Recommendations on Shoreline Master Program Updates from the Environmental Community

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Backgrounds

- Tim Trohimovich
  - Helped work on the City of Redmond Shoreline Master Program (SMP) update
  - Administered the Grays Harbor SMP
  - Prepared amendments to other SMPs
  - Worked with the Department of Ecology on SMA and GMA issues on a temporary basis
- Dean Patterson
  - Formerly with Yakima County Planning
  - Administered Yakima County SMP, CAO, zoning ordinance, and SEPA program for 11 years.
  - Project Mgr. for Yakima Co. SMP Update

Why the SMP Updates are Important

- Many SMPs have not been comprehensively updated for 30 years, and won't be updated again for another 7 years or more. *We have to get it right this time.*
- SMPs deal directly and indirectly with Puget Sound, which is at a tipping point in its health
- Accelerating growth and fewer shoreline sites is placing ever increasing development pressure on Greater Puget Sound shorelines
- Developed and degraded shorelines are more common than natural conditions, placing shorelines at a tipping point in their health
- SMPs must prevent further deterioration to shorelines and turn the trend around with improved conditions

Shoreline Management Act Policy

Shoreline Management Act Policy

RCW 90.58.020 - First Paragraph

"It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the **public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life**, while protecting generally public **rights of navigation** and corollary rights incidental thereto."

Shoreline Management Act Policy

RCW 90.58.020 - Second Paragraph

- Protect shorelines of statewide significance Policies in RCW 90.58.020:
  1. Recognize and protect the statewide interest over local interest;
  2. Preserve the natural character of the shoreline;
  3. Result in long term over short term benefit;
  4. Protect the resources and ecology of the shoreline;
  5. Increase public access to publicly owned areas of the shorelines;
  6. Increase recreational opportunities for the public in the shoreline;
  7. Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

Shoreline Management Act Policy

RCW 90.58.020 - Third Paragraph

"In the **implementation** of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end **uses shall be preferred** which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. **Alterations** of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be **given priority** for single family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. Alterations of the natural condition of the shorelines and shorelands of the state shall be recognized by the department."

Recommendations Resulting from Re-Examining the SMA policy

- Have to change the focus from “permitting development” to “protecting ecological functions“
  - … what is allowed
  - … loopholes built into regs
- Need a long-term vision of shorelines
  - Final state of development under current trends
    - Privately owned lake and marine shorelines
    - Few undeveloped and functioning areas left in many places
  - Protect the remaining functioning shoreline area
  - Shift development emphasis from new development to re-development.

Important Concepts in Implementing the SMA Policy

SMA Policy is incorporated into the SMP Guidelines

- 5 major concepts
  - No-net-loss of ecological function
  - Mitigation Sequencing
    - Not all impacts can be mitigated
  - Cumulative Impact Analysis
  - Restoration Planning
    - Can't accomplish No-Net-Loss without an active restoration strategy
  - Shoreline Dependent Uses Analysis
    - Preferences for shoreline dependent uses

No-Net-Loss of Ecological Function

- No-net-loss is considered in 2 ways
  - At the program level in the SMP standards
  - At the project review level
- Drives 2 other important concepts
  - Mitigation Sequencing
  - Cumulative Impact Analysis
- Necessitates another important concept
  - Restoration Planning

Mitigation Sequencing

- Mitigation Sequencing:
  - Avoid impacts first, then minimize, then compensate
- Even with Mitigation Sequencing, every project cannot completely eliminate its impacts
  - displacement of vegetation and habitat by structures, other facilities, and yards
  - use of chemicals in yards or around structures
  - pets that prey on or drive off fish and wildlife
  - night lighting that impacts or drives off fish and wildlife
  - machinery & vehicular noise or other human activity that impacts or drives off fish and wildlife

Cumulative Impact Analysis

- Considers several factors:
  - Project impacts that remain after mitigation sequencing
  - Full build out of land and water uses
  - Continual creep of existing development into buffers & critical areas, and the resulting increased impacts.
  - Restoration programs
  - Restoration for new projects

