

ORDINANCE NO. 2509

AN ORDINANCE OF THE CITY OF ENUMCLAW, KING COUNTY, WASHINGTON, ADOPTING THE CITY OF ENUMCLAW SHORELINE MASTER PROGRAM, INCLUDING THE ACCOMPANYING GOALS AND POLICIES, ENVIRONMENT DESIGNATIONS, REGULATIONS, RESTORATION PLAN AND CUMULATIVE IMPACTS ANALYSIS; ADDING A NEW CHAPTER 15.36 AND AMENDING CHAPTER 19.02 OF ENUMCLAW MUNICIPAL CODE; AND AMENDING THE COMPREHENSIVE PLAN, FILE NO. 0803

WHEREAS, The Washington Shoreline Management Act (RCW 90.58, referred to herein as "SMA") recognizes that shorelines are among the most valuable and fragile resources of the state, and the state and local government must establish a coordinated planning program to address the types and effects of development occurring along shorelines of state-wide significance; and

WHEREAS, the City of Enumclaw is required to adopt a shoreline master program ("SMP") pursuant to the SMA and WAC 173-26; and

WHEREAS, there has been substantial public participation with respect to the new SMP in the form of mailings, published notice, technical review committee, planning commission public meetings and an open house for property owners and the public; and

WHEREAS, on June 23, 2011, the Planning Commission held a public hearing on the SMP consistent with WAC 173-26-100, at which time members of the public had the opportunity to present testimony and other evidence in favor of or against the proposed SMP; and

WHEREAS, on June 23, 2011, considered public testimony and other evidence and recommended adoption of the SMP; and

WHEREAS, on December 7, 2009, the City's SEPA responsible official issued a Determination of Non-Significance for the Shoreline Master Program, and on August 17, 2011, issued an addendum to the DNS; and

WHEREAS, the City Council considered the Planning Commission recommendation related to the SMP at its July 11, 2011 and September 12, 2011 meetings; and

WHEREAS, on September 12, 2011, the City Council adopted resolution No. 1431, "Intent to Adopt City of Enumclaw Shoreline Master Program", and directed staff to forward the SMP to the Department of Ecology; and

WHEREAS, in accordance with WAC 173-26-100 and RCW 36.70A.106, a notice of intent was transmitted to the Washington State Department of Commerce on July 1, 2011; and

WHEREAS, a notice of intent to adopt was filed with the Washington State Department of Ecology on October 13, 2011 as required by RCW 90.58.090; and

WHEREAS, the State Washington State Department of Ecology is authorized under the SMA to approve, deny or propose modifications to the City's SMP; and

WHEREAS, on May 7, 2012, the Washington State Department of Ecology approved the SMP with minor changes; and

WHEREAS, the City Council adopts the Findings and Conclusions of the Washington State Department of Ecology; and

WHEREAS, the City Council does agree with the proposed changes, and said changes have been made Exhibit A to this ordinance; and

WHEREAS, in order to implement the SMP, it must be adopted and codified;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ENUMCLAW, KING COUNTY, WASHINGTON DOES HEREBY ORDAIN AS FOLLOWS:

Section 1: The City Council makes the following findings:

- The City has met all statutory requirements necessary to adopt the SMP; and
- The SMP is consistent with and implements the Shoreline Management Act (RCW 90.58) and the Growth Management Act (RCW 36.70A); and
- The City council concludes that the SMP is consistent with and meets the Guidelines established under WAC Chapter 173.26; and
- The SMP will result in “no net loss” in shoreline ecological function relative to the baseline due to its implementation and will ultimately produce a net improvement in shoreline ecological function.

Section 2: The City Council hereby adopts the City of Enumclaw Shoreline Master Program as set forth in Resolution 1431 and hereby incorporated by reference and also adopts the changes required by the Washington Department of Ecology approval letter dated May 7, 2012, Exhibit A.

Section 3: A new Chapter 15.36 *Shoreline Master Program* is hereby added to Enumclaw Municipal Code, as set forth in Exhibit B attached to this ordinance and incorporated by reference.

