

BOULEVARD TO CORNWALL OVER-WATER-WALKWAY: Public Comment Tracker				
<b>This Comment Tracker includes responses to comments submitted between November 12, 2010 and January 7, 2011</b>				
Cmmt. No.	Name	Date	Public Comment	Staff Response
1	Wendy Steffensen and Matt Krogh; ReSources	1/7/11	Two concerns: Mitigation Sequencing is incomplete and mitigation will not meet NO NET LOSS OF SHORELINE ECOLOGICAL FUNCTION standard.	
2		1/7/11	Mitigation Sequencing: We have not seen an adequate discussion of alternatives to the Overwater Walkway, as required under the Critical Areas Ordinance, the applicable ordinance. This ordinance requires that the applicant first attempt to avoid the impact. To meet the avoidance criteria, we believe an analysis must be made to determine whether an overwater walkway is needed compared with the existing trail system or an additional overland system.	BMC 16.55.250 A states "Avoid the impact altogether by not taking a certain action <u>or parts of an action</u> ;" An alternatives analysis was provided in the 2009 Feasibility Report prepared by Reid Middleton. The exhibits from this section of the report are shown in EXHIBIT N.

3		1/7/11	<p>Mitigation to meet no net loss: Under the Critical Areas Ordinance, the proposal needs to "protect[s] the critical area functions and values consistent with the best available science and result[s] in no net loss of critical area functions and values", (16.55.200 A5). The proposal for the walkway does not meet the no net loss standard because it will result in a net increase of shaded area. This may be mitigated by reducing shading in other areas, such as at the Central St. stub which presently covers a pocket beach. The proposal also does not mitigate for either the temporary disturbance from pile-driving, nor for the long-term disturbance to fish and birds from the presence of the overwater walkway. A baseline of fish and wildlife usage in the Boulevard to Cornwall area is necessary to quantify disturbance, so that it can be adequately mitigated. All of these impacts, shading, temporary disturbance, and long-term disturbance, must have commensurate or greater mitigation.</p>	<p>BMC 16.55 also states in .250 that "Applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to Critical Areas." Staff believes that the project applicant has demonstrated and proposes to implement mitigating elements consistent with Best Available Science that achieves no net loss. It is correct that there will be net increase in shaded area however, nearly all of that shaded area is in <u>deeper water</u> where impacts of shade are minimized or where science is inconclusive regarding shading impacts. There is a <u>net decrease</u> in shaded area within the inter-tidal zone where science is conclusive that shading in such areas does decrease function. Science goes on to suggest (at least) several mechanisms that can be implemented into a project design that minimizes impacts to achieve no net loss of existing function. Please see the STAFF RESPONSE beginning on page 14 of the staff report where these impacts and mitigation strategies are discussed.</p>
4	Tim Paxson	1/7/11	<p>Regarding a few procedural matters. It is my understanding that the Lummi Nation has not given final approval to any design presented to the public and as such, I believe the process is flawed until they get a chance to make final recommendations or denial to the City's plan. I request that this process be remanded back to its proper status of being incomplete.</p>	<p>There are ongoing negotiations between the City and the Lummi Nation regarding the project. Consultation with the Lummi Nation is also part of other permit and approval processes conducted by other resource agencies later in the process of obtaining permits and approvals for the project.</p>

5		1/7/11	<p>1. According to WDFW web site there are many Priority species and Critical Habitat in this area. Specifically it has been reported of Gray Whales coming to this Cornwall Beach to die, in the Bellingham Herald., also many siting of Bald Eagles, Green and Great Blue Heron, Salmon fry area and possible spawning. No mitigation to protect these species is mentioned by WDFW. In addition many of WDFW emails appear to have no Date or Time stamp on them making them useless to analyze or include in the CUP and in fact do not even appear in the CUP.</p>	<p>According to the WDFW's August 2008 Priority Habitat and Species List, the priority habitat that is in the project area is "Nearshore - Puget Sound." The State listed endangered, threatened, sensitive species within the project area (as specified in BMC 16.55.470 A.1.b) are listed in Section 9l of the JARPA prepared on June 11, 2010 by the applicant with the exception of the 'common loon' which is a 'sensitive' specie. WDFW will review the project and evaluate whether impacts to any species, and/or their habitat are likely to result from the project. In addition, NMFS will review the project to evaluate impacts to ESA species. NMFS and WDFW may require additional BMPs and conservation measures to be included in the project to protect species and their habitats.</p>
6		1/7/11	<p>No impact study for priority species of sea ducks, bivalves, mammals, including seals, otters, geoducks, harlequin ducks, barrows golden eye and a large colony of Caspian Terns. With no base line study, no mitigation or MDNS can be properly generated. WDFW has failed to do its job here.</p>	<p>WDFW will review the project and evaluate whether impacts to any species, and/or their habitat are likely to result from the project. In addition, NMFS will review the project to evaluate impacts to ESA species. NMFS and WDFW may require additional BMPs and conservation measures to be included in the project to protect species and their habitats.</p>
7		1/7/11	<p>This Greenways project has also been misrepresented by proponents as having been somehow voted on by public. Original approval was for improvement in Greenways III in 2006 of a Shore line trail not an ill advised and high impact OVERWATER trail. It appears that this proclamation by the City is a Complete fabrication with intent to deceive the public to discourage them from commenting on this project conditional use permit. A search of the projects described in 2006 show no mention of an overwater trail.</p>	<p>The Greenway Levy III includes funding for a "Future Waterfront Redevelopment Trail." Approval of Greenway Levy III funds is in accordance with the Ordinance, Resolution and City Policy. Projects are recommended for approval by the Greenway Advisory Board and Parks and Recreation Advisory Board. City Council approved the project and funding.</p>

8		1/7/11	<p>This proposal crosses at least 3 Toxic wastes sites make it look like Love Canal, Minamata Japan and A Civil Action, Erin Brockovitch Hinkley California, Woburn Mass, Mercury, Dioxins, Furans, Radioactive Waste. Best Available Science would not allow children to be adjacent to these toxic waste sites.</p>	<p>Sites in the vicinity of the project are subject to MTCA clean up actions. Gina Austin, the project manager for the Overwater Walkway Project, is also the City's project manager for the South State Street Manufactured Gas Plant cleanup site (the MTCA site associated with Boulevard Park). Any necessary clean-up actions under MTCA will be coordinated at the City and with the Washington State Department of Ecology who is overseeing the MTCA process.</p>
9		1/7/11	<p>Alleged Ex Parte Communications with Hearing Examiner. Numerous emails have recently appeared referring to possibly undisclosed meetings showing apparent ex parte communications with the Bellingham City Hearing Examiner. If accurate, these are serious violations of both State and Federal Law and may jeopardize the city's ability to get any DOT grants in the future in addition to possible criminal charges on the current C.U.P.</p>	Comment noted.
10		1/7/11	<p>As mentioned above the Lummi Nation has not been consulted so there IS no final design for the public to comment upon.</p>	<p>There are ongoing negotiations between the City and the Lummi Nation regarding the project. Consultation with the Lummi Nation is also part of other permit and approval processes conducted by other resource agencies later in the process of obtaining permits and approvals for the project.</p>
11		1/7/11	<p>We now understand now that the City Council is being asked to rubber stamp a Federal Department of Transportation approval of the over water trail by declaring that there is no other alternative when clearly there is a shoreline alternative.</p>	Comment noted.
12		1/7/11	<p>I am requesting that the Hearing Examiner reject this flawed and illegal C.U.P. process until an adequate EIS has been completed showing the less impact and cheaper shoreline trail alternative.</p>	Comment noted.