Restoration Plan Requirement

WAC 173-26-186(8)(c)

For counties and cities containing any shorelines with impaired ecological functions, master programs shall include goals and policies that provide for restoration of such impaired ecological functions. These master program provisions shall identify existing policies and programs that contribute to planned restoration goals and identify any additional policies and programs that local government will implement to achieve its goals. These master program elements regarding restoration should make real and meaningful use of established or funded nonregulatory policies and programs that contribute to restoration of ecological functions, and should appropriately consider the direct or indirect effects of other regulatory or nonregulatory programs under other local, state, and federal laws, as well as any restoration effects that may flow indirectly from shoreline development regulations and mitigation standards.

Restoration Plan Goal

- “These master program provisions should be designed to achieve overall improvements in shoreline ecological functions over time, when compared to the status upon adoption of the master program.” WAC 173-26-201(2)(f)

Recommendations on Restoration Planning

- Restoration plans have focused almost exclusively on non-regulatory programs
- Most jurisdiction have large areas of degraded shorelines
  - the vast majority in some jurisdictions
- Stand-alone restoration projects address only a small percentage of degraded areas
- New development and redevelopment interacts with degraded areas that are hundreds of times larger
- Plans that address restoration only through restoration projects and ignore the much broader opportunities in the regulatory program cannot meet the requirement

Problems Addressed by Including Restoration in Regulatory Program

- Unmitigated degradation from 30 years of development
- Impacts remaining after mitigation sequencing
- Continual creep of existing development into buffers critical areas

Shoreline Dependency Use Analysis

- The SMA Policy has a preference for uses that are dependent on shoreline areas
- Major element in Mitigation Sequencing
- Consequences in:
  - Uses: shipping ports, swim beaches, boating building
  - Facilities within a project:
    - Roads (not water-dependent) v. water crossings
    - Utilities (not water-dependent) v. outfalls
  - Buffers
    - Water-dependent facilities and uses need to be in the buffer by their nature

Recommendations for Implementing SMA Policy into the Shoreline Master Program

Implementation Strategies

- No-net-loss / mitigation sequencing strategy
- Restoration strategy
- Water dependency preference strategy
- Uses strategy and use table
- Environments and Mapping
- Buffer strategy
- Permit strategy
- Nonconformities strategy
- CAO Integration strategy
- Organization Strategy (General & Tailored)
- Shore-side Structures Strategy
- Strategy for Specific Uses

Recommendations for No-Net-Loss & Mitigation Sequencing in the SMP

- At the program level, the SMP should be structured with mitigation sequencing built into the standards.
  - Avoidance Standards
    - What uses are inappropriate or suitable for different environments
    - Buffers based on science
    - Use water-dependency for allowed uses and meeting buffers
  - Minimization Standards
    - Preferences for less impacting methods
    - Require minimization in scope and scale
  - Mitigation Sequencing Standard
- At the review level, projects must use mitigation sequencing to deal with site specific impacts

Recommendations for Restoration in the SMP Regulations

- Apply Mitigation Sequencing: avoidance & minimization first
- Use restoration as part of mitigation for impacts
- Make sure buffers can actually do what they are supposed to
  - Re-establish degraded buffer vegetation
  - Expansions of existing development should improve buffers as much as possible
- Correct other degraded conditions, where possible
  - Remove unneeded structures, bulkheads, fill, etc.
- Provide streamlined process for stand-alone restoration projects.