Section 4: Section 19.02.020 *Applicability, Regulated Activities, and Exempt Activities* is hereby amended as set forth in Exhibit C attached to this ordinance and incorporated by reference.

Section 5: Section 15.06.070 *Appeals* is hereby amended as follows (deleted text is ~~struck~~, added text is underlined):

15.06.070 Appeals.

Any action (not recommendation) of the administrator (other than Type I permit decisions – Chapter 15.18 EMC and Shoreline Permits – Chapter 15.36) or design review board may be appealed to the hearing examiner by submitting a written appeal to the city clerk within 14 days of the action. The

fee for an appeal shall be as set by resolution. The hearing examiner may hold a hearing on the appeal (Chapter 15.13 EMC). Any hearing examiner decision involving a Type III permit may be appealed (closed record) to the city council with the exception of variances. Reference EMC 15.36.040 for appeals of shoreline permits.

Section 6: New Section 15.10.015 is hereby added to read as follows:

15.10.015 Non-Conforming Uses and Structures in Shorelines.

Non-conforming uses and structures within shoreline jurisdiction must also comply with EMC 15.36.070.

Section 7: Section 15.30.060 *Permit Expiration* is hereby amended as follows (deleted text is ~~struck~~, added text is underlined):

15.30.060 Permit expiration.

A. This section applies to all permits except shoreline permits pursuant to EMC 15.36, and those based in the International Building Code and the International Residential Code which have their own expiration provisions.

B. Permits shall expire two years after the date of issuance if substantial progress has not been made toward realizing the permitted use or project, or within five years if construction has not been completed.

C. The body charged with granting the permit may extend the date of permit expiration upon request by the applicant prior to said permit's expiration.

Section 8: Section 15.34.010 *Development Regulations Subject to Variance* is hereby amended as follows (deleted text is ~~struck~~, added text is underlined):

15.34.010 Development regulations subject to variance.

A. The hearing examiner may grant a variance to any of these development regulations except for EMC 15.36 (Shoreline Master Program) and except those governing administrative procedures or permitted uses.

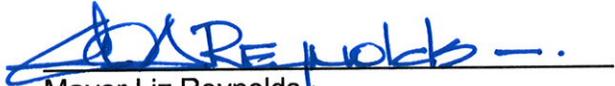
B. The power to grant variances does not extend to use regulations, because the flexibility necessary to avoid results inconsistent with the objectives of the zoning ordinance is provided by the conditional use process. The hearing examiner shall not grant a variance which has the effect of amending the zoning ordinance.

Section 9: The goals and policies of the SMP as set forth in Resolution 1431 are hereby incorporated as an element of the City's Comprehensive Plan.

Section 10: If any provision of this ordinance is determined to be invalid or unenforceable for any reason, the remaining provisions shall remain in force and effect.

Section 11: This ordinance shall be in force and take effect five (5) days after passage, approval and publication as required by law.

DONE IN REGULAR AND OPEN SESSION this 25 day of June, 2012.



Mayor Liz Reynolds

INTRODUCED: 6-11-2012
PASSED: 6-25-2012
APPROVED: 6-26-2012
PUBLISHED: 7-4-2012

ATTESTED:



Meredith Shirey
City Clerk

APPROVED AS TO FORM:



Michael J. Reynolds
City Attorney



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

May 7, 2012

The Honorable Liz Reynolds, Mayor
City of Enumclaw
1339 Griffin Avenue
Enumclaw, WA 98022

**Re: City of Enumclaw Comprehensive Shoreline Master Program Update –
Conditional Approval, Resolution Number 1431**

Dear Mayor Reynolds:

I would like to take this opportunity to commend the city of Enumclaw (City) for its efforts in developing the proposed comprehensive Shoreline Master Program (SMP) Update. It is obvious that a significant effort was invested in this update by your staff and engaged community. The SMP will provide a framework to guide development and habitat restoration in the City's shoreline along Boise and Newaukum Creeks. We applaud the City's "pre-designation" of anticipated future annexation areas. This improves predictability for all concerned regarding future incorporation of these areas.