13		1/7/11	I request that the City be required by the Hearing Examiner get final approval of the Lummi Nation prior to proceeding on any more votes or permit applications.	There are ongoing negotiations between the City and the Lummi Nation regarding the project. Consultation with the Lummi Nation is also part of other permit and approval processes conducted by other resource agencies later in the process of obtaining permits and approvals for the project.
14		1/7/11	WDFW has not completed an impact study in this special habitat region and for priority species included endangered chinook salmon, bull trout, and other wildlife. This is unacceptable when applying for a permanent structure that can destroy habitat and wildlife when there are other alternatives that have strangely been deleted from this C.U.P.	WDFW will review the project and evaluate whether impacts to any species, and/or their habitat are likely to result from the project. In addition, NMFS will review the project to evaluate impacts to ESA species. NMFS and WDFW may require additional BMPs and conservation measures to be included in the project to protect species and their habitats.
15		1/7/11	It appears that WDFW has also provided undated emails that make it appear that they have fully participated in the C.U.P. process with mitigation plans that are based on nothing and not included in the original package.	City staff has coordinated with WDFW during the CUP process to the maximum extent practical. WDFW's permitting authority is very specific (to eelgrass in this case) and has very specific standards and protocols for mitigation and ongoing monitoring.
16		1/7/11	Further, a complaint has been filed with the Federal Department of Transportation Office of Inspector General (FDOT OIG) about the irregularities and possible alleged fraud involved in this Conditional Use Permit. Of particular interest are the alleged emails showing or referring to ex parte communications which currently remain undisclosed by both the City, its consultant and its Hearing Examiner.	Comment noted.
17		1/7/11	An attempt by the Planning department to get rubber stamp approval by the City Council for a 4F DOT designation of this trail will have been based on deception, misinformation to the City Council and possible fraud.	Comment noted although the De minimus 4 f exemption is not related to the subject SCUP.

18	Wendy Harris, Shane Roth, Sue Brown, Laura Leigh Brakke, Frances Badgett	1/5/11	Submits Motion to Remand and Reopen Public Hearing for development of lacking information, analysis and other materials necessary to support the submitted proposal permits. As basis for this motion, parties affirm the following:	Please see City's January 21, 2011 Memorandum that responds to this Motion which requests that the Hearing Examiner deny these requests to remand back to staff and re-open the public hearing.
19	Motion Comment #1	1/5/11	Public Hearing scheduled for November 17, 2010. Public comment held open until Jan. 6 with additional 2-weeks for City Staff rebuttal.	Comment noted.
20	Motion Comment #2	1/5/11	Extension of the public record was based, in part, on the City's failure to reach a settlement with the Lummi Nation. EXHIBIT A-1.	Comment noted.
21	Motion Comment #3	1/5/11	City refuses to revise project schedule. Please see EXHIBITS A-3 and B-2.	Comment noted.
22	Motion Comment #4	1/5/11	The Lummis have raised concerns regarding the design of the bridge, the City's failure to conduct a cumulative impact analysis, inadequate mitigation measures, impacted Lummi fishing rights within the project area, toxic site remediation and monetary settlements. Exhibit A-1.	Comment noted.
23	Motion Comment #5	1/5/11	Approval of the CUP and shoreline permit is premature before settlement is reached with the Lummis.	The SCUP is only the first approval necessary. In almost all cases, other permitting agencies or authorization entities will not issue a decision until the local (environmental) permitting is complete.
24	Motion Comment #6	1/5/11	The City's Critical Area Ordinance (CAO) is applicable to the permit review process. The CAO must be liberally construed in the manner most protective of critical areas. BMC 16.55.140.	Comment noted.

25	Motion Comment #7	1/5/11	The CAO provides that the City shall not approve any permit <u>or otherwise issue any authorization</u> to alter the condition of any land, water, vegetation or construct a structure over a critical area without first ensuring compliance with the CAO. The Hearing Examiner must find that the project complies with the CAO.	Correct, the Hearing Examiner must find that the project complies with the CAO (and the SMP/SMA). Staff has concluded that the project does comply with CAO standards. Please see Section IX. Beginning on page 24 of the staff report.
26	Motion Comment #8	1/5/11	EHB 1653 was enacted on March 18, 2010. Although the City consultant reports for this project were finalized in June, 2010, they refer to the 1989 SMP, rather than the CAO. the CAO imposes a higher regulatory standard for shoreline development than the 1989 SMP. Thus, many of the reports and analysis submitted by the City in support of its permit applications fail to apply the correct legal standard. This fails to reflect a full and adequate application of CAO performance standards to the project permit applications.	Both rules have been applied to the project. This SCUP is the permit required at this time and must reflect compliance with both regulations. This interface is acknowledged in Section VI. beginning on page 7 of the staff report. SMP / SMA / CAO compliance are demonstrated in the following sections beginning on page 8 of the staff report.
27	Motion Comment #9	1/5/11	Because transportation routes already exist, and will be expanded in the future to include shoreline access, the City has failed to establish that there is no alternative route with less environmental impact, as required under BMC 16.55.500.B.b and E.4.a. Additionally, the existing transportation routes establish that an overwater bridge is not essential, and therefore, violates mitigation sequencing requirements to avoid harmful impacts where possible. BMC 16.55.250.	The public is cut off from the shoreline by the Burlington Northern Santa Fe Railroad. Various portions of the shoreline are held in other private ownership as well. There is no trail link to the Cornwall Landfill site (future waterfront park) from the South Bay Trail. Wharf Street, which connects Cornwall Avenue to State Street, will be closed to the public as part of an agreement with BNSF under the water front development plan.

28	Motion Comment #10	1/5/11	A required cumulative impact analysis has not been conducted. An important state-sponsored study, reflected on page 118 of the Staff Report, indicates that "the ultimate assessment of the impact of overwater structures likely rests in determining the cumulative impacts of multiple structures along a shoreline segment or the relative sensitivity of certain ecologically significant regions of shorelines." BAS establishes that a cumulative impact analysis is required to protect the functions of critical areas, and must be utilized for development within a critical area.	Please see 'F' at the bottom of page 10 of the staff report for a discussion on cumulative impact analysis. The document referred to on page 118 is not a regulatory document. It is a recommendation for agencies and policy makers to perform a cumulative impact analysis of such structures so that while rules are being drafted for SMP or CAO updates, a complete understanding of the ecological system and potential incremental impacts can be drawn from. (The city performed this analysis as part of its SMP update process.) Please note that the same document referenced in this comment also includes recommendations to mitigate impact of overwater structures beginning on page 115 of the staff report. Please note that under "Fixed Docks" and "Pilings" that 6 of the 11 strategies have been implemented for the OWW.
29	Motion Comment #11	1/5/11	The CAO contains a number of other provisions that may not specifically require a cumulative impact analysis, but which require information that is the product of a cumulative impact analysis. BMC 16.55.101.D; BMC 16.55.480.C; BMC 16.55.240.B; BMC 16.55.210.4 and 6; BMC 16.55.450.A. The City has handled the permit applications for this project in a compartmentalized manner, reflecting a piece-meal approach. This does not provide the type of planned, coordinated growth required under SEPA or the SMA, nor does it protect the functions and values of connected critical marine waters and habitat.	Section IX of the staff report addresses compliance with the CAO.

30	Motion Comment #12	1/5/11	A habitat assessment to determine project impacts on fish and wildlife species and habitat, and connected performance standards, are lacking for a great many species. BMC 16.55.480; 490, 500.	Section .480 C.2 states, "Identification of any species of local importance, priority species, <u>or</u> endangered, threatened, sensitive, or candidate species that have a primary association with habitat on or adjacent to the project area...." It doesn't state AND therefore require listing <u>ALL</u> species. Section 9l of the JARPA includes a list of these species with the exception of the Common Loon. While there are many other priority species that may utilize the area, it is those listed species that make certain land areas a critical area (FWHCA) pursuant to BMC 16.55.470 A. Compliance with .490 and .500 begin on page 30 of the staff report.
31	Motion Comment #13	1/5/11	Numerous other performance standards under the CAO have not been addressed such as: Current plan designs with concrete landing abutments violate BMC 16.55.500.B.1.d regarding shoreline erosion control measures. The proposal does not address the impacts of the fill proposed for this project required under BMC 16.55.500.B.3. It is unclear whether the proposal is a structure that will prevent migration of salmonid species currently or historically used by anadromous species. BMC 16.55.500.B.2.	The abutments are necessary for structural support are to be constructed above the elevation of the MHHW and the minimum amount of material is being placed below the elevation of the OHWM to minimize impacts to near-shore areas. The abutments and material placed in-water will not prevent species from utilizing those areas, including fish migration and foraging. Material placed in water will mimic existing character of bedlands. The abutments will not result in a shear wing-wall but rather will have material placed at the footings similar to adjacent shoreline materials. Removal of existing pilings from dilapidated pier / wharf is intended to improve movement areas for species and re-introduction of natural processes such as wave and tidal energy and sediment transport. Additional analysis on compliance with BMC 16.55.500 is provided beginning on page 30 of the staff report.