➢ Place restoration requirements in General Standards along with water quality and buffer requirements

Recommendations for Water-Dependent Uses in the SMP

- Incorporate the fact that both uses and their facilities can have varying levels of water-dependency
  - Regular commercial v. restaurant v. kayak rental shop
  - Residential subdivision v. community boating facility
  - Street v. bridge water crossing
  - Sewer main v. outfall
- Implement preference for water dependent uses and facilities
  - For different categories of use, make distinctions between different levels of water-dependency
  - Apply distinctions across environments
  - Use prohibited uses and conditional uses for non-preferred uses
- Apply buffers based on water-dependency

Recommendations for Organizing Use Provisions

- Benefits of Use Table
  - Keep all use provisions in one location rather than being scattered throughout the document
  - Easily determine whether something is allowed
  - Easily determine the type of review
  - Can keep development standards separate
  - Can still address special cases

Recommendations for Allowed Uses

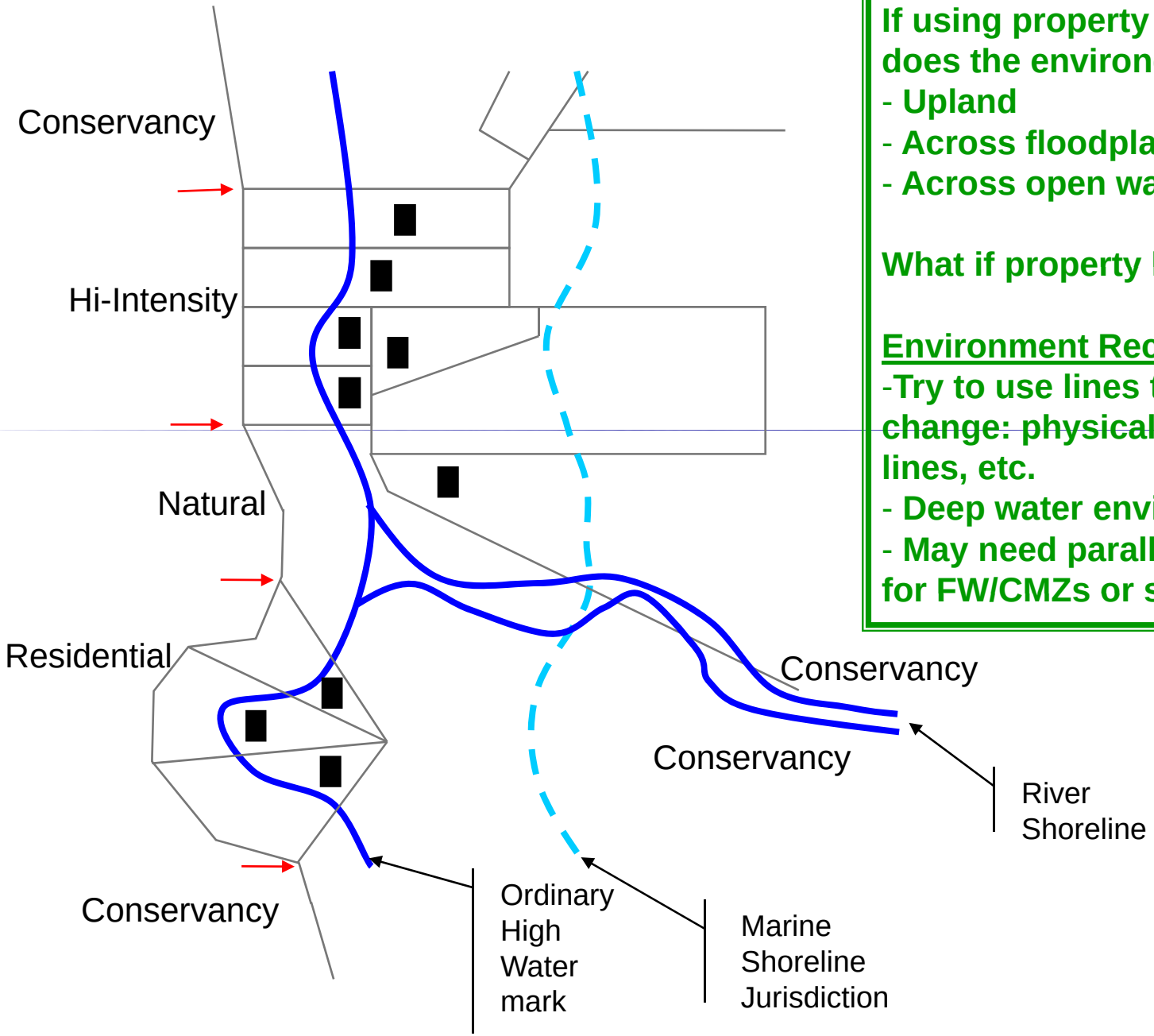
- Implement SMA Preferences
  - Water-dependency
  - "Only when no other alternative"
  - Less-impacting v. more impacting
- Call out uses with large shoreline impacts
- Differentiate use-types with categories - no gaps
  - Water dependency; scale/size; intensity; etc.
  - Otherwise be very careful to cover all instances
- Address all use-types and categories - no gaps
  - Be clear about prohibited uses
  - If a use is not addressed, it can be allowed as a conditional use under Ecology's rules, which can create problems
  - Things not covered usually end up not having standards to meet

