Attachment B: Whatcom County – Final Ecology Required Changes

The changes in red are required for consistency with the SMA (RCW 90.58) 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.

ITEM	PROVISION	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)	RATIONALE
REQ-1	**WCC 16.16.720 Habitat Conservation Areas Use and Modification**	4. If the current stand can exceed the riparian protection that could be expected based on site potential, then additional activity may be allowed provided the following performance standards can be met. ~~For Type S streams, an alternative method may be utilized to allow limited timber harvest within the outer 100 feet of a buffer.~~ Add the following provision to WCC 16.16.720.P – Timber Removal: 5. The provisions of WCC 16.16.720.P above shall not apply within shoreline jurisdiction	Required Change – The change is required for consistency with WAC 173-26-201(2)(a) since the source of the scientific and technical information that supports the provision could not be identified. The provisions also allow for "alternative methods" to allow timber harvest within Type S Streams but provides no detail on what these alternative methods may be. SMP regulations must be sufficient in scope and detail to ensure proper implementation (WAC 173-26-191(2)(a)(ii)(A) and result in no net loss of shoreline ecological functions. A change is required to ensure this new critical area provision, that allows removal up to 50% of timber within regulatory buffer areas, does not apply within shoreline jurisdiction.
REQ-2	**WCC 23.40.020.D.2 Common-Line Setback for Single-Family Residences**	~~2. Common-Line Setback for Single-Family Residences. For the purpose of accommodating views to be adequate and similar, but not necessarily equivalent, for new residences while protecting predominant shoreline views of the water from legally existing primary residences in developed residential areas, the shoreline buffer (setback) may be modified for primary residential structures in the Urban, Shoreline Residential, and Rural environments (only), consistent with the following. The presence of nearby shacks, sheds, or dilapidated structures does not constitute the existence of a residence, nor can such structures be used to determine a common-line setback.~~ ~~a. Where there are legally established single-family residential primary structures within 50 feet on both sides of the proposed residence, the setback shall be determined as the greater of either:~~ ~~i. A common line drawn between the nearest corners of the foundation closest to the sideyard property line of the proposed residence to each adjacent residence, or~~ ~~ii. A common line calculated by the average of both adjacent residences' existing setbacks.~~ ~~b. Where there is a legally established single-family residential primary structure within 50 feet on only one side of the proposed residence, the common line setback shall be determined as the greater of either:~~ ~~i. A common line drawn between nearest corner of the foundation closest to the sideyard property line of the proposed residence to the adjacent residence and the nearest point of the standard buffer on the adjacent vacant lot, or~~ ~~ii. A common line calculated by the average of the adjacent residence's setback and the standard buffer for the adjacent vacant lot.~~ ~~c. When the use of a common-line setback is allowed, compliance with buffer width reduction and mitigation pursuant to WCC 23.30.010 (Ecological Protection) shall be required.~~	Required Change – This change removes the common-line setback standard to avoid confusion with the existing language at 23.40.020.D.2.c which requires compliance with the ecological protection standards in WCC 16.16. This includes WCC 16.16.640.C.1.c and WCC 1616.740.C.1.c which limits reduction of standard buffers to 25%. According to Whatcom County staff, requiring compliance with the ecological protection standards in WCC 16.16 is intended to limit common-line setback reductions to 25% of the standard buffer widths consistent with the sections cited above. The SMP Guidelines require that shoreline master programs be sufficient in scope and detail to ensure proper implementation [WAC 173-26-191(2)(a)(ii)(A)]. In this case, the common-line setback provisions in 23.40.020.D.2 are confusing, as they read as though a reduction can be achieved simply by drawing a line between adjacent structures and buffers on vacant lots. The reader must go to 16.16 to find that such reductions are limited to 25% percent of the standard buffer. If application of the common-line results in the same setback reductions allowed per WCC 16.16.640.C.1.c

		~~d. In no case shall development be located waterward of the common-line setback or a minimum of 50 feet from the ordinary high water mark.~~ ~~e. The lot shall not be subject to landslide hazard areas, or riverine or coastal hazard areas or associated buffers (see WCC 16.16.310).~~	and 16.16.740.C.1.c, striking this section will avoid appeals and lead to greater consistency of implementation.
REQ-3	**WCC 23.50.020.F.2.b.iv Nonconforming Structures**	2. The enlargement or expansion of single-family residences or normal appurtenances greater than the constrained lot provisions of WCC 23.40.170(C) may be approved once during the life of the structure (100 years); provided, that the following conditions are met: a. The existing structure must be located landward of the ordinary high water mark. Building footprint enlargement or expansion: i. Shall not increase the total building footprint by more than 500 square feet. ii. Shall be landward or lateral of the existing footprint. iii. Shall occur on previously impacted impervious surface. iv. Shall not occur waterward of the common line setback as follows: ~~described in WCC 23.40.020 (Shoreline Bulk Provisions).~~ A. Where there are legally established single-family residential primary structures within 50 feet on both sides of the proposed residence, the setback shall be determined as the greater of either: 1. A common line drawn between the nearest corners of the foundation closest to the sideyard property line of the proposed residence to each adjacent residence, or 2. A common line calculated by the average of both adjacent residences' existing setbacks. B. Where there is a legally established single-family residential primary structure within 50 feet on only one side of the proposed residence, the common line setback shall be determined as the greater of either: 1. A common line drawn between nearest corner of the foundation closest to the sideyard property line of the proposed residence to the adjacent residence and the nearest point of the standard buffer on the adjacent vacant lot, or 2. A common line calculated by the average of the adjacent residence's setback and the standard buffer for the adjacent vacant lot. v. Shall be accompanied by enhancement of an area equivalent to the enlargement or expansion if the total building footprint increases by more than 250 square feet. If enhanced through planting, the Director shall require a vegetation management plan consistent with WCC 23.30.040 (Vegetation Management). vi. The property has not previously received a shoreline exemption under the provisions of the nonconforming or constrained lot.	Required Change – This change is needed to define the common-line setback for the purposes of implementing WCC 23.50.020.F.2.b.iv as a result of REQ-2 above.