addressed in a CAO in the context of reasonable use of property. For more information about this regulatory tool, see Section VII of the Critical Areas Assistance Handbook published by the Washington State Department of Commerce: http://www.commerce.wa.gov/Documents/GMSCritical-Areas-Assist-Handbook.pdf We think this is an important legal issue for many county landowners. We suggest you ask the PDS/Commissions' legal counsel to review these criteria and related resources and produce a memo with a recommended set of criteria for the record before you complete your recommendations on this important issue to the County Council. The adopted CAO definitions of Reasonable Use and RU Exception should be reviewed too; attached.	
BIAWC18	Rob Lee, BIAWC Executive Officer	4/22/21		2. Buffers for wetlands and Habitat (HCAs) Our April 12 testimony makes several comments on this important issue. In general, the buffers make more land unusable for all kinds of essential land uses than preserving the actual wetland. At this point, we have carefully reviewed the 3 most recent statements by Miller Environmental Services on the many changes proposed by staff re wetland and habitat buffer and related issues. We have discussed many with him and find that we agree in general with all the comments. A few other wetland scientists have also submitted valuable comments, e.g., NW Ecological Services and NW Wetlands Consulting. We respectfully recommend that Planning Commission members and staff review these comments carefully, and seriously consider acceptance. Almost all are opposed to new, more restrictive language, and do not propose new text or values. Many of staff's proposed changes, and opposed by Miller, would tip whatever balance the CAO now has toward preservation of more non-wetland areas, i.e., buffers. Other items objected to will make the process of obtaining some flexibility in the rules more difficult, or impossible in some cases.	Your comments will be provided to the P/C and Co/C.

				We submitted two of the three Miller letters with our April 12 letter: the February 19, 2021 letter (8 pages; 14 comments, and the Jon Maberry Prepared Motions, one page, 12 issues, dated February 25 2021. We are attaching the firm's most recent April 12, 2021 letter to this statement, 8 issues and 6 p. We are taking this approach because no active members of our GAC or of the BIAWC have the scientific credentials or experience to do the kind of objective analysis of the draft changes that Miller and the other scientists have done. From reading all the Miller comments, we conclude that if the CAO draft is adopted as written today, the Whatcom CAO will be one of the restrictive in the state, if not the most!	
BIAWC19	Rob Lee, BIAWC Executive Officer	4/22/21		We do ask that the Planning Commission hold the record open for written comments for at least 2 weeks. We will review the testimony after the hearing and may want to send additional comments.	The P/C considered this request at their 4/22 hearing and denied it.
MES51	Ed Miller, Miller Environmental Services	4/22/21	16.16.900	**P/C Public Hearing Testimony:** The WAC definition of "watercourse," which is where the ditches would fall, talks about the presence of a high water mark and the presence of fish; it specifically excludes irrigation ditches, canals, stormwater treatment, conveyance systems, or other entirely artificial watercourses. So it seems to me that ditches, unless they carry fish or convey a prior stream, are not waters of the state. So it seems to me that ditches are not waters of the state unless they carry fish or convey a prior stream. And from a practical standpoint, regulating ditches in Whatcom: If all the ditches become a critical area with a buffer, we'd have to do critical areas report for everyone with the ditch, with a buffer. I'm not sure how that would work. If you filled a ditch, what the mitigation would be for that, would you have to create another ditch? I'm not sure how that would work. If Public Works was to create a new ditch for a new road they'd be creating a new critical area, putting a new buffer on someone's property. Additionally, most all of the ditches in Whatcom County that have these buffers are located in County right-of-way, so it just seems from a practical standpoint it's not even doable. Aside from the fact that they don't appear to be waters of the state by state definition.	These comments were considered by the P/C in their deliberations and final recommendation on the definition and regulation of ditches.
TSF09	Diani Taylor, Taylor Shellfish Farms	4/22/21		**P/C Public Hearing Testimony:** I am a 5th generation shellfish farmer with my family business, Taylor Shellfish Farms. We have been farming shellfish here in the state since 1890 and grow a variety of oysters, mussels, clams and geoduck today. Our company is vertically integrated where we farm-to-table, so we include everything from hatcheries and nurseries to farms, processing facilities, and retail and restaurants. I wanted to introduce myself after we submitted comments on the most recent draft of the SMP document. We really appreciate regulations, especially in the Shoreline Master program, that are so important to protect our environmental resources, including water quality and shoreline and our shoreline ecosystem, which is important and critical for our farms. Our comments are intended to just ensure that the regulations around aquaculture are based on the most current scientific and technical information and align with the state guidelines.	Comment noted. These comments were considered by the P/C in their deliberations and final recommendation. Please see staff responses to TSF's written comments addressing their issues.
RES25	Karlee Deatherage, RE Sources	4/22/21		**P/C Public Hearing Testimony:** The current version of the SMP is an improvement for protecting our shorelines. However, there are 3 areas to further strengthen. We submitted a letter on April 12 asking the P/C to make changes with respect to reasonable use, sea level	These comments were considered by the P/C in their deliberations and final recommendation. Please see staff responses to these previously raised issues.

