Attachment B: City of Sumas - Ecology Required and Recommended Changes

The changes in red are required for consistency with the SMA (RCW 90.58) and the SMP Guidelines (WAC 173-26, Part III). Changes in blue are recommended and consistent with SMA (RCW 90.58) policy and the SMP Guidelines (WAC 173-26, Part III). Note that all references to SMP Provisions are based on the proposed SMP numbering and naming conventions.

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Req-1	15.04.025 Authority and Purpose	**15.04.025 Effective Date.** This Program and all amendments thereto shall become effective ~~upon adoption by the City Council and~~ 14 days from the date of approval set forth in the Department of Ecology's written notice of final action.	REQUIRED CHANGE 1: Strike local adoption reference regarding the SMP effective date. We require this change for consistency with RCW 90.58.090(7). The SMP becomes effective 14 days from the date of the department's written notice of final action to the local government.
Req-2 Rec-1	15.04.030 Definitions	FLOODWAY, SHORELINE - Means those portions of a river valley lying streamward from the outer limits of a watercourse ~~floodplain~~ upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodways being identified, under normal condition, ~~circumstances~~ by changes in surface soil conditions or change in types of quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually ~~or vegetation~~; PROVIDED that, floodways shall not include areas protected from flooding by flood control devices maintained or licensed by a government agency. For the purpose of this Program, the general location of the shoreline floodway ~~shall~~ includes those areas within the ordinary high water marks of the Sumas River and Johnson Creek and those adjacent land areas extending to the top of bank of the Sumas River or Johnson Creek. Actual floodway locations shall be determined on a case-by-case basis at the time of permit review in accordance with the above definition.	REQUIRED CHANGE 2: Clarify the jurisdictional extent of floodway may change from the definition's description, based on information required at the time of permitting. This change is required for consistency with WAC 173-26-221(3), flood hazard reduction. These principles and standards apply to actions taken to reduce flood damage or hazard and to uses, development, and shoreline modifications that may increase flood hazards. The most effective means of flood hazard reduction is to prevent or remove development in flood-prone areas. Determining the true extent of the floodway is crucial for decisions relating to shoreline permitting to ensure appropriate implementation of flood hazard reduction provisions of the SMP. RECOMMENDED CHANGE 1: Revise definition to match SMA definition of Floodway. The City has the option to choose either the FEMA mapped floodway or the floodway definition found in RCW 90.58.030(2)(b)(ii). As proposed, the definition is missing key criteria for the case-by-case determination that must be made at the time of permitting.
Req-3	15.04.030 Definitions 15.04.060 Geographic Jurisdiction	SHORELANDS - Means those lands extending landward for 200 feet in all directions, measured on a horizontal plane, from the ordinary high water mark of the Sumas River or Johnson Creek; plus those lands extending landward for 200 feet in all directions, measured on a horizontal plane, from the shoreline floodway of the Sumas River or Johnson Creek; plus those wetlands associated with any of these water bodies, including but not limited to those located within the 100-year floodplain. **15.04.060 Geographic Jurisdiction** The provisions of this Program shall apply to all shoreline areas within the corporate limits of the City of Sumas. The location and extent of known shoreline jurisdiction are shown on	REQUIRED CHANGE 3: Expand inclusion of shorelands to include all potential waterbodies in the definition of "shorelands" in 15.04.030 and description of the shoreline geographic jurisdiction in 15.04.060. This change is required for consistency with the shoreland area designation criteria located in WAC 173-22-040(3)(c) related to wetlands associated with streams. The added language recognizes that there are factors other than their physical location within a floodplain that must be considered in classifying shoreline associated wetlands. Furthermore, we require this change for consistency with WAC 173-26-191(2)(a)(ii)(A), which states the SMP regulations need to "be sufficient in scope and detail to ensure the implementation of the

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		the Official Shoreline Map. Shoreline jurisdiction includes the water areas of the Sumas River and Johnson Creek, together with the lands underlying them, plus those lands within 200 feet of the ordinary high water mark of the above water bodies, plus those lands within 200 feet of the shoreline floodway of the above water bodies, plus those wetlands associated with any of the above water bodies, including but not limited to those located within the 100-year floodplain.	Shoreline Management Act, statewide shoreline management policies of this chapter, and local master program policies". These changes aim to cover all potential shorelands with the city.