32	Motion Comment #14	1/5/11	The permit applications do not meet mitigation standards under the CAO. Mitigation must result in equivalent or greater biologic or hydrologic functions, mitigate for adverse impacts upstream or downstream of the site proposal, and mitigate for each function affected by project alteration. BMC 16.55.490.D.	The revised mitigation report from November 2010, the information in the BA beginning in Section 2.4 and the information in EXHIBIT J in the staff report describe the mitigation measures per the impact and by implementing same will achieve equivalent and possibly greater biologic and hydrologic functions. Compliance with section .490 is also discussed on page 30 of the staff report.
33	Motion Comment #15	1/5/11	The City has failed to resolve other issues crucial to approval of the project permits, such as implementation of toxic site clean-ups and project design. It is also unclear whether the permit applications contain sufficient final information for the 30% design stage.	There are multiple permitting processes to be followed in order to construct the OWW. This SCUP process is only one of the many permits and authorizations necessary. The Parks Department is coordinating all of these elements and must have ALL required permits and authorizations in hand prior to commencing site work.
34	Motion Comment #16	1/5/11	On December 15, 2010, the Department of Fish and Wildlife (WDFW) advised the City that its Hydraulic Permit Application was on hold due to its failure to account for potential MTCA clean-up actions in its design plans for the project's landing sites and armoring designs. While approval of a Hydraulic permit is not necessary for approval of a CUP and shoreline development permit, the problems delaying the Hydraulic permit process are relevant to the Hearing Examiner's determination. EXHIBITS C & D.	Coordination meetings with all agencies continue and are ongoing throughout the permitting process.
35	Motion Comment #17	1/5/11	On December 15, 2010, the Department of Ecology (DOE) Project Manager for the Boulevard Park (the "SSSMGP") site advised WDFW that "Ecology has not determined what actions will have to be taken to address contamination at this site, much less how that might influence walkway design." EXHIBIT E.	Coordination meetings with all agencies continue and are ongoing throughout the permitting process.

36	Motion Comment #18	1/5/11	WDFW sets out 17 mandated revisions, ranging from minor clarifications to more substantive changes in mitigation analysis. For example, comment 5 notes that the revised mitigation plan does not address impacts from 864 sf of new overwater structure over the intertidal zone (-12 to +8.5). The monitoring sites are improperly located, and the City's proposed analysis continues to utilize improper reference points and data.	Coordination meetings with all agencies continue and are ongoing throughout the permitting process.
37	Motion Comment #19	1/5/11	Project permit applications do not establish that the City will adequately protect water quality during the lengthy 42 week project construction period, although this is a stated goal of the CAO. BMC 16.55.010.C, D. DOE has also questioned whether alternatives to the riprap at the landings have been considered, and whether the City has quantified transient vessel moorage usage and mitigated for lost recreational use. Exhibit G. These issues are also relevant to the pending permit applications.	Bubble curtains and sound attenuators will be employed during pile driving. In water work windows established by other agencies must be followed so as to minimize impacts and disruption of present fish species.  Staff has addressed the transient vessel issue beginning on page 19 of the staff report.  SEPA condition #6 of the MDNS for the OWW states, "Mitigation and monitoring as required by other Local, State and Federal agencies shall be implemented as required" in order to ensure that water-quality standards are being complied with. (Other permitting agencies have strict thresholds and measurement standards to assure compliance and the City often relies on these specific standards to comply with the broad overall standard of protecting water quality.)

38	Motion Comment #20	1/5/11	<p>The above information indicates that the CUP and shoreline permit applications reflect a rushed and incomplete process that fails to address the legal performance standards required under the CAO and lacks relevant information and analysis. The nature and extent of future modifications to the proposal are undetermined, and the City has not been forthcoming regarding this situation. The City has prematurely requested the approval of the CUP and shoreline development permits to avoid a loss in project grant funding that will result from missing WDOT deadlines. Exhibit H. (Issues regarding City entitlement to the De minimus (4f) exemption remain.) While funding concerns are understandable, the rushed and incomplete applications submitted by the City do not serve the public interest. Protection of shoreline ecological functions and shorelines of statewide significance are paramount and must be protected before any other interest.</p>	<p>There are multiple permitting processes to be followed in order to construct the OWW. This SCUP process is only one of the many permits and authorizations necessary. The Parks Department is coordinating all of these elements and must have ALL required per</p>
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39	Motion Comment #21	1/5/11	I request that the Hearing Examiner remand this case back to the City, pursuant to Hearing Examiner Rules of Practice and Procedure, Section 2: Chapter 27(a) and (b). As established above, the relevant legal standards have not been properly applied, resulting in a lack of information and analysis necessary to satisfy the provisions of relevant regulations. Submission of the permits is premature unless the City has reached settlement with the Lummi Nation, and corrected the numerous other problems discussed above. Until this occurs, the City can not established that the permit applications result in no net loss to ecological functions of the shorelines as required under the SMA and the CAO. Alternatively, the City could withdraw its CUP and shoreline development permit applications and submit new applications at the appropriate time, after first complying with notice, and if necessary, SEPA requirements. Alternatively, the Hearing Examiner could determine that the permit applications should be denied for ample cause established above.	Please see City's Memorandum that responds to this Motion which recommends that the Hearing Examiner deny these requests to remand back to staff and re-open the public hearing.
40	Laura Leigh Brakke	1/5/11	Opposed because an expensive duplication of services that the Public already enjoys. The South Bay Trail and a dedicated bike path already are available and parallel the path of the proposed Bridge.	The purpose of the project is to provide public access to the water. The existing trail connection does not meet this objective.
41		1/5/11	The popularity of the Taylor St dock and over-water structure is not in question but is not a justification for duplicating that style of "public access". I question the cost.	Comment noted.

42		1/5/11	In reviewing the communications from the WA Dept of Fisheries to the WA Dept of Ecology there is a very huge gap in knowledge (i.e., studies of contaminated soils at this site are not finalized). Until that information is current and available no further use of Public funds should be squandered in pursuing this project. I question whether the risks to the environment are worth the benefits.	The City's project manager is also managing the MTCA actions on the City's behalf, and is coordinating with Ecology on a weekly basis; Ecology is overseeing the clean up process.
43		1/5/11	Is there available money and expertise to control the release of contaminants during the drilling for 96 new pilings, and the removal of the existing creosote pilings in the area? I would contend that degree of soil disruption would in fact release a huge amount and variety of toxins that will not contribute to the health of the Bay and will jeopardize the aquatic life forms in the near shore area. This project most certainly must have an EIS performed in order to go forward.	Any water quality impacts potentially resulting from the project will be reviewed as part of the local, state and federal permit review required. Methods of construction, containment and mitigation will be guided by applicable laws and regulations administered by the appropriate resource agencies. BMPs will be employed to minimize sediment disturbance during construction including bubble curtains and noise attenuators.
44		1/5/11	To use Federal Funds designed for Transportation in this "feel good" way without creating a new transportation corridor is not a wise use of Public money.	Comment noted.
45		1/5/11	The essential problem of underwater-contaminated soils has never been adequately addressed in Bellingham Bay. There is a high degree of complexity to this project, with many overlapping agencies that are part of this project permitting process. In reviewing some of the communications from the different agencies and tribes it is obvious to me that there are huge gaps in communication and sequencing of approval for moving forward.	Any contamination issues will be handled under MTCA which will be completed prior to the start of construction of the over-water walkway. The City's project manager is also managing the MTCA actions on the City's end. This will ensure efficient coordination of the project with MTCA activities. Ecology is overseeing the clean up process.

46		1/5/11	The City Council is to review on Monday January 10 <sup>th</sup> , a Request for the use of the De minimus (4f) exemption. I feel the request did not elaborate on the fact there is a trail providing safe transportation to and from nearly the same destination and origin as the proposed bridge.	This comment refers to a process that is not part of this permit review. WSDOT will determine whether or not the use of the De minimus (4f) exemption form is appropriate to address the impacts to Boulevard Park.
47		1/5/11	I question, once built, if the over-water walkway will qualify as the Public Access portion of the Waterfront redevelopment plans. I would not want to see Public access limited in future plans on the GP property.	The project by nature provides access to the water and will not limit public access related to future plans; it will not limit water access.
48	Wendy Harris	12/14/10	Urges City Council to intercede in the construction of the overwater bridge.	
49		12/14/10	It is clear that the Planning Department and the Parks Department have rationalized the construction of the overwater bridge based on the time and resources that have already been expended and available funding. As you know, this project has been planned for many years, and it was conceived with the best intentions. However, I believe that the project design has now lagged behind both best available science and our current financial problems. Therefore, I believe that important facts are being overlooked.	Best available science has been applied to evaluate the effects of the project on the environment and to inform the design. No additional facts have been added in this comment that can be responded to.
50		12/14/10	At the forefront of these concerns are public health and safety issues associated with a pedestrian bridge that being constructed on and over what is, essentially, a chain of toxic remediation sites. The Cornwall Bridge is also located within and over an area of high seismic activity, high landslide risk and within a 100 year flood plan zone.	Comment noted.