				rise, and include the use of Department of Fish and Wildlife new riparian buffer guidance in the critical areas ordinance. The science is clear when it comes to sea level rise. We have been and continue to witness the impacts of rising seas. With storm surges impacting property, we will see the loss of critical shoreline habitats for salmon and forage fish through a phenomenon called coastal squeeze if we don't act now to prevent the construction of buildings or infrastructure in harm's way. Suggested code for amending 23.30 under general regulations that the new section was included in our letter, please restore the staff proposed language for 16.16.270 (Reasonable Use Exceptions) and improvements over the current code to require the Hearing Examiner approval for reasonable use exceptions. However, 4,000 square feet of impact area is excessive, especially when some lots could be 6,000 square feet. Lastly, WDSW release guidance on riparian buffers in July and also in December 2020. We hope the P/C will incorporate best available science from WDW that calls for a one hundred foot buffers known as the "200-year site potential tree height" from the edge of the 100-year floodplain or channel migration zone. This could be applied as a new section to 16.16.420 (General Standards) for frequently flooded areas or a new entry in the table for 16.16.740 (Habitat Conservation Area Buffers).	
PG01	Andrew Gamble, PetroGas	4/22/21		**P/C Public Hearing Testimony:** We do have a few concerns, questions, and clarifications about the update. • First of all, we've noticed that there are some overlapping regulations, and we just want to point out that where there's already existing regulation in place and that the SMP need not be layered on and may not actually be necessary. • Another thing that we're looking at is that there's a potential for a maximum height requirement. We don't think that should apply to the Cherry Point UGA. • And then there's maintenance dredging. We think that should probably be a permitted and conditional use, and I think I read somewhere that it was to be prohibited and conditional. That should just be for the maintenance dredging. And then dredge material disposal management actually is already in place, so it doesn't need to be managed again. • And then some clarification on no net loss. We were looking for a bit of an explanation on the baseline condition. Is that the same as it was outlined in, I think it was a 2007 staff report, on a previous update? • And as for mitigation, is that still achieved through voluntary and incentives, or is that going be permit required mitigation? Could that be applied to legacy or historical problems and not part of a new project proposal? • And does this SMP Update establish a shoreline conditional use permit? • Then finally, we were looking for some clarification on the sea level rise policies. I heard Mr. Hansen talk about that as well. It's kind of scattered throughout. And we were looking to see if this is going to create new responsibilities for permit applicants.	These comments were considered by the P/C in their deliberations and final recommendation. But briefly: • Staff doesn't believe there are overlapping regulations. • There does need to be height limitations so as to protect the shoreline, especially in terms of protecting views. • Maintenance dredging is proposed to be a Permitted Use. • The baseline condition was set by the 2007 SMP Update and it's corresponding background documents. • Some mitigation may be required for impacts from project proposals, but the County does not require applicants to "fix" existing issues, though applicants are always welcome to do so through voluntary mitigation. • No, Shoreline CUPs already existed in the County's SMP. • Currently only SLR policies are being considered, which would not create new responsibilities for permit applicants. However, we expect that in the not too distant future there may be regulations requiring applicants to address it in their permit analyses.