Rec-2	15.04.030 Definitions 15.04.090(A)(1) Exempt Activities	SUBSTANTIAL DEVELOPMENT - Means any development of which the total cost or fair market value exceeds $8,504~~7,047~~.00, or as this amount is hereafter adjusted for inflation pursuant to RCW 90.58.030(3)(e), or any development which materially interferes with the normal public use of the water or shorelines of the state; EXCEPT that the classes of development listed under Section 15.04.090(A) (1) through (14) shall not be considered substantial developments. Any development of which the total cost or fair market value, whichever is higher, does not exceed eight thousand five hundred and four ~~seven thousand and forty-seven~~ dollars or as this dollar value is adjusted for inflation pursuant to RCW 90.58.030(3)(e), if such development does not materially interfere with the normal public use of the water or shorelines of the state. For the purposes of determining whether or not a shoreline substantial development permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030 and this master program. The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;	RECOMMENDED CHANGE 2: Update the cost threshold/dollar in the definition of "Substantial development" in 15.04.030 and 15.04.090(A)(1) for consistency and accuracy. The updated amount applies in the City's shoreline regardless, but we recommend the City's SMP match the correct amount for better implementation. Ecology recommends revising the "Substantial development" definition in 15.04.030 to update the cost threshold/dollar amount, as the new value became effective on July 1, 2022. Update the threshold/dollar amount listed in 15.04.090(A)(1) to ensure consistency with the definition.
Req-4 Req-5 Rec-3	15.04.080(D) Application to Development, Use and Modification	D. Areas and uses in those areas that are under exclusive federal jurisdiction as established through federal or state statutes are not subject to the jurisdiction of chapter 90.58 RCW. All nonfederal developments and uses undertaken on federal lands and on lands subject to nonfederal ownership, lease, or easement, even though such lands may fall within the external boundaries of a federal ownership are subject to this Chapter. Direct federal agency activities affecting the uses or resources subject to the Act are subject to review for consistency with the Shoreline Management Act by the WA state department of Ecology through the Washington state coastal zone management program. ~~Direct federal agency activities affecting the uses or resources subject to the Act must be consistent to the maximum extent practicable with the enforceable provisions of the Act and with this master program as required by WAC 173-27-060.~~	REQUIRED CHANGE 4: Strike proposed language and insert Ecology's recommended language from checklist item 2017f in 15.04.080(D). We require this change to clarify areas or uses occurring in shoreline jurisdiction, but under exclusive federal jurisdiction, are not subject to the SMA, pursuant to WAC 173-22-070, WAC 173-27-060 and periodic checklist item 2017f. The Recommendation in this section clarifies nonfederal actions on federal lands and the applicability of the WACZM program for federal actions consistent with WAC 173-27-060. These do not need to be included in the SMP as they are applied under the authorities of the WACZM program not the SMP.