51		12/14/10	The Bridge originates at Boulevard Park, on a site being investigated under a DOE Agreed Order for soil and groundwater contamination related to the South State Street Manufactured Gas Plant site. The Bridge terminates at the Cornwall Avenue Landfill site, which is being investigated under a DOE Agreed Order for contamination associated with a former municipal landfill. Part of the land within the project area may have been created with contaminated fill materials from dredged soils from the Whatcom Creek Waterway. Fill on adjacent land was contaminated from the by-products of the manufacture of coal gas.	Soil and groundwater contamination issues will be handled under MTCA. Any MTCA related activities will occur prior to the start of construction of the project. The City's project manager is also managing the MTCA actions on the City's behalf. This will ensure that the MTCA activities are well coordinated with the proposed project.
52		12/14/10	The bridge crosses over DNR owned aquatic lands within a designated natural recovery area subject to cleanup and long-term monitoring pursuant to the Whatcom Waterway consent decree. Contaminated dredge soils present in the aquatic portions of the site are listed as Category 4A impaired sediments subject to a TMDL. This overwater bridge requires placement of 96 piles, each of which has a 26 inch diameter, many of which will be driven into this impaired sediment, likely causing contamination that has settled in soil to be stirred up and dispersed into an already impaired body of water.	Soil and groundwater contamination issues will be handled under MTCA. Any MTCA related activities will occur prior to the start of construction of the project. The City's project manager is also managing the MTCA actions on the City's behalf. This will ensure that the MTCA activities are well coordinated with the proposed project.
53		12/14/10	Moreover, at a time when the City is experiencing financial distress, resulting in budget cuts and employee lay-offs, a \$7 million dollar overwater trail seems excessive, particularly when less expensive land based shoreline trail options are available. Finally, the cumulative environmental impacts from overwater structures can be particularly egregious, although this information was not as readily available when the project was first planned.	The purpose of this project is to provide public access to the water, therefore, a land based trail would not meet the objective. Impacts associated with over water structures vary depending on existing environmental conditions and the design and alignment of the structure. The City's cumulative impact analysis is provided beginning at the bottom of page 10 of the staff report.

54		12/14/10	To proceed with construction of an overwater bridge over such polluted and geologically hazardous lands, prior to remediation, and despite knowledge of the environmental impacts, does not protect public health and safety and should not be allowed. I hope that the City Council will use the limited time available to investigate why a public trail is being constructed in such an unsuitable location when there is a great need for additional trails in many other parts of the City.	Comment noted.
55	City of Bellingham Parks and Recreation Advisory Board	12/8/10	Protection of the environment is a central aspect of this development and based on our review of the process, the mitigations the City proposes are appropriate and necessary. We support this mitigation approach and the proposed mitigations identified by the City. The mitigations balance the purpose of the project with any environmental impacts that may result from its development.	Comment noted.
56		12/8/10	This citizen Advisory Board fully supports completion of this project as it relates to the full development of the Over-water Walkway connecting Boulevard Park to Cornwall Avenue and the future waterfront development. It is our understanding that this Board's support echoes the overwhelming support of the project by the citizens of Bellingham. We are aware that issues are constantly being identified and addressed as is appropriate in the regulatory process. There does not appear to be any substantive reason why this project should not receive a Shoreline Conditional Use Permit.	Comment noted.
57		12/8/10	This Board requests that the City make a strong effort to timely, respectfully and meaningfully consult on the Tribal concerns about the project.	There are ongoing negotiations between the City and the Lummi Nation regarding the project. Consultation with the Lummi Nation is also part of other permit and approval processes conducted by other resource agencies.

58		12/8/10	In light of the historical use of the site and the environmental improvements that these thorough processes and appropriate and necessary mitigation measures achieve, the Parks and Recreation Advisory Board, (a) does not believe the project meets the requirement of "significance" for an environmental impact statement; and (b) strongly supports the project and the mitigation and site restoration it provides.	Comment noted.
59	Wendy Harris	11/22/10	Submitted as an email attachment the Washington Sea Duck Management Strategies - Draft Report to Fish and Wildlife Commission dated July 28, 2010.	Comment noted, document examines existing harvest monitoring programs (hunting) in relationship to population trends, recruitment, movement and hunting season regulations. (Certain species of sea ducks are game species.)
60	Mike Anderson	11/18/10	Steve, as a Park Board member and citizen of Bellingham, I fully support completion of the Over Water Walkway project. The city has done very comprehensive work researching mitigation to the potential problems associated with the project. The benefit to the community is not overstated in the report. I visit Taylor dock and the associated over water walkway frequently and bring out of town visitors often. Everyone has thoroughly enjoyed the experience and this further oww experience will be further reason for people to visit and enjoy Bellingham.	Comment noted.

61	Wendy Harris	11/17/10	SUMMARY: Multiple objections to proposed overwater bridge based upon current science which establishes impacts of overwater structures. Proposal does not include adequate mitigation and cannot achieve 'no net loss' of shoreline ecological functions. Proposal does not compensate for impacts to fish and wildlife and WDFW priority estuarine habitat. Overwater trail is unnecessary due to future development of Cornwall Park within Waterfront District which can be connected to other existing trails. Supports a shoreline trail on land as well as protection and restoration of forage fish spawning and salmon migration areas and bird habitat.	SUMMARY STAFF RESPONSE: Please see Section XI beginning on page 33 of the staff report.
62		11/17/10	SHORELINE DEVELOPMENT STANDARDS DO NOT COMPLY WITH SMA. City's existing regulations do not comply with DOE's 2003 SMP Guidelines (SMP-G) and therefore do not comply with SMA. 2003 SMP Guidelines requirement 'No Net Loss' of shoreline ecological function.	DOE's 2003 SMP Guidelines are not regulatory. They are a guide for local governments performing their SMP updates. WAC 173-26-171 (2)
63		11/17/10	City did not complete its (local) SMP update until December 2009, four years after December 1, 2005 update deadline. Therefore the existing 1989 SMP is inadequate because it does not include no net loss requirements nor mitigation sequencing.	It is true that the 1989 SMP does not include those requirements. That is why the Critical Area Ordinance standards were applied to this project which include no net loss requirements AND mitigation sequencing. Please see section IX beginning on page 24 of the staff report.
64		11/17/10	The City should have required an EIS but instead issued an MDNS.	Please see the SEPA Comment Response Matrix prepared by the consultant in EXHIBIT C of staff report.
65		11/17/10	NO NET LOSS OF SHORELINE ECOLOGICAL FUNCTION REQUIREMENTS NOT INCLUDED IN PROJECT REVIEW. DOE establishes a sequenced process in updating an SMP that can lead to NO NET LOSS OF SHORELINE ECOLOGICAL FUNCTION.	This comment refers to programmatic updates of SMP's under the 2003 Guidelines.