P6613	Tim Johnson, Phillips 66	4/22/21		**P/C Public Hearing Testimony:** I would refer you to the Phillips 66, April 12th written comments as well as some supplemental comments that were submitted today via email. But I would like to highlight a few comments tonight, specifically in Exhibit C, Chapter 8. Regarding Policy 8T -1 we would request some clarification of the methods by which the County will coordinate with landowners to protect marine resource lands In policy 8 U-2 we request some clarification of the types of non-regulatory programs and options and incentives that owners of marine resource lands can employ to meet or exceed the County environmental goals. In Exhibit D, Title 23, the general provisions indicate that shoreline development must be consistent with Shoreline Management Act of 1971, the County Shoreline Regulations, and other County land use regulations. Chapter 23 then references certain requirements for existing legal fossil fuel refinery operations, existing legal transshipment facilities, expansions of those facilities, and new or expansions of renewable fuel refineries or transshipment facilities. And is related definitions also provided on page 241 on expansions of existing fuel, fossil fuel, and renewable fuel facilities that says they are required to obtain conditional shoreline permits. As the planning department is aware, industry, labor, and environmental organization stakeholders have been working together to develop recommendations and changes to the County Council's October 2019 proposed Comprehensive Plan amendments. There's been considerable progress made by the stakeholders, and those have been presented to the County Council for their consideration, and we request that this SMP draft be delayed until the final work from the stakeholder effort is accepted or rejected and the final definitions and framework for conditional use permit is finalized. And then finally, I would just like to note that we would request an additional opportunity to review and provide input and further revisions made by the staff before the shoreline amendments are finalized.	These comments were considered by the P/C in their deliberations and final recommendation. Please see the staff responses to Phillips 66's written comments on these same issues.
WH02	Wendy Harris	4/22/21		**P/C Public Hearing Testimony:** I support the comments that have been submitted by the environmental community; they are well founded. But I want to express my outrage that the P/C majority is using their position to reduce environmental protections for their own interests, ignoring what is best for the public and the planet. This is being done at a time when scientists have issued three distress letters about how we are not doing enough fast enough at the risk of biosphere collapse and extinction of most forms of life, including our own. There are many members of the public who share my views. If you are here for yourself, you're here for the wrong reason. I'm also appalled at the lack of science I failed to hear being discussed. I heard agenda based changes being proposed and I heard nothing regarding the science that supports this. This must have resulted in staff using science as if they were drafting a legal brief to support their argument. Why wasn't the science presented front and center to the topic being discussed? This is troubling. I understand that this round of the SMP update does not require a new review of the foundational elements necessary to determine no net loss. However, DOE indicated that there was an exception for a substantial change in Shoreline function. I believe that applies here and is very relevant since the County still lacks baseline standards, means of	These comments were considered by the P/C in their deliberations and final recommendation.

				quantification, and monitoring protocols. In other words, we have no means of determining no net loss, which leads to the following statement in all but the largest SEPA reviews, which is in regards to species of wildlife present: “none known to the best of my knowledge.” And by that everybody escapes having to care about or mitigate for wildlife impacts or whatever other kind of impacts are around. Other changes in events approved or pending are going to reshape the shoreline in the County jurisdiction in a manner that will make it unrecognizable from its current condition. We've lost one of the most important shoreline keystone species since the last SMP. The sea star numbers established how the loss of even a small number of stars had a significant impact on our healthy shoreline function. There is the Birch Bay berm. There's the Cherry Point update that's allowing expansion of use and of size, and that's going to bring in more tankers which have led to the killer hornets that are here in Blaine, and they're believed to arrive via Cherry Point tanker. And so these are vectors for aquatic invasive disease. Taken as a whole, this is enormous change and it's a loss in shorelines of statewide significance that does not follow the prioritized shoreline use preference so that we estimate one sentence. I asked that the DOE require the County at least provide a concrete example of how the no net loss would work.	
BIAWC20	Roger Almskaar, BIAWC	4/22/21		**P/C Public Hearing Testimony:** We submitted our 2nd round of testimony by email. It was late today. Did you see our letter come in a 4-page letter and some attachments? OK, good, thank you. So that's in the record. So I'll move along here. Let's see, I want to say thank you to Cliff Strong for his good work on the staff report, and the synopsis just made our work a lot easier in figuring out what's going on with this extremely complicated project. Most of the impacts on building that we're concerned about are coming from critical area rules, not shoreline rules. We just don't get into the shoreline areas very much anymore. I want to give you something about my background, though I think most of you don't know this. I'm a land use consultant right now, but I got into planning in 1971, being hired by Whatcom County to do the first SMP, which goes back a long time. Our final product adopted in 1976 was about 170 pages. Lots of definitions that I had to write. At that time the state guidelines from Ecology were a booklet of about 25 pages. I don't know if Cliff has ever seen that one. Let me move on here. I think the most important thing for me to say tonight is we're very concerned about the reasonable use process. And I've been surprised in the last few months to learn that that process has become a major part of the workload of many of the local wetland scientists. That was not true a few years ago, and I've been doing short plats for a long time and just hadn't heard that. So my most important thing to say tonight is that we are really concerned about the staff's new proposal to have three layers of permit processing to get a reasonable use exception. The first layer would be the staff of (mini?) variance, second would be a variance through the H/E, and the third would be a reasonable use through the H/E. So you'd be going there twice, paying the same amount of money, twice fees and everything. And so our proposal is to eliminate the middle level, the variance that would go to the H/E. And if you're not satisfied with what you are able to negotiate with a staff, with your wetland scientist, work	These comments were considered by the P/C in their deliberations and final recommendation. Please see the staff responses to the BIAWC’s written comments on the proposed reasonable use process.