As we have already discussed with your staff, the Washington State Department of Ecology (Ecology) has identified specific changes necessary to make the proposal approvable. These changes are detailed in Attachment B. Ecology's findings and conclusions related to the City's proposed SMP Update are contained in Attachment A.

Pursuant to RCW 90.58.090 (2) (e), at this point, the City may:

- Agree to the proposed changes, or
- Submit an alternative proposal. Ecology will then review the alternative(s) submitted for consistency with the purpose and intent of the changes originally submitted by Ecology and with the SMA.

Final Ecology approval will occur when the City and Ecology agree on language that meets statutory and guideline requirements.

The Honorable Liz Reynolds
May 7, 2012
Page 2

Please provide your written response within 30 days to the Director's Office at the following address:

WA State Department of Ecology
Attention: Director's Office
PO Box 47600
Olympia, WA 98504-6700

Ecology appreciates the dedicated work that you, the City Council, Community Development Department staff (Director Erika Shook), the Planning Commission and the Shoreline Advisory Committee have invested into the Shoreline Master Program Update.

Thank you again for your efforts. We look forward to concluding the SMP Update process in the near future. If you have any questions or would like to discuss the changes identified by Ecology, please contact our Northwest Regional Planner, Joe Burcar, at Joe.Burcar@ecy.wa.gov / (425) 649-7145.

Sincerely,



Ted Sturdevant
Director

Enclosures

By certified mail [7006 2760 0000 7716 6397]

cc: Joe Burcar – Ecology, SEA Program, Northwest Regional Office
Erika Shook, city of Enumclaw
Peter Skowlund – Ecology, SEA Program, Lacey Headquarters
Geoff Tallent – Ecology, SEA Program, Northwest Regional Office

**ATTACHMENT A: FINDINGS AND CONCLUSIONS -
COMPREHENSIVE UPDATE TO THE CITY OF ENUMCLAW SHORELINE MASTER PROGRAM**

SMP Submittal October 13th, 2011¹, Resolution No. 1431

Prepared by Joe Burcar, on March 11th, 2012

BRIEF DESCRIPTION OF PROPOSED AMENDMENTS:

The City of Enumclaw (City) submitted to Ecology a comprehensive amendment to their Shoreline Master Program (SMP) to comply with the Shoreline Management Act (SMA) at RCW 90.58 and SMP Guidelines requirements at WAC 173-26 (Part Three). The updated master program submittal contains locally tailored shoreline management policies, regulations, environment designation maps, administrative provisions, and portions of the City's Critical Areas Regulations applicable to shoreline projects as described within section 5.2.1 and Appendices A, B, C, D, E, F and G of the updated SMP.

FINDINGS OF FACT

Need for amendment: The proposed amendment is needed to comply with the statutory deadline for comprehensive update to local Shoreline Master Programs pursuant to RCW 90.58.100. The City has submitted to Ecology all of the required materials listed in WAC 173-26-110. According to the City, a 2005 annexation of former King County areas containing Boise and Newaukum Creeks (*Shorelines of the State*), required that the City continue to implement King County's Shoreline Master Program pursuant to WAC 173-26-160, until a new SMP is developed and approved by Ecology (Landau Associates, 2011). This comprehensive update is intended to replace the City's existing SMP in its entirety and will provide a Master Program that reflects current shoreline conditions, as recognized in RCW 90.58.

Section 1.0 of the City's SMP provides an "Introduction", acknowledging the (local) intent of the update as follows:

This document contains goals, policies, and regulations that are intended to ensure that the City permits land uses within the shoreline jurisdiction that meet the policies of the SMA. The implications of the proposed goals, policies, and regulations, as described in this SMP, are to create an additional layer of protections for land within the shoreline jurisdiction, focusing on the protection of critical areas from impacts associated with development, while allowing for zoned and planned land uses. Technical information that supports these goals, policies, and regulations can be found in the City of Enumclaw Shoreline Characterization Report, produced by Landau Associates.