66		11/17/10	The City utilizes the applicable reaches from the 2004 Shoreline Characterization and Inventory for establishing baseline standards for this project which is not applicable to the 1989 SMP standards.	The data reach sheets in EXHIBIT D of the staff report were utilized as reference for baseline conditions. These are from the 2004 Shoreline Characterization and Inventory that was required for SMP Update. However, the Biological Assessment, JARPA and Mitigation Reports that were submitted as part of the project application characterize an up-to-date existing condition.
67		11/17/10	A shoreline inventory and baseline standard does not establish NO NET LOSS OF SHORELINE ECOLOGICAL FUNCTION.	Correct. An inventory, characterization or assessment only establishes the baseline by which NO NET LOSS OF SHORELINE ECOLOGICAL FUNCTION can be measured.
68		11/17/10	Mitigation sequencing is used to achieve NO NET LOSS OF SHORELINE ECOLOGICAL FUNCTION and must be based on information obtained through the SMP update process.	Not exactly. Mitigation sequencing (for a specific project) is used to achieve no net loss but must be based upon information on existing condition submitted as part of the application and may be supplemented with other environmental documents.
69		11/17/10	City cites all other state and federal agency permits required for the project as evidence of satisfying NO NET LOSS OF SHORELINE ECOLOGICAL FUNCTION. However, only the SMA is concerned with impacts to all shoreline ecological functions.	Please see section V beginning on page 6 of the staff report and the other sections referenced therein. Please also refer to the section titled "BMC 16.55.250 - Mitigation Sequencing" on page 26 of the staff report.
70		11/17/10	CUMULATIVE IMPACT ANALYSIS: Defined as the combination of individually minor effects of multiple actions over time.	There are several definitions to cumulative impact analysis. One is programmatic as defined in the 2003 DOE Guidelines (WAC 173-26-201 (3) d. iii. The other two relate to a specific project; the cumulative impacts of the entire project, and the cumulative impacts of similar actions over time in a defined area.
71		11/17/10	Update of SMP's are required to perform a CIA.	Correct. However, while not related to this specific project - the City did perform a Cumulative Impact Analysis as a component of its SMP update.

72		11/17/10	A CIA was not performed as part of SEPA but was performed in limited fashion to other shoreline CUP development. A CIA was performed however, as part of the City's SMP update process.	The cumulative impacts <u>of the project</u> were considered as part of SEPA review. EXHIBIT C in the staff report includes the MDNS and responses to that SEPA Determination. That is different than a "Cumulative Impact Analysis" that is required as part of a the review of a SCUP application.
73		11/17/10	This overwater structure is the first of likely other impacts that will occur as development of the Waterfront District progresses resulting enormous impacts to Bellingham Bay shoreline.	The <i>existing condition</i> of the majority of shorelines and intertidal areas in the Waterfront District is heavily impacted with either shoreline armoring (rip-rap) or is a MTCA site. The WD Master Plan <u>includes planning for substantial shoreline restoration and other habitat related improvements</u> as well providing public access along these same shorelines.
74		11/17/10	The City erred in failing to conduct a CIA. Specifically, a CIA was necessary for Taylor Avenue Dock. Increases in numbers of overwater structures exponentially increase the impacts to shoreline ecological functions.	Please see "Additional compliance with WAC 173-27-160 (2): CUMULATIVE IMPACTS:" at the bottom of page 10 of the staff report.
75		11/17/10	Reference to EXHIBIT D in staff report and that Taylor Dock has not harmed nearby shoreline functions.	Again, EXHIBIT D simply provides a reference to shoreline conditions within as well as north and south of the project area. Please also see EXHIBIT M in the staff report which demonstrates that eelgrass - within the Taylor Dock project area - has maintained its footprint or has continued to colonize beyond.
76		11/17/10	IMPACTS REQUIRING MITIGATION. City has done a poor job of highlighting impacts both temporary and permanent to require mitigation to achieve NO NET LOSS OF SHORELINE ECOLOGICAL FUNCTION. Construction period is 42-46 weeks and no compensatory mitigation or restoration has been proposed to off set impacts to achieve NNL. Additional concerns or issues follow:	Disagree. Please refer to Section IX, beginning on page 24 of the staff report. Please see EXHIBIT K in the staff report which is an excerpt from the Revised Mitigation Report, November 2010; specifically section "5.4: Proposed Timing and Schedule"

77		11/17/10	WDFW PRIORITY ESTUARINE ZONE: OWW is located in this habitat type designated by WDFW. White Paper by Williams and Thom, 2001 recommends protection and restoration of marine / estuarine habitat and function by avoiding shoreline modifications altogether.	Comment noted although 'White Papers,' including management recommendations from state and federal agencies and other BAS documents recommend certain strategies to avoid or minimize impacts such as those specified in EXHIBIT I of the staff report beginning on page 102.
78		11/17/10	BIRD SPECIES: City fails to analyze or address impacts to bird species and habitat:	There are no documented nesting sites of PHS bird species that are listed as 'threatened / endangered / sensitive' within the project area. WDFW's project review will include an evaluation of potential impacts to birds and their habitat and an assessment of whether mitigating measures are required.
79		11/17/10	No compensatory mitigation is provided for impacts to bird habitat due to lengthy construction period and permanent impacts of increased human activities.	WDFW will evaluate whether mitigation for impacts to birds and their habitat is required.
80		11/17/10	Project is close to 2nd largest Caspian tern colony on the Pacific Coast and area within Boulevard Park is associated with nearby pigeon guillemot nests.	The Caspian tern colony is located on the GP main campus approximately 1/2 miles north of the project. Other actions on the waterfront will occur <i>before</i> the Over Water Walkway is built including cleanup at the Cornwall Landfill, cleanup at R.G. Haley, and cleanup at the GP West site. Patterns and distribution of birds may change as a result of <i>these</i> listed actions.
81		11/17/10	EXHIBIT D in the staff report states that the project area has "high function for offshore winter bird habitat."	Comment noted.
82		11/17/10	Waterfront District DEIS also notes that this is high quality aquatic habitat.	Comment noted.
83		11/17/10	Not all seabirds remain far from shore. Commenter has seen and documented large number of seabirds including black oystercatcher, loons, 4 species of grebes, scoters, scaups, harlequin ducks, herons, an eagle common and barrow goldeneyes, kingfishers, black turnstones, comorants.	Birds occurring in the project area are likely accustomed to noise due to existing train and truck traffic in the vicinity of the project. In addition, other project actions are underway or planned to occur before the walkway would be constructed. Patterns of distribution and activity of birds may change as a result.

84		11/17/10	FORAGE FISH AND SPAWNING HABITAT: The Biological Assessment, June 2010, state no documentation of forage fish spawning area within project area. However, WD-DEIS acknowledge spawning forage fish. EXHIBIT D in staff report states surf smelt and sand lance spawn on south end of Boulevard Park reach and are vulnerable to habitat impacts concluding "high forage fish spawning in packet beaches."	The surf smelt and sand lance spawning mentioned in the staff report is documented in Marine Reach 9, mostly south of the project which is located in Marine Reach 8 for the most part. While suitable substrates for herring, sand lance and surf smelt spawning are present within the project area, they have not been documented to date. WDFW stated in an e-mail dated 11.09.2010 that while there is a potential for spawning it has not been documented at the project site. The City will conduct a survey prior to construction begin to ensure that no spawning is occurring at the time of construction.
85		11/17/10	Chinook Salmon are an ESA fish which use Bellingham Bay and rely on estuarine habitat for refuge. The BA indicates that the noise level during the construction period for this project is likely to adversely disrupt normal juvenile Chinook. WDOT application discloses that project has potential to directly or indirectly impact designated critical habitat for salmonids.	Construction of the project will occur during agency approved work windows established for the protection of ESA fish species. The project is further subject to NMFS ESA review. Any impacts and required mitigation related to ESA listed species will be addressed through this review and NMFS will evaluate whether additional conservation measures will be required to offset impacts.
86		11/17/10	Boccacio, Yelloweye Rockfish and Canary Rockfish: these ESA listed fish are in project area. No compensatory mitigation or restoration is proposed to achieve NO NET LOSS OF SHORELINE ECOLOGICAL FUNCTION.	Adults of all three rockfish species are found in deep water and rocky bottom habitats, usually more than 150 feet deep. Adults are rarely found in water shallower than 40 feet. Juveniles could potentially be present in nearshore areas. Potential impacts to rockfish would be primarily limited to construction impacts. Impacts to rockfish will be from the built project will be mitigated through the mitigating measures incorporated into the project. Noise impacts and potential conservation measures and required mitigation related to rockfish will be addressed through review by NMFS and WDFW. Additional information is provided in the Biological Assessment.