				out a deal based on science, not arbitrary numbers, it's politics. But then you can go to the H/E. So we're agreeing to support that. It's still going to be expensive for people, but at least it's not double the cost as it is. But please look at that in detail as quite a bit in our paper on that.	

2019 Whatcom County Locally Initiated SMP Amendment– Public Comment Summary

The following comments were received during the Ecology comment period from October 28, 2019 to November 27, 2019. The comments are associated with the above-referenced 2019 SMP amendment which has now been incorporated into this SMP periodic review amendment at the request of Whatcom County. Since the changes from the 2019 amendment are being rolled into this amendment, the comments have been included here.

Comment #	SMP Section	Commenter	Comment / Concern	Local Government Response / Rationale
01	WCC 23.90.060.B – Vegetation Conservation Regulations	Tani Sutley	Regarding Hazard Tree Definition Changes and 23.90.060(B): Since this limited amendment is intended to consolidate the multiple location code definitions of "hazard trees," can you clarify if the SMP regulation 23.90.060B(9) will still supersede CAO hazard tree removal regulations **in shorelines** as determined by the Whatcom County Hearing Examiner?* "Vegetation conservation standards do not apply to the removal of hazard trees pursuant to WCC 16.16.230.F." WCC 23.90.060B(9) "Shoreline developments shall comply with the vegetation conservation policies of this program through compliance with the critical areas standards of WCC 16.16.335, 16.16.360, 16.16.630, and 16.16.740 for protection and maintenance of critical areas and buffer vegetation." WCC 23.90.060.B.1 **Ecology Note: It is assumed that the commenter is referring to a January 2019 decision by the Whatcom County Hearing Examiner (Norman Chang v. Whatcom County APL2018-0004) that hazard tree removal is allowed outright in shoreline jurisdiction without any review or mitigation even when located in geologic hazard areas.*	Yes, the whole point of the amendments of Ord2019-013 and Ord2019-057 was to close this loophole by making the text less ambiguous and less likely to be misinterpreted. The intent of the amendments in Ord2019-013 regarding the definition of "hazard tree" was to develop one clear, unambiguous definition that is consistent in the zoning code, Critical Areas Ordinance, and the Shoreline Management Program. This was followed by Ord2019-057, which tightened up the rules for tree canopy retention in the Lake Whatcom and Water Resource Protection Overlay Districts, including within the shoreline jurisdiction and critical areas. These amendments made it clear that, unless it's an emergency, an arborist's report is required to remove any tree canopy, even hazard trees. Ms. Sutley has found some bad references, however. WCC 16.16.230(F) was a reference to the 2007 CAO, in which removing hazard trees from critical areas was exempt ("The landowner may cut hazard trees within critical areas and buffers."). The 2017 CAO update deleted that exemption, and instead made "The felling of hazard trees within critical areas and buffers, with an approved tree risk assessment completed by a qualified professional" an Activity Allowed with Notification (WCC 16.16.235(B)(4). WCC 23.90.060(B)(1) should probably now read: "Shoreline developments shall comply with the vegetation conservation policies of this program through compliance with the critical areas standards of WCC 16.16.32~~3~~5, 16.16.335~~60~~, 16.16.630, and 16.16.740 for protection and maintenance of critical areas and buffer vegetation."