	Urban	Rural	Conservancy	Natural	Urban Conservancy
COMMERCIAL AND COMMUNITY SERVICE USES					
Large Commercial uses (more than 1/2 acre of use area) of a Water Oriented nature, including marinas.	C	C	C	X	C
Small Commercial uses (1/2 acre or less of use area) of a Water Oriented nature	S	S	C	X	S
Non-Water Oriented Commercial Uses, except for instances below	X	X	X	X	X
Non-Water Oriented Uses, when set back from OHWM or wetland edge by either a public right of way or 100'+ of a separate parcel	C	C	C	X	C
Non-Water Oriented Uses in a mixed use project that includes a Water Dependant Commercial, Industrial, Aquaculture, or Recreational Use	C	C	C	X	C
Events and temporary uses involving public interest (see definition) that do not impair the shoreline environment	C	C	C	C	C

	Urban	Rural	Conservancy	Natural	Urban Conservancy
RECREATION					
Indoor Recreation – Reviewed as Commercial use; see that section of table.	N/A	N/A	N/A	N/A	N/A
State owned recreation facilities and ecological study areas.	S	S	C	C	S
Outdoor Recreation of a Non-Water Oriented nature (sports complex, organized sport fields, golf course)	C	C	C	X	C
Hi-Intensity Outdoor Recreation of a Water Oriented nature (urban area parks, white water parks, etc.)	S	C	C	X	S
Moderate-Intensity Outdoor Recreation of a Water Oriented nature (use areas with minor structures and improvements, such as camp grounds, picnic facilities, hiking trails, swimming beaches, fishing sites)	S	S	S	X	S
Low-Intensity Outdoor Recreation of a Water Oriented nature (unimproved use areas, such as hiking or nature trails, primitive camping areas, swimming beaches)	S	S	S	C	S
Very-Low-Intensity Recreation (wildlife viewing, scenic vistas, fishing, hunting, rafting, walking, etc.) See Applicability for activities not subject to this title.	N/A	N/A	N/A	N/A	N/A
Events and temporary uses involving public interest (see definition) that do not impair the shoreline environment.	C	C	C	C	C

Recommendations for Environments and Mapping

- Use Ecology lakes and rivers studies
- Double check lakes acreage v. cut-off #'s
- Use polygons - not lines
  - Helps you boundary problems and deal with them
- Apply environments to all jurisdiction
  - Floodplains
  - Open water
  - Large wetlands
- Contingency for missed shorelines
- Contingency for created shorelines
  - mine ponds, reservoirs, etc.
- Contingency for property lines that move



If using property lines, where does the environement edge go?
- **Upland**
- **Across floodplains**
- **Across open water**

What if property lines move?