87		11/17/10	Chum, Coho, Cutthroat, Pink, Sockeye, Harbor Seals, Pacific Herring, Dungeness Crab, Pandalid Shrimp: JARPA indicates these priority state species might be affected by the overwater bridge. Again, little provided to offset habitat impacts.	The over water structure is designed to minimize habitat impacts. The alignment of the structure has been modified to minimize shading of eelgrass beds and the nearshore in general by integrating grating into the surface of the structure to allow for light penetration. (Eelgrass is avoided entirely on the Cornwall abutment.) Habitat quality will be improved by removing existing over water structures that do not allow for light penetration and by removing creosote-treated piling. The mitigating measures built into the project are inclusive of all species.
88		11/17/10	Human Impacts: increase in human presence further out into Bellingham Bay, closer to wildlife. Many different users will increase noise which will frighten away fish and wildlife.	Birds occurring in the project area are likely accustomed to noise due to existing train and truck traffic in the vicinity of the project. In addition, other project actions are underway or planned to occur before the walkway would be constructed. Patterns of distribution and activity of birds may change as a result. The level of noise generated by human activities are not expected to be more significant than other already existing noises.
89		11/17/10	37,500 square feet of new impervious surface: project is over an impaired water body, subject to clean-up and long-term monitoring consistent with Consent Decree. New impervious surface is a pollution generating surface; shoes, bikes, skates, strollers, track pollutants onto walkway. People eat drink smoke, pets and children urinate and defecate which can all be left as trash or simply thrown into water. Cumulative water quality impacts must be considered in conjunction with Taylor Dock and other project in Waterfront District.	Comment noted. However, more people utilizing the area and coming into contact with shorelines also results in 'more eyes on the shoreline' and it tends to result in common citizens taking ownership and stewarding shorelines that are currently unavailable for access - both physical and visual. More citizens in the area can minimize trash and help monitor polluting behaviors by sheer virtue of presence of other people. It's difficult to find a piece of garbage on Taylor Avenue Dock or on the shorelines at either end because so many people are using the area.

90		11/17/10	REMOVAL OF OLD STRUCTURES IS NOT MITIGATION: Removal of the existing over-water structures at the Boulevard Park end are required in order to build the new structure. Creosote from these structures has already leached most contaminants. In fact, removal will stir up contaminated soil and create at least temporary impacts to water quality and fish / wildlife habitat.	Considering the removal of existing over water structures as mitigation is a common practice. The removal of creosote treated piling will follow a protocol and applicable BMPs developed by the resource agencies to ensure that adequate protections are in place. Contaminated soils at the site are subject to MTCA provisions and will be overseen by Ecology. Any contaminated substrates within the project area would be subject to MTCA procedures.
91		11/17/10	DECK LIGHTING IMPACTS: No attempt to mitigate increased ambient light on over-water bridge. Installation of 188 fixtures does not reflect proper use of mitigation sequencing. Biological Assessment fails to consider light impacts to bird and marine animals.	Several lighting options were considered for the project. Low level directed lighting was included for lighting on the dock to minimize impacts. Please also see condition #2 on page 34 of staff report.
92		11/17/10	CONSTRUCTION NOISE: Vibratory pile driving is expected to have the greatest in water noise and could impact fish within 4.5 miles of activity. This impact which results in fish mortality rates has not been mitigated.	NMFS and WDFW will conduct a review of potential noise impacts to ESA fish species and may require additional conservation measures to offset impacts.
93		11/17/10	INSTALLATION OF 96 PILINGS: Mitigation Report indicates that placement of new piles will "harm to organisms" and displaced sea floor substrate. Whitepaper on over-water structures in marine waters cites impact of new piles and large circumference of piles, 24-inches.	NMFS and WDFW will conduct a review of potential impacts to other organisms and may require additional conservation measures to offset impacts.
94		11/17/10	REDUCED LIGHT IN & AROUND BRIDGE: Structure results in reduced light within nearshore and in Bellingham Bay. Only small portion (5 panels) are grated within nearshore area. No basis for determining that the 5 grated panels are adequate mitigation.	Grating was placed over nearshore areas to ensure light penetration over nearshore areas. This mitigating measure was agreed to by the City and WDFW

95		11/17/10	City must determine impacts from portions of bridge out in deeper water where concrete panels are. Cited whitepaper connects reduced light with increase in fish mortality rates - particularly for salmonid species.	Impacts to fish will be determined by NMFS and WDFW.
96		11/17/10	EELGRASS: Mitigation was imposed by WDFW - not so much voluntary.	Mitigation for eelgrass impacts was incorporated into the design in order to address anticipated agency concerns. Eelgrass mitigation will ultimately be approved by WDFW.
97		11/17/10	LIMITED SCOPE OF MITIGATION DOES NOT COMPLY WITH LAW: Revised Mitigation Report (Nov. 2010) reflects 3 goals: minimize permanent overwater structure shading intertidal zone, compensate for permanent overwater structure shading in intertidal zone and provide protection and enhancement of sensitive eelgrass within the project area. These goals are not consistent with 2003 SMP Guidelines, CAO requirements for geohazard areas and habitat restoration areas. No basis for City to conclude complied with SMA mitigation sequencing.	DOE's 2003 SMP Guidelines are not regulatory. They are a guide for local governments performing their SMP updates. WAC 173-26-171 (2) Geohazard information at the time of building permit submittal, if the project is approved. The <i>engineering</i> for the abutments has not been completed at this stage. Compliance with the geohazard requirements in the CAO is necessary but the cost to do so at this point, since the project has not yet been approved is not wise use of funds. City has concluded that mitigation sequencing has been followed - please see the STAFF RESPONSE near the bottom of page 26 of the staff report.
98		11/17/10	PUBLIC NAVIGATION: Proposal interferes with navigation on public waters and reduces ability of vessels to navigate and moor in the project area.	Please see the STAFF RESPONSE at the top of page 19 of the staff report which addresses navigation. A Coast Guard bridge permit is being obtained for the project. The Coast Guard will determine whether the project has any effect on navigable waters. The Coast guard will be responsible to determine whether or not there are impacts and how these need to be addressed.
99		11/17/10	MITIGATION SEQUENCING: Mitigation sequencing has not been followed in the case. Avoidance has been ignored. Future Cornwall Park could eventually be connected to South Bay Trail and Boulevard Park, overwater bridge is duplicative of existing and future trails.	Avoidance has been implemented at the Cornwall abutment where the walkway avoids eelgrass bed altogether.

100		11/17/10	Additional sequencing requirements to reduce impacts have been ignored based enormous footprint. Width varies from 14 to 18-feet. Unjustified width for overwater structure and must be greatly reduced if this project is approved at all.	The walkway width was determined using WSDOT design standards for shared use paths. The design width included in the drawings is the minimum width required for safe travel of pedestrians, bicyclist, and for compliance with the Americans with Disabilities Act.
101		11/17/10	PUBLIC HEALTH AND SAFETY ISSUES NOT ADDRESSED: project is located within the boundaries of three MTCA sites regulated by DOE. Also located within high landslide risk, seismic activity and 100-year flood plan zone.	Ecology is required to review any actions taken within the MTCA cleanup sites. The project manager for the over water walkway is also the project manager for one of the cleanup sites. The project manager meets with the Ecology site manager on a weekly basis for the South State Street Manufactured Gas Plant cleanup site and on a quarterly basis with Ecology, Port, and other City managers to coordinate all cleanup sites on Bellingham Bay. At these meetings, updates are provided on the progress and coordination of the over water walkway.
102		11/17/10	The Boulevard Park site, Cornwall Avenue Landfill site as well as DNR owned tidelands are all currently underway in feasibility and investigation studies for cleanup.	All agencies are involved in the review of this project.
103		11/17/10	Contaminated dredge spoils are present in the aquatic portions of site. Additional information in EXHIBIT D of the staff report.	Contaminated sediments are subject to MTCA procedures and protocols. Adequate BMPs will be applied. Ecology is overseeing the clean up process.
104		11/17/10	Proceeding with overwater bridge in polluted and geologically hazardous lands, without remediation does not protect public health and safety and should not be allowed.	Development within a geologically hazardous area is not prohibited but rather required to adhere to certain reporting and performance standards as specified in BMC 16.55.430 - .460. This will occur at the time a building permit is applied for if the project acquires all the necessary permits and authorizations.
105		11/17/10	THE WATERFRONT DISTRICT SHOULD UTILIZE CONSISTENT DEVELOPMENT STANDARDS: Overwater bridge is likely to be first project within the Waterfront District to be constructed.	Comment noted although only the Cornwall abutment and landing is technically within the Waterfront District.