Comment #	SMP Section	Commenter	Comment / Concern	Local Government Response / Rationale
				Or maybe more succinctly (and to cut down on potential bad cross references): "Shoreline developments shall comply with the vegetation conservation policies of this program through compliance with the critical areas standards of WCC 16.16~~.335, 16.16.360, 16.16.630, and 16.16.740~~ for protection and maintenance of critical areas and buffer vegetation." Such bad cross references can be common over time, and our attorney and Clerk have informed us that having a bad cross reference does not negate the intent of the regulation. As the Ms. Sutley knows, we are currently undergoing a periodic update of the SMP, and many of these sections are being rewritten and any cross references updated. We will fix these though either the periodic update or through "scrivener's error" rules, which allows us to fix bad cross references without an ordinance. An additional note is that WCC 23.90.060(B)(9) is interpreted by our Natural Resources Supervisor to mean that while the removal of hazard trees in the shoreline setback is exempt from the requirements for conservation of vegetation and shoreline use regulations, it does not mean that those activities are exempt from mitigation in 23.90.030 or 16.16.260. Mitigation would still be required.
02	WCC 23.90.060.B – Vegetation Conservation Regulations	Tani Sutley	WCC 16.16.230.F is referenced by WCC 23.90.060 but it is no longer the original provision before the last CAO comprehensive update removed the CAO allowance to cut danger trees in critical areas. **Question:** Should this be corrected so 23.90.060.B.9 correctly identifies that the previous language in 16.16.230.F was deleted or do you really want it to now include residential maintenance exceptions as 16.16.230.F now references? 2005-068 Ordinance said: 16.16.230 F – The landowner may cut hazard trees within critical areas. (Exemption)	See the response to Item 01, as it addresses this bad cross reference (which should point to WCC 16.16.235(B)(4)). Such bad cross references can be common over time, and our attorney and Clerk have informed us that having a bad cross reference does not negate the intent of the regulation. As the Ms. Sutley knows, we are currently undergoing a periodic update of the SMP, and many of these sections are being rewritten and any cross references updated. We will fix these though either the periodic update or through "scrivener's error" rules, which allows us to fix bad cross references without an ordinance.
03	WCC 23.90.060.B – Vegetation	Tani Sutley	Regarding Hazard Tree Definition Changes and 23.90.060(B)(6), 16.16.235.G and 16.16.235(B)(4)	Yes, Ms. Sutley found another bad cross reference (perhaps we should hire her to proof all cross references☺).