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	15.04.080(E) Application to Development, Use and Modification	E. This program shall not apply to: 1. Pursuant to RCW 90.58.355, remedial ~~A~~activities undertaken to comply with a United States Environmental Protection Agency Superfund-related or a Washington Department of Ecology order pursuant to the Model Toxics Control Act ~~(such as the Swift Creek Sediment Management Action Plan),~~ chapter 70.105D RCW.~~, or a Department of Homeland Security order that specifically preempts local regulations in the findings of the order.~~ 2. Boatyard improvements to meet NPDES permit requirements. Pursuant to RCW 30.58.355, any person installing site improvements for stormwater treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system stormwater general permit. 3. WSDOT facility maintenance and safety improvements. Pursuant to RCW 90.58.356, Washington State Department of Transportation projects and activities meeting the conditions of RCW 90.58.356 are not required to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other local review.	REQUIRED CHANGE 5: Add reference to RCW 90.58.355 and strike language regarding Department of Homeland Security exception in 16.04.080(E). This change is necessary for consistency with WAC 173-27-044 and periodic checklist item 2017c, clarifying requirements to obtain shoreline permits, or other review conducted by a local government to implement the SMA do not apply to the listed actions. To the best of our knowledge, the Swift Creek Sediment Management Plan doesn't apply to shorelines of the state. Furthermore, the SMP does not need to include exceptions to Department of Homeland Security orders, as federal exemptions apply regardless of inclusion. RECOMMENDED CHANGE 3: Insert boatyard improvement and WSDOT facility maintenance and safety improvement exceptions in 15.04.080(E). We recommend this change for consistency with WAC 173-27-044 and periodic checklist item 2017c. Inclusion of these exceptions addresses all exceptions found in WAC 173-27-044, ensuring consistent implementation.
Req-6	5.8.2.6 Urban Conservancy-Wetland Designation Criteria	(6) The area is within the delineated edges of a wetland associated with the Sumas River or Johnson Creek~~.~~, including but not limited to those located within the 100-year floodplain.	REQUIRED CHANGE 6: See rationale for required change 3.
Rec-4	15.04.350 Shoreline Environment Designations Shoreline Residential – Conditional Uses 15.04.390 Shoreline Environment Designations	**15.04.350 Shoreline Residential Environment - Conditional Uses.** The following conditional uses may be permitted within the Shoreline Residential Environment by the City Council upon application and in accordance with Section 15.04.180: A. Agriculture. B. Water-oriented Commercial Development. C. Shoreline flood protection. D. Shoreline Stabilization. E. Solid waste disposal, limited to transfer stations. F. Stormwater management and conveyance facilities within Category II wetland buffers. **15.04.390 Urban Conservancy Environment – Conditional Uses.** The following conditional uses may be permitted within the Urban Conservancy Environment by City Council upon application and in accordance with Section 15.04.180 of this Chapter: A. Aquaculture.	RECOMMENDED CHANGE 4: Require a conditional use permit for stormwater management and conveyance facilities within Category II wetland buffers in 15.04.350 and -390. This change inserts the conditional use requirement for stormwater management and conveyance facilities within Category II wetland buffers from 15.04.475(D) and (E) into the listed conditional uses for the Shoreline Residential and Urban Conservancy Environments. This recommendation is intended to improve implementation of 15.04.475(D) and (E) which both include allowances for consideration of stormwater management facilities within a Category II wetland buffer through a conditional use permit.

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	Urban Conservancy – Conditional Uses	B. Boat ramps. C. Docks. D. Shoreline flood protections. E. Shoreline stabilization. F. Solid waste disposal, limited to transfer stations. G. Stormwater management and conveyance facilities within Category II wetland buffers.	