106		11/17/10	All phases of construction would reflect high standards of environmental protection which implies that shoreline development will reflect current science and comply with state regs including SMA. Projects reviewed and approved under 1989 SMP misleads public and has inconsistent standards.	Comment noted. That is exactly why the CAO standards have been applied to this project.
107		11/17/10	THE PUBLIC HAS NOT APPROVED THIS PROJECT: Approval of the Greenway Levy is not approval of specific project cited as examples. The public would expect that any specific proposal would be subject to the public review and comment after an environmental assessment was conducted.	Approval of Greenway Levy III funds is in accordance with the Ordinance, Resolution and City Policy. Projects are recommended for approval by the Greenway Advisory Board and Parks and Recreation Advisory Board. City Council approved the project and funding.
108		11/17/10	Public comments submitted in June 2008 questioned need for overwater bridge when the South Bay trail existed and questioned construction expense.	Public comments received in June of 2008 include various comments in support and non-support of the project.
109		11/17/10	Public is not informed of harmful environmental impacts of this proposal and when they are they generally feel opposed.	Comment noted.
110		11/17/10	Aware agencies such as ReSources and People for Puget Sound who tend to be most aware organizations oppose project based on impacts and inadequate mitigation.	Comment noted.
111		11/17/10	Lummi Nation has not approved project who hold 50% of the salmon and shellfish within the project area.	There are ongoing negotiations between the City and the Lummi Nation regarding the project. Consultation with the Lummi Nation is also part of other permit and approval processes conducted by other resource agencies.
112		11/17/10	SEPA and consultant studies were done to comply with state agency requirements but are not incorporated into the project design plans. WDOT issued SEPA DNS before actual (City) SEPA determination was issued. Staff report emphasizes time / resources / money spent justifies approval of project.	Environmental considerations informed and were integrated into the design of the project, e.g. grating is proposed over the nearshore areas and the alignment of the structure was modified to minimize shading of eelgrass. WSDOT has not issued a DNS; this portion of the comment is incorrect.

113		11/17/10	ADDITIONAL TIME IS NEEDED FOR PUBLIC COMMENT: Rescheduled for additional public hearing and comment period be held open for one month.	At the November 17, 2010 public hearing on this proposal, the Hearing Examiner determined to keep the written comment period open until January 7, 2011.
114	Danne Neill	11/17/10	My old house in the Sehome neighborhood overlooks the former GP site. It has been fascinating to watch the area change over the last 20 years. I use the South Bay Trail on a regular basis. It's a tremendous community asset. I always enjoy walking on the over water portion of the trail. Locals greet one another, kids watch seals pop up and look back at them, tourists are amazed - we all stand in awe when the sun sets over the Bay. Being on a walkway over the water provides an extremely different perspective than being on land.	Comment noted.
115		11/17/10	The community has spent years planning and is looking forward to a new downtown waterfront. I believe that it is essential to move forward with this project. Citizens need to see that their time and efforts have produced something tangible. It is the first step on the path to the revitalization of our waterfront. It will provide access to an area that needs rebirthing - let's get this project going!	Comment noted.
116	Kevin Cournoyer	11/17/10	I'm writing you out of grave concern that an illegitimate and potentially illegal project, the Boulevard Park to Cornwall Avenue Over-Water Walkway (BPCAOWW)--- a project that's being treated like a fait accompli by City officials. There's clear evidence of corruption in the process surrounding this project. I request that all interested parties cease all activities, as well as all spending, on this project immediately.	Comment noted.

117		11/17/10	Out of scope. Please reference PAR 04.01.01. The use of \$4 million of the public's money on a massive capital project like the BPTCAOWW is self-evidently deplorable and is not within the scope of PAR 04.01.01. Similarly, COB Ordinance No. 2006-03-033, Table 1, Line 9 makes no mention of a massive capital project like a "bridge" or an "overwater walkway," contrary to what's stated on page 15 of your so-called "Feasibility" study. (How much of our money was spent on that wholly corrupt study?) Moving forward at this time is potentially a criminal act, wherein City officials are, in essence, stealing our money for a pet capital project of enormous proportions.	This comment is outside the scope of the subject SCUP. Nonetheless, the over water walkway project funding approval is by City Council. PAR 04.01.01 applies to use of Greenway Levy funds for acquisition, not development. Projects are recommended for approval by the Greenway Advisory Board and the Parks and Recreation Advisory Board. Final approval is by the Bellingham City Council in accordance with the Ordinance and Resolution.
118		11/17/10	Unnecessary, superfluous. The bridge is completely unnecessary. The South Bay Trail already exists. If ever there was an utterly wasteful capital project, this is it. We do not need the bridge.	The purpose of the project is to provide public access to the water. The existing trail connection does not meet this objective, because the South Bay Trail does not provide public access to the water.
119		11/17/10	Rigged process. You want to spend \$4 millions of our money and you deliberately do not list tonight's meeting at <a href="http://www.cob.org/calendar">http://www.cob.org/calendar</a> . This is potentially in violation of a number of State laws regarding public input. You have not openly publicized this important hearing.	All notification procedures were followed to adequately publicize the Hearing for the project. The project has also previously been included in a variety of public planning document for which a public process and opportunity for public comment was provided.
120		11/17/10	Ms. Austin sent out an e-mail to all "supporters" of the BPTCAOWW, alerting them to this hearing. At best, this is unethical. At worst, her actions are criminal.	The project engineer sent an email to all members, whether they support the project or not, of the Parks and Recreation Board, the Greenways Committee, and the Waterfront Group email. The email was not sent to the general public. Email is frequently used to update these advisory groups of upcoming public meetings.
121		11/17/10	Where's your conditional use permit under the updated SMP?	The updated SMP has only been approved locally and must be approved by DOE before taking effect. Until that time the 1989 SMP is in effect.

122		11/17/10	<p>The land the bridge is going to is profoundly contaminated, including high-concentrations of TOCs like mercury at subsurface depths----below a few inches. No discussions by officials over the years makes any mention whatsoever of what the public has repeatedly stated is their clear desire: A MTCA B residential cleanup level throughout our waterfront. There are the over 6,400 signatures from the Healthy Bay Initiative----any mention of which is deliberately missing from your so-called "Feasibility" Study. There's plenty of polling data to support this fact. Please reference <a href="http://www.francesbadgett.com/ahealthybay/pages/polls_01.html">http://www.francesbadgett.com/ahealthybay/pages/polls_01.html</a> Again, all such polling data was deliberately left out of your so-called "Feasibility" study. Both the City and the Port of Bellingham have repeatedly stated, sotto voce, that they have no intention whatsoever of cleaning up our waterfront to a MTCA B Residential level, as is desired by the community. (Cf. ILA between COB and POB, the associated EPS document, your own BPCAOWW "Feasibility Study," the so-called "remediation ILA," the insurance agreement with AIG, and statements made by the POB's own lawyer in the court transcripts for Case #06-2-01918-7 (Whatcom Superior Court). Nothing's been contemplated other than a low-permeability landfill cap over the uplands area. Nothing. In other words, we</p>	<p>Any contamination issues will be handled under MTCA which will be completed prior to the start of construction of the over-water walkway. The City's project manager is also managing the MTCA actions on the City's end. This will ensure efficient coordination of the project with MTCA activities. Ecology is overseeing the clean up activities.</p>
123	Julie Guy	11/17/10	<p>I am forwarding Geoff Middaugh's comments to you again . They are spot on and worthy of careful consideration. Bellingham needs to have our waterfront as people accessible and friendly as possible. Over 100 years passed with industrial uses covering the waterfront and keeping the public out. Now is the time to extend the public access. Thank you</p>	Comment noted.

124	Frances Badgett	11/16/10	<p>I'm really puzzled by the urgency of building the overwater walkway to Cornwall Beach when absolutely no cleanup has been slated for those areas, and the new SMP for the waterfront (a process in which I participated for over a year a good three years ago) has not been completed. I'm concerned about the lack of public process, the allocation of \$4 million of Greenways funds, and the use of federal money for this project during our current financial crisis. I am additionally concerned with the unresolved matter of Lummi Nation Treaty rights for this area. This bridge seems like a poor time to use public money for something that has no direct or immediate benefit for the community. Direct public services like the library, neighborhoods, and the police are getting slashed. There is nothing to greet the bridge on the other side except more contamination.</p>	Comment noted.
125		11/16/10	<p>I understand that there is a great deal of impatience in getting "something" started on the waterfront. As I have always stated, and will continue to state, if you do not remove contamination from those areas which are most contaminated (particularly in the uplands—the Chemfix, Caustic Groundwater Plume, and the former RG Haley site) then the area will remain unsuitable for development. There is a mercury deposit close to the area slated for in water supports for this bridge. That danger has not been mitigated.</p>	Comment noted.