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	Conservation Regulations		WCC 23.90.060(B)(6) *Clearing, pruning and re-vegetation of buffer areas, except landslide hazard areas and buffers and riverine and coastal erosion hazard areas and buffers, may be conducted in accordance with the regulations in WCC 16.16.235.G.* **B16.16.235G does not exist.** However, the CAO provision 16.16.235(B)(4) now includes hazard tree Activities Allowed with Notification and states: "The felling of hazard trees within critical areas and buffers, with an approved tree risk assessment completed by a qualified professional." **Questions:** Since Whatcom County is amending hazard tree definitions for the SMP shouldn't WCC 23.90.060(B)(6) also be amended as well? Is Whatcom County assuming provision 16.16.235(B)(4) supersedes WCC 23.90.060B(6) because of WCC 23.10.08? (Severability)"	WCC 23.90.060(B)(6) should now point to WCC 16.16.235(B)(5), not WCC 16.16.235(G) to read: "Clearing, pruning and re-vegetation of buffer areas, except landslide hazard areas and buffers and riverine and coastal erosion hazard areas and buffers, may be conducted in accordance with the regulations in WCC 16.16.235(B)(5)~~(G)~~." Such bad cross references can be common over time, and our attorney and Clerk have informed us that having a bad cross reference does not negate the intent of the regulation. As the Ms. Sutley knows, we are currently undergoing a periodic update of the SMP, and many of these sections are being rewritten and any cross references updated. We will fix these though either the periodic update or through "scrivener's error" rules, which allows us to fix bad cross references without an ordinance.
04	WCC 16.16.900 – Definitions	Tani Sutley	In shorelines, Hazard Tree as defined by the new proposed definition could allow all large trees removed on small lots for home construction to prevent damage to the new residential home and also existing homes where trees have grown and now meet the definition of hazard tree. **Question:** Is this correct or not correct and why? As now proposed for amendment, a hazard tree might include any tree that poses "potential damage to permanent physical improvements to property causing personal injury and consequences" while the old definition for shorelines only included "*any tree that is susceptible to **immediate fall** due to its condition (damaged, diseased, or dead) or other factors".*	No, it is not correct. The newer definition of "hazard tree," which currently applies countywide, but through this amendment would also include areas within the shoreline jurisdiction, would be: "Hazard tree" means a tree whose risk evaluation, as determined through a Whatcom County approved tree risk assessment method, is high. Risk evaluation is the combined measurement of: tree failure identification, probability of failure, potential damage to permanent physical improvements to property causing personal injury, and consequences. A tree that constitutes an airport hazard is considered a hazard tree. A hazard tree whose failure is imminent and consequences of damage to permanent physical improvements to property causing personal injury are significant is considered an emergency. "Imminent" in this instance means failure has started or is most likely to occur in the near future, even if there is no significant wind or increased load. Imminent may be determined by a qualified consultant (defined in this section) or when mutually agreed upon by a landowner and Whatcom County.

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				This definition places a stricter onus on the property owner to prove a hazardous condition via a professionally acceptable evaluation method. It would make it less likely that "all large trees removed on small lots for home construction to prevent damage to the new residential home and also existing homes where trees have grown."
05	WAC 173-26-110 – SMP Amendment Submittal Requirements	Tani Sutley	Regarding WAC 173-26-110(8) "A summary of amendments made in response to comments received." What amendments were made in response to comments received as required by WAC 173-26-110(8)? Were WAC 173-26-110(8) requirements documented with the submittal of this limited amendment?	Staff has no record of any public comments received during the processing of these amendments.
06	WCC 23.10.030 – Governing Principles	Tani Sutley	The completed checklist did not demonstrate compliance with the No Net Loss provisions of WAC 173-26-201(1)(c)(iv) and WCC 23.100.03 but did state: "*New definition of hazard tree **ensures** that mitigation is required for removal within shoreline jurisdiction."* WAC 173-26-201(1)(c)(iv) *(c) Master program amendments may be approved by the department provided:* *(iv) Master program guidelines analytical requirements and substantive standards have been satisfied, where they reasonably apply to the amendment. **All master program amendments must demonstrate that the amendment will not result in a net loss of shoreline ecological functions.*** **WCC 23.10.03** This Program **and any future amendment** hereto shall ensure not net loss of shoreline ecological functions and processes on a **programmatic basis** in accordance basis in accordance with the **baseline functions present as of the date of adoption of this Program**, February 27, 2007: **Questions:**	Amending the definition of "hazard tree" to place a stricter onus on the property owner to prove a hazardous condition via a professionally acceptable evaluation method (Ord2019-013), as well as making the tree removal regulations more clear (Ord2019-057) would result in fewer non-hazard trees being cut in critical areas and the shoreline/HCA buffer. This could only result in less loss of ecological function than previously, whereby through bad code construction some applicants successfully argued to the Hearing Examiner that the code did not apply to their situation. Whatcom County's NNL compliance program consists of our regulations, mitigation for direct impacts, the County's code enforcement program, and implementation of the 2007 SMP Restoration Plan.