<u>Environment Recommendations</u>
-**Try to use lines that won't change: physical features, section lines, etc.**
- **Deep water environment**
- **May need parallel environments for FW/CMZs or some nearshore**

Recommendations for Vegetative Buffers

- Must be based on science
- Must achieve the “no-net-loss” standard
- Must at least be as protective as the critical areas regulations
- Apply buffers based on water-dependency
  - Water-dependent - don’t have to meet buffer
  - Water-related - can be in buffer, but meet it if can
  - Water-enjoyment/Non-water-oriented - must meet buffer
- Don’t weaken with exceptions (trails, utilities)
- Minimum buffers presume intact vegetation
  - Require restoration of degraded buffers

Recommendations for Permit Review

- East v. West = mostly administrative v. mostly hearing
  - Consequence: backlash for NO review, or variance as exemption
- Exemptions - abbreviated review
  - Only exempt from the permit process
  - Still meet standards
  - Not permission to degrade the shoreline
- SDP - Administrative - no hearing
- CUP - Use hearing - reserve for special cases
  - Borderline uses / non-preferred uses
  - Nonconforming Uses
- Variance - Administrative - no hearing
  - When there is a good reason for not meeting a standard
  - Not just buffers - any standard that can't be met
- Prohibited - can't allow Reasonable Use as a Variance

Recommendations for Nonconformities

- Distinguish between different types
- Nonconforming Use
  - Normally not allowed, but legally existing
  - Needs careful review through a Hearing
  - NCUs should not be encouraged to continue
- Nonconforming Structure or Area
  - Include lawns, gardens, parking, etc.
  - Just require normal review (including variances, CUPs, etc.), and avoid extra requirements
  - Don't allow expansions in buffer without permit review.

Recommendations for Nonconformities (cont.)

- Nonconforming Lot - Misnomer
  - Problem Area: going from Hearing to Exemption
  - Don't allow new development in buffer without permit review: can use Variance or CUP
    - Exemption review is incapable of providing necessary detail in review
    - Use a "Non-Hearing" process - lowers cost and time
  - Should figure out the impacts of development for lots too small for buffers and address them
    - Require as much buffer as possible
    - Require replacement mitigation
    - Require restoration (should be in General Stds.)

Recommendations on Integrating SMP and CAO

- Needs to be done carefully & explicitly in the SMP given the *Anacortes* decision
- Different methods
  - SMP and CAO within Development Code; adopt CAO by reference. Have seen SMP within CAO too.
  - SMP in separate title; adopt CAO by reference
  - SMP in separate title; incorporate critical areas regulations in the SMP
    - Requires expanded shoreline jurisdiction to accommodate buffers
    - Existing agriculture would continue to be regulated by the CAO

Recommendations on Integrating SMP and CAO (continued)

- Incorporating SMP into other title & referencing CAO can be tricky
  - Designed for different purposes
  - SMA exemptions do not exempt from policies and regulations, other kinds of exemptions do
  - SMPs regulate activities, not just uses
  - Weak standards and loopholes have to be corrected
  - Other document needs careful review and appropriate modifications to be acceptable for SMP
- SMP as separate title with copied parts of CAO is easiest to construct quickly & accurately, and is easiest way to modify CAO protection measures for SMP
- Integrated development code can be easier for staff and the public over the long-term

Integration Problems We've Seen

- Inappropriate "applicability" of CAO/Dev. Code
  - Excluding things from regs that degrade shorelines
- Inappropriate exemptions not matching SMA
- Inadequate buffers not based on science
  - And allowing inappropriate things within buffers
- Easy reduction of buffers to insignificance
- Standards that are not tailored to impacts from different types of development.
- New development on nonconforming lots in buffers with no permit or effective review
- Expansion of nonconforming structures in buffers with no permit or effective review

Recommendations for Organizing SMP

- Use SMP Guidelines as starting point
  - Administrative and Enforcement Provisions
  - Project Review Provisions (exemptions/permits)
  - General Standards that apply to all projects
    - Water quality, vegetation conservation, public access, critical areas, mitigation sequencing & minimization
  - Water-dependency and Buffer Standards
  - Modifications Standards
  - Use Standards

Recommendations for Shore-side Uses & Structures

- Shore Stabilization - bulkheads & armoring, but also flood structures (dikes)
  - SMP Guidelines very protective
  - Only allowed in very specific situations
  - Need preference for less-impacting methods
  - Sea level rise will continue and property owners will be requesting more armoring as erosion and storm intensities increase
    - Need to minimize the need as development and redevelopment occur
    - Need effective mitigation such as bulkheads setback behind restored beaches
  - Need to consider restoration or reduction
    - Removal of obsolete, non-functional, unnecessary structures
    - We need to decrease bulkheaded shoreline to protect shoreline functions

Recommendations for Shore-side Uses & Structures (cont.)