Req-7 Req-8 Rec-5	15.04.420 Shoreline Environment Designations Urban Conservancy-Wetland Environment – Permitted Uses. 15.04.430 Urban Conservancy-Wetland Environmental – Conditional Uses	**15.04.420 Urban Conservancy-Wetland Environment – Permitted Uses** Permitted uses in the Urban Conservancy-Wetland Environment include the following: ~~A.~~ A. Agriculture, limited to ongoing agricultural activities consistent with state regulations. ~~B. Industrial development, outside of Conservancy wetlands, when measures have been taken to avoid, minimize and mitigate impacts to wetlands and where the development results in no net loss of shoreline ecological functions and processes.~~ ~~C. Landfill and excavation in association with approved development.~~ ~~D.~~ B. Outdoor advertising and signs. ~~E.~~ C. Recreational development- passive recreation facilities consistent with Subsection 15.04.475(F). ~~F. Residential development, except in Conservancy wetlands.~~ ~~G.~~ D. Shoreline habitat and natural systems enhancement projects. ~~H.~~ E. Transportation, pursuant to Subsection 15.04.475(C). ~~I.~~ F. Utilities, pursuant to Subsection 15.04.475(B). **15.04.430 Urban Conservancy-Wetland Environment – Conditional Uses.** A. Aquaculture, outside of Conservancy wetlands. B. Commercial development. C. Industrial development, outside of Conservancy wetlands, when measures have been taken to avoid, minimize and mitigate impacts to wetlands and where the development results in no net loss of shoreline ecological functions and processes. D. Landfill and excavation in association with approved development. E. Docks. F. Recreational development not identified as permitted pursuant to Section 15.04.420 on existing lots of record where measures have been taken to avoid, minimize and mitigate impacts to wetlands and where the development results in no net loss of shoreline ecological functions and processes. G. Residential development, except in Conservancy wetlands. H. Shoreline flood protection. I. Shoreline Stabilization.	REQUIRED CHANGE 7: Strike industrial development, landfill and excavation, and residential development from permitted uses in the Urban-Conservancy-Wetland Environment in 15.04.420 and add to the listed conditional uses for the Urban-Conservancy-Wetland Environment in 15.04.430. WAC 173-26-221 establishes that Ecology's role in reviewing SMP provisions for critical areas is based upon the guidelines in WAC 173-26 and that the objective of SMP critical areas provisions shall be the protection of existing ecological functions and ecosystem-wide processes. Ecology finds that the provisions contained within 15.04.420 and 15.04.430 do not provide adequate protection for Urban-2 wetlands because they allow wetland impacts without proper application of the full range of mitigation sequencing options and irrespective of the use priorities of the SMA. As modified, by the required changes proposed, the provisions will protect wetland and shoreline functions while identifying the shoreline conditional use process as the preferred mechanism for allowing the uses, when appropriate. REQUIRED CHANGE 8: List the filling of Urban-2 wetlands as a conditional use consistent with Section 15.04.430 in the Wetland Performance requirements of 15.040.473(A)(5), strike the allowance for filling of Category III or IV wetland designated Urban-2 in 15.04.473(E)(1), and require a shoreline variance for the placement of fill waterward of the ordinary high water mark or in a wetland, except where directly associated with ecological restoration or authorized use in 15.04.540(D)(2)(g). These changes are necessary for consistency with the wetland protection standards in WAC 173-26-221 and to ensure no net loss pursuant to WAC 173-26-186(8)(b)(i). This change also identifies the shoreline variance process as the required mechanism for relief, when appropriate per WAC 173-27-170.

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		J. Solid waste disposal, limited to transfer stations. K. Stormwater management and conveyance facilities within Category II wetland buffers.	RECOMMENDED CHANGE 5: Require a conditional use permit for stormwater management and conveyance facilities within Category II wetland buffers in 15.04.430. This change inserts the conditional use requirement for stormwater management and conveyance facilities within Category II wetland buffers from 15.04.475(D) and (E) into the listed conditional uses for the Urban Conservancy-Wetland Environment.
	15.04.473(A)(5) Wetlands – Performance requirements	5. Conservancy and Urban-2 Wetlands. The City has identified and mapped certain high-value wetlands that have been prioritized for increased protection under this Program. These high-value wetlands are identified as Conservancy on the Official Shoreline Map. Other wetlands not designated Conservancy are shown as Urban-2 on the Official Shoreline Map. Wetlands not shown on the Official Shoreline Map that are subsequently identified shall be designated Urban-2 unless they meet all of the following designation criteria: Category I or II, habitat function score of 6 or more, and one-quarter of an acre or larger in size. Other provisions of this Master Program not withstanding, the filling of Conservancy wetlands shall require approval of a Variance. The filling of Urban-2 wetlands shall require a conditional use permit consistent with Section 15.04.430.	