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			How does this limited amendment meet the requirements of WCC 23.10.03 and WAC 173-26-201(1)(c)(iv)? What current NNL documented compliance program is WC using to demonstrate and ensure no net loss of shoreline ecological functions and processes on a programmatic basis as required by WCC 23.10.03 and WAC 173-26-201(1)(c)(iv) and that the "*New definition of hazard tree*" *actually "**ensures** that mitigation is required for removal within shoreline jurisdiction."*	
07	WCC 23.90.060.B.6 – Vegetation Conservation Regulations	Tani Sutley	No Net Loss Alternative Documentation **Since the provisions in WCC 23.90.060(B)(6) is relying on conde in the CAO that does (sic) exist then it is unclear to me how NNL is achieved.** *Clearing, pruning and re-vegetation of buffer area, except landslide hazard areas and buffers and riverine and coastal erosion hazard areas and buffers, may be conducted in accordance with the regulations in WCC 16.16.235.G.* **16.16.235G does not exist** It may be difficult to document compliance with No Net Loss if there are conflicts in the existing code preventing implementation of new regulations. Whatcom County did not submit any amendments with this current Locally Initiated Amendment to the SMP to fix consistency issues between the CAO and the SMP. Is WCC 23.10.08 currently being used to implement new SMP amendment regulations that conflict with existing SMP regulation problems that the County has decided not to amend? Can Whatcom County demonstrate and ensure No Net Loss provisions of WCC 23.10.03 and WAC 173-26-201(1)(c)(iv) by documenting WCC 23.10.08 as a tool of issuing permits and enforcement instead of using consistency in code since there seems to be some reluctance to amendment (sic) the inconsistency issues? **23.10.08 Severability** The Act and this Program adopted pursuant thereto comprise the basic state and County law regulating use of shorelines in the county. In the	NNL is achieved with mitigation in WCC 23.90.030 and 16.16.260. Again, the reference to 16.16.235(G) is a bad cross reference, as pointed out above. Such bad cross references can be common over time, and our attorney and Clerk have informed us that having a bad cross reference does not negate the intent of the regulation. As the Ms. Sutley knows, we are currently undergoing a periodic update of the SMP, and many of these sections are being rewritten and any cross references updated. We will fix these though either the periodic update or through "scrivener's error" rules, which allows us to fix bad cross references without an ordinance.

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			event provisions of this Program conflict with other applicable county policies or regulations, **the more restrictive shall prevail.** Should any section or provision of this Program be declared invalid, such decision shall not affect the validity of this Program as a whole.	
08	WCC 23.10.060 – References to plans, regulations or information sources	Tani Sutley	"Whatcom County submitted a letter dated August 2, 2019 with their Locally Initiated SMP update amendment regarding the changes being made to their SMP WCC 23.10.060 References to plans, regulations or information sources. *"Note that it also clears up some of the language regarding which portions of the CAO are not applicable in the shoreline jurisdiction,* ***as we spoke about during the last limited update."*** However, the changes presented to Ecology in this letter are NOT the changes proposed for some future SMP update during the last SMP update. Those changes are documented on the 2017 Update Responsiveness Summary, which included: "There are also 3 sections that our **Natural Resources Supervisor now believes should be included in the exemption (WCC 16.169.230 (Exempt Activities), WCC 16.16.235 (Activities Allowed with Notification), WCC 16.16.250 (Submittal requirements and critical area review process)**, WCC 16.16.270 (Reasonable Use Exceptions), 16.16.273 (Variances), 16.16.275 (Nonconforming Uses/Buildings), 16.16.280 (Appeals), and 16.16.285 (Penalties and Enforcement)." See attached. Whatcom County and Ecology made an agreement that Whatcom County would change WCC 23.10.060 References to plans, regulations or information sources at some future date instead of using the procedures of required or recommended changes documented in the guidelines used by Ecology. WAC 173-26-120 By delaying a very simple change, the result was confusing and I fault Ecology for not following their own guidelines. WAC 173-26-120(ii) **Either approve the proposal as submitted, recommend specific changes necessary to make the proposal**	The current amendment does not include the NR Supervisors previous suggestion; it was dropped for the time being to the make this amendment move along faster. However, the previous suggestion is being considered through our current periodic update.

Comment #	SMP Section	Commenter	Comment / Concern	Local Government Response / Rationale
			consistent with chapter 90.58 RCW policy and its applicable guidelines, or deny the proposal Ecology should now require the changes agreed upon since Whatcom County has already documented their intent. I assume Whatcom County simply forgot what they agreed to do. I simply do not understand Ecology's reluctance to use recommended or required changes for amendment updates to the SMP as documented in the Guidelines procedures. I hope Ecology will start being more transparent.	