- Docks & piers
  - Major impacts on both fresh and salt water
  - Need preference for less-impacting facilities
    - (i.e. buoys, etc.)
  - No net increase in overwater structures should be allowed
    - Remove obsolete, non-functional, unnecessary structures
    - Reduce sizes of existing structures as a condition of allowing new ones
  - Need to protect important habitats from docks and piers

Recommendations for Shore-side Uses & Structures (cont.)

- Docks & piers (cont.)
  - New subdivisions need to provide community facilities
    - No individual docks
    - Need limits on the size (acreage, % water coverage, etc.)
  - Existing waterfront lots should try to share existing facilities or use public facilities
  - New facilities for existing waterfront lots need to be shared with adjacent lots
  - Waterfront multi-family should not have individual slips - just shared “parking area” slips

Recommendations for Shore-side Uses & Structures (cont.)

- Beach access structures
  - New subdivisions and multi-family need to provide community facilities
  - Try to share existing access or use public access
  - New structures for existing lots need to be shared
- Public Access - a primary goal of SMA Policy
  - Most developments are required to provide public access
    - Not single-family home construction
  - Public access benefits property owners by reducing trespass
  - Good design of public access can minimize potential conflicts, reduce trespassing, and minimize use of fragile locations
  - Public trust doctrine issues
  - Careful about unrestrained access degrading shorelines

Recommendations for Specific Issues

- Roads, driveways, parking & rail
  - Centralized facilities (terminals, depots, maintenance) should be treated as commercial or industrial
  - Only when no alternative, and as far away as possible
  - In floodplains, construct at grade or provide flood water pass-through
  - Require disclosure of excess material disposal before approval - can cause more damage than road
  - Don't cut off hydrologic features
  - Minimize # of bridges: alternative access points, share existing, share new bridges with adjacent lots
  - Span OHWM & floodway

Recommendations for Specific Issues

- Utility lines: above ground & below ground
  - Also address major facilities (sewer plants, water treatment, transfer stations, substations, power generation) specifically and limit to water-dependent
  - Avoid erosion failures due to stream bed mobilization:
    - In CMZ or floodway and near streams, locate 4 feet below bed or 1/3 of bankfull depth
  - Use installation method preference list to reduce impacts:
    - Clear span, attach to bridge, boring, plowing, trenching
  - In high groundwater areas, prevent french-drain effects from draining/ rerouting groundwater patterns that support wetlands and streams
  - Associated roads treated separately
  - Return grade to previous or better condition
  - Require disclosure of excess material disposal before approval - can cause more damage than utility

Recommendations for Specific Issues

- Aquaculture
  - Water-dependent, so is a preferred use
  - Don't lump all methods together, different methods have different impacts
  - Ecology is working on guidance
  - May need to limit from certain areas
    - Ecological issues for ecologically intact areas
  - Address aesthetic issues for residences if reasonably possible
  - Cumulative impacts of heavy disturbance/ blanket methods

Lessons Learned

- Much misinformation will flow
- Local governments and citizens groups need to do myth busting for their members, the general public, and folks attending meetings
- The public cares about water quality and other issues, will accept doing the right thing if it is explained to them
- Ecology should enforce SMA and guidelines through a careful review of the SMP
  - The public and policy makers need to know that
  - Ecology needs to realize that some local governments can only go so far, will have to be the heavy sometimes
  - Citizen groups plan on being a back stop to Ecology, the public and policy makers need to know that too