	15.04.473(E)(1) Buffer Reductions	1. Buffer Reduction Based on Mitigation. Where compensatory mitigation is provided, standard buffers may be reduced, provided that the standard buffer is not reduced by more than 25 percent for Category II wetlands, and not by more than 40 percent for Category III and Category IV wetlands; provided that, standard buffers shall not be reduced by more than 25 percent for wetlands having a habitat functions score of over 4 on the wetland rating form. Reduction of the standard buffer of a Category I wetland is prohibited. Buffer reductions shall only be permitted when all impacts to wetlands and their required buffers are compensated at the expense of the applicant through implementation of a mitigation plan prepared by a qualified wetland biologist consistent with Section 15.04.474(G), below. Except as otherwise allowed pursuant to this Chapter, filling of any wetland, ~~except a Category III or IV wetland designated Urban-2 on the Official Shoreline Map,~~ or reduction of a wetland buffer by more than the percentages stated above, shall require approval of a shoreline variance. Buffer reductions up to one-half of the percentages identified above may be authorized through approval of a shoreline substantial development permit. Buffer reductions greater than one-half of but not exceeding the percentages identified above may be authorized through a shoreline conditional use permit.	
	15.04.540(D)(2)(g) Specific Shoreline Modification Regulations	g. In order to assure consistency with this program and with the Act, no landfill or excavation shall be undertaken within the shoreline unless the responsible person has first obtained either a shoreline permit or a shoreline statement of exemption as appropriate; provided, that the placement of fill waterward of the ordinary high water mark or in a wetland, except where directly associated with ecological restoration or authorized use, shall require approval of a ~~conditional use~~ shoreline variance permit.	

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Req-9 Req-10 Req-11	15.04.470(A) Critical Areas. 15.04.470(C)(1) Floodplains.	**A. Generally.** Critical Areas include wetlands, fish and wildlife habitat conservation areas, frequently flooded areas, aquifer recharge areas and geologically hazardous areas. Where not specifically addressed within this Chapter, either directly or through reference, regulation of critical areas within shoreline jurisdiction shall be pursuant to applicable provisions codified in Chapter 15.20 SMC adopted by Ordinance No. 1400 in 2004 and amended by Ordinance No. 1687 in 2016; PROVIDED that, in the event of conflict between provisions contained in the Chapters listed below, the more restrictive provision shall apply; provided that the following sections of Chapter 15.20 SMC, shall not apply to critical areas within shoreline jurisdiction: 1. 15.20.050 Applicability and jurisdiction. 2. 15.20.070 Authorization required. 3. 15.20.090 Exemption from critical area review requirements. 4. 15.20.100 Waiver for subsequent approvals. 5. 15.20.180 Application and fees. 6. 15.20.190 Threshold determination. 7. 15.20.450 Reasonable use exceptions. 8. 15.20.460 Enforcement. 9. 15.20.470 Violations and penalty. C. Floodplains. Development within portions of the 100-year floodplain that are also within shoreline jurisdiction shall be as follow: Development on shorelands within the floodplain shall comply with the provisions of this Program as well as those codified in Chapter 14.30 SMC, Flood Damage Prevention, adopted through Ordinances Nos. 1035 in 1991, 1089 in 1993, 1101 in 1993, 1176 in 1996, 1216 in 1997, 1373 in 2003, 1376 in 2003, 1399 in 2004, ~~and~~ 1738 in 2018, and 1783 in 2021, or as amended to ensure continued consistency with the National Flood Insurance Program, as reviewed by Ecology, which are incorporated as part of this Program by reference; PROVIDED that, in the event of a conflict between the provisions contained in each, the more restrictive provision shall apply.	REQUIRED CHANGE 9: Update specific, dated edition of the City's Flood Damage Prevention Ordinance under 15.04.470(C)(1). The City recently updated their frequently flooded areas provisions of Chapter 15.20 (Ordinance 1783 in October 2021) and flood hazard regulations in Chapter 14.30. This occurred during the City's SMP periodic review process but was not captured in the final locally adopted SMP critical areas incorporation by reference section in 15.04.470. The City found these amendments necessary to ensure continued consistency with the National Flood Insurance Program and have requested that the updated provisions be included as a required change within this conditional approval. Ecology reviewed Chapter 15.20 and find these provisions remain consistent with the SMA and implementing rules. A change is necessary for consistency with WAC 173-26-191(2)(b) which allows SMPs to include other policies and regulations by referencing a specific, dated edition. REQUIRED CHANGE 10: Provide resolution for when provisions within the Critical Areas Ordinance conflict with those found elsewhere in the SMP. A change is necessary for consistency with RCW 90.58.610 and RCW 36.70A.480, which govern the relationship between SMPs and CAOs. REQUIRED CHANGE: Exclude sections of CAO that are inconsistent with the SMA. Changes are necessary for consistency with the SMA, WAC 173-26 and WAC 173-27. • Chapter 15.20 contains several sections that do not comply with the permitting framework established in RCW 90.58.140 and WAC 173-27. For example, these include 15.20.090, exemption from critical area review requirements [WAC 173-27-040 lists exemptions in shoreline jurisdiction], and 15.20.450, reasonable use exceptions, [where provisions interfere with reasonable use, relief is granted through a shoreline variance].