126		11/16/10	I am deeply concerned about the lack of notice for this hearing before the Hearing Examiner on Nov. 17th. I understand that the Project Engineer sent an email inviting supporters of the plan to attend, but those who may be in the greater community but who may be interested in attending were not notified. There is no mention of this hearing on the COB website. Please foster a robust public process, postpone the hearing until the public and Lummi Nation can be fully engaged.	The project engineer sent an email to all members, whether they support the project or not, of the Parks and Recreation Board, the Greenways Committee, and the Waterfront Group email. The email was not sent to the general public. Email is frequently used to update these advisory groups of upcoming public meetings.
127	People for Puget Sound	11/15/10	Concerned about structure. While supportive of pedestrian walkways, bike paths and public access linkages there is an alternative approach. Also, please clarify standards.	Project must comply with 1989 SMP (BMC 16.40), City's Critical Areas Ordinance (BMC 16.55), Shoreline Management Act (RCW 90.58). If the project is approved, at the time a building permit is submitted it must also comply with International Building Codes and standards in BMC 16.55.450-460 for Geologically Hazardous Areas.
128		11/15/10	Habitat/wildlife impacts. The bridge will impact habitat – in water vegetation and animals as well as birds. Even if care is taken to align the structure to reduce shading and to use some light-permeable materials, shading is still inevitable and will thus impact eelgrass and other species. The pilings to create the bridge will potentially impact sediment movement in the area. There are concerns about lighting impacts. Finally, this area is part of the critical habitat for listed species under the Endangered Species Act.	The OWW avoids and minimizes impacts to habitat and wildlife and has been designed to implement agency management recommendations that are accepted as BAS in order to mitigate impacts. This information is provided in the staff report beginning on page 14. The area is within critical habitat for listed species under the ESA. Federal permitting agencies such as NMFS and USFWS will be reviewing the project to ensure that the project will not adversely affect those species.

129		11/15/10	Minimize harm. A new overwater structure is not consistent with the concept of mitigation sequencing. The first principle of mitigation sequencing is to avoid harm and the second is to minimize harm. In this case, an alternative could be done, which would satisfy the desire for public access (pedestrian and bike trail) by building an overland elevated structure, which would have significantly less impact on aquatic habitat health.	The purpose of the proposed project is to provide an overwater pedestrian trail to link Boulevard Park to the Cornwall Landing site. This overwater trail would provide a critical link that would connect the City's trail system from Fairhaven to the new Waterfront District. A key element of the project is to provide waterfront access to trail system users in an area where current shoreline access is highly limited due to an existing rail line. Upland trail connections to Boulevard Park to the Cornwall Landing do not meet the project purpose.
130		11/15/10	Tribal access, fishing rights and navigation access. A new overwater structure such as this proposal is in direct conflict with existing rights and regulations.	The SMA intends for a "limited reduction of right of the public in the navigable waters" provided the development "will promoted and enhance the public interest." (RCW 90.58) and on page 19 of the staff report. Issues with Lummi Nation regarding tribal access and fishing rights are in ongoing negotiations.
131		11/15/10	We believe that instead of a bridge over water, an elevated walkway that goes over land between the two park areas would be less impactful to the environment, potentially will be less expensive (no in-water work) and will fulfill the desired ability to create a continuous pathway.	Comment noted.
132	Geoff Middaugh	11/15/10	I am a member and presently chair of the Bellingham Parks and Recreation Advisory Board, and am the chair of the South Hill Neighborhood Association (SHNA) Land Use Committee. These comments represent my personal opinion and do not represent a deliberated position nor voted position of either the PRAB or the SHNA. I am providing these comments to the hearing record, and am requesting approval of the Shoreline Conditional Use Permit (SCUP).	Comment noted.

133		11/15/10	1. Merits and accuracy of the Hearing Record: I would like to say that the basic hearing record presented by the COB staff is thorough and complete. The staff report at Appendix O is a solid, and accurate reflection of the decision focus for the Hearing Examiner, and I believe it to be technically sound. This report accurately reflects the citizens of Bellingham support for the Overwater Walkway. The record is highly technical and over focuses by regulatory necessity on the environmental issues that need to be mitigated and to the extent they can be resolved.	Comment noted.
134		11/15/10	2. Public Support of the OWW. Due to the heavy focus on the environmental issues within the record, let me express what I believe is also important in the record: the overall public support for completing the OWW. The hearing record accurately reflect the continued public discussion and support for this project by the citizens of Bellingham. The record accurately paraphrases the projects human value as providing a unique public access opportunity for citizens outside (and inside) Bellingham and Whatcom county while linking and completing previous projects and planning by the COB. The record accurately represents the economic development that will continue and further result by linking Fairhaven to downtown Bellingham by sea trail, and to the future waterfront development.	Comment noted.

135		11/15/10	<p>3. Technical Sufficiency. If weight and volume were the single criterion, the staff report and the supportive documents would make it seem that the environmental issues are the only factors that are important in this discussion. They are not the only issue meriting consideration. While the environmental effects are important, they are not the sole basis for the decision that needs to be made to complete this project. The environmental effects and the mitigations are solidly developed and addressed by the City in the permitting process. I commend the project staff for their work and for their efforts at keeping me informed about the issues and how they intend to address them.</p>	<p>This project is unique in that strict development and protection standards within the CAO are meant to be applied <u>in addition to</u> the three tenets of the SMA, which are to be balanced equally and include resource protection, public access and preservation of certain areas for water-dependent uses.</p> <p>The Hearing Examiner must issue a decision that complies with all of these regulatory requirements which inherently have the potential to conflict with one another as acknowledged in WAC 173-26-176 (2). The Department of Ecology also has the same responsibility to ensure compliance with both sets of standards as their approval (or further conditioning or denial) is FINAL.</p>
136		11/15/10	<p>4. Decision Criteria of BMC 16.55.200: I have noticed certain public comments have identified specific environmental impacts that they believe are not being appropriately mitigated. The concern is that the COB should consider a "no harm" criterion for their decision on the SCUP. This should not be allowed. The decision criteria of BMC 16.55.200 provides for broad flexibility to addressing less than 100% certainty by the choice of words. The record fully supports that this project has met the criteria by minimizing impacts, avoiding unreasonable threats, demonstrating consistency with the general purposes of the plans, mitigating to the extent practicable, and using the best available science. The COB has met all of these thresholds, and approval is fully supported by the record. I urge the hearing examiner not to be distracted by the allegations of additional real or imagined impacts that are not there, or do not need to be further resolved. (Refer to page 26 of the Staff Report to fully see how the COB has addressed these decision criteria).</p>	Comment noted.

137		11/15/10	5. Restoration: Approval of this project will provide for a broad platform of ecological restoration to an area of the Bay that has been severely impacted as a result of our economic development history. This project is an improvement over our past land uses, and not an impact. This project will make the habitat along the Bay better, and provide for a broader array of desired ecological services, rather than a loss of ecological function. For this restoration component alone, the project should be approved. The staff report and the proposed mitigation actions are realistically based on the current condition of the shoreline (i.e., it's "not natural" condition), the past history of impacting uses, and the necessity to improve the overall shoreline functions as a result.	Comment noted.
138		11/15/10	6. Sufficiency of SEPA/NEPA regulatory compliance. The SEPA/NEPA analysis, the biological assessment and the state and federal permitting processes are carefully coordinated and provided for in this project approval process and record. The delicate job of balancing the complex requirement of all the agencies is generally well done. The unique nation to nation issues that the Lummi Nation has identified are also respectfully addressed. While the public record indicates that everyone's opinions have not been met, the process has	Comment noted.
139	Adrienne Lederer	11/14/10	Supports.	Comment noted.

140	John Blethen	11/14/10	<p>I have sent my letter on. I was a major proponent on the WFF for this overwater project and also was on the Environmental team (two of us) so I also believe that we must do meaningful environmental restoration on the waterfront and identified through public process many ideas. I also served on the last greenways levy where we partially funded this project. I don't believe that this project is in conflict with clearly identified waterfront restoration goals. I am in agreement with the Baykeeper, I would like to see other restoration projects happen but I don't think this first step of re-inviting the community to the water's edge should be held hostage to a clean-up that is coming will have a public process and will address the water's edge.</p>	Comment noted.
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