Rec-6 Rec-7	15.04.470(D) and -(F) Critical Areas.	**~~B~~C. Wetlands** The regulation of wetlands within shoreline jurisdiction shall be pursuant to Sections 15.04.471 through 15.04.475 of this Master Program. **~~C~~D. Floodplains** Development within portions of the 100-year floodplain that are also within shoreline jurisdiction shall be as follows:	RECOMMENDED CHANGE 6: Combine SMC 15.04.470(D) and 15.04.470(F) Fish and Wildlife Habitat Conservation Areas include critical freshwater habitat found in rivers and streams. We recommend combining the critical area regulations into the same provision to reflect that HCAs include rivers and streams. This revision aligns with the City's definition of "critical areas" which does not include a separate distinction for rivers and streams, and Chapter 15.20.320 of the City's Critical Areas Ordinance.

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		1. Development on shorelands within the floodplain shall comply with the provisions of this Program as well as those codified in Chapter 14.30 SMC, Flood Damage Prevention, adopted through Ordinance Nos. 1035 in 1991, 1089 in 1993, 1105 in 1993, 1176 in 1996, 1216 in 1997, 1373 in 2003, 1376 in 2003, and 1399 in 2004, and 1738 in 2018, or as amended, which are incorporated as part of this Program by reference; PROVIDED that, in the event of conflict between the provisions contained in each, the more restrictive provision shall apply. **~~D~~E. ~~Rivers and streams – Critical Freshwater Habitat.~~Fish and Wildlife Habitat Conservation Areas.** ~~The regulation of rivers and streams within shoreline jurisdiction shall be pursuant to Sections 15.04.476 through 15.04.479 of this Master Program.~~ The regulation of fish and wildlife habitat conservation areas within shoreline jurisdiction shall be pursuant to Sections 15.04.476 through 15.04.479 of this Master Program. **~~E~~F. Steep Slopes** A steep slope can be defined as a slope having a slope gradient from top of toe of 35 percent or greater with a vertical relief of 10 feet or more~~exceeding 40 percent and a minimum of 20 feet in height~~. The following regulations shall apply to all uses and developments potentially affecting shoreline bluffs and steep slopes. 1. All development shall comply with the applicable provisions set forth in Chapter 15.20 SMC adopted by Ordinance 1400 in 2004 and amended by Ordinance No. 1687 in 2016. **~~F. Fish and Wildlife Habitat Conservation Areas.~~** ~~The regulation of fish and wildlife habitat conservation areas within shoreline jurisdiction shall be pursuant to Sections 15.04.476 through 15.04.479 of this Master Program.~~	RECOMMENDED CHANGE 7: Revise description of steep slope in 15.04.470(F) to match description in the Critical Areas Ordinance (CAO) adopted by reference. This change eliminate confusion over what qualifies as a steep slope. The existing description in the SMP does not match the description in the CAO.