Area Description: According to the City's *Inventory and Characterization Report* (Landau Associates, 2011) the updated SMP will cover approximately 209-acres of river (over 20-cfs), floodplain and associated wetland² as shoreline jurisdiction within the City's boundary and Urban Growth Area (UGA). Within the City, Boise and Newaukum Creeks are listed as a "Shorelines of the State" pursuant to RCW 90.58.030 as the mean annual flow for both of these rivers is greater than 20-cubic feet per second (Landau Associates, 2011). Therefore, aquatic areas, adjacent uplands within the 100-year floodplain, and wetland areas associated with either Boise or Newaukum Creek make up the City's

¹ Ecology completed verification of a complete submittal on October 21, 2011 pursuant to WAC 173-26-110.

² City has noted that this estimate includes 'mapped' associated wetlands, which does not include "potentially associated wetlands", which may be discovered through additional field work.

jurisdictional boundaries³ and are subject to compliance with the Shoreline Management Act (RCW 90.58). According to the City, the Federal Emergency Management Flood Insurance Program have not delineated a “Floodway” for Boise and Newaukum Creeks, for which the City has identified the entire 100 year flood plain as shoreline jurisdiction (Landau Associates, 2011; A-2-2). The City has chosen to not include the optional expansion of the SMP to critical areas located adjacent to, but outside of SMA jurisdiction. Therefore, these critical areas will continue to be managed by the City’s existing Critical Areas Ordinance. However, as referenced above, the City has ‘pre-designated’ future annexation areas as part of this SMP update pursuant to WAC 173-26-150. Therefore, once these UGA areas are formally annexed, the City will not need to amend the SMP, as the designations have already been established.

CURRENT CONDITIONS DOCUMENTED:

Documentation of current shoreline conditions is vital to satisfying the no net loss standard of the state SMP Guidelines (WAC 173-26-186). Pursuant to this requirement, the City produced a *Characterization Report* dated June 10th, 2011, which serves as a basis for describing existing shoreline conditions as well as identification of restoration-protection opportunities that may exist within the City. This report also serves as a primary tool used to; develop the City’s environment designations, identify relevant policies to include in the SMP and development of specific use regulations to ensure that future shoreline development is managed appropriately.

The City’s *Characterization Report* (Landau Associates, 2011) provides both an ecosystem-wide (watershed) and reach-level analysis of existing shoreline (natural and built) environment conditions as well as recommendations related to future protection and/or restoration opportunities.

Newaukum Creek is located within the City’s existing boundary and UGA, and is described as a freshwater stream, designated as a “shoreline of the state” from river mile 11 downstream to the confluence with the Green River (Landau Associates, 2011). **Boise Creek** is also located within the the City’s boundary and UGA and consists of a freshwater stream designated as a “shoreline of the state” from river mile 11 downstream to the mouth of the Creek, where it flows into the White River at river mile 23.3 (Landau Associates, 2011).

For the purposes of characterizing shoreline functions within shoreline management areas of Boise and Newaukum Creeks, the City has labeled each water body by a separate *Shoreline Management Zone* (SMZ), with Newaukum Creek = SMZ #1, and Boise Creek = SMZ #2. Each SMZ is further categorized by unique land-use or natural features that are identified as separate “Areas” within the SMZ. The Newaukum Creek SMZ (#1) is divided into 5 different “Areas” (numbered 1-5) and the Boise Creek SMZ (#2) is divided into an additional 3 “Areas” that are numbered 6 through 7 (Landau Associates, 2011).

Land-use for the **Newaukum Creek** SMZ and sub-areas are generally characterized by the City as follows:

Shoreline Uses: The City describes existing uses within this SMZ (#1) as primarily “Public Park” and “Low Density Residential” uses (Landau Associates, 2010a). SMZ-1/Area-1, is zoned “Public Use” and consists of Mahler Park, which is a public natural area located within the floodplain of Newaukum Creek and is described as; “...vegetated with mature forests” (Landau Associates, 2010a). The City anticipates that the current use of the park will remain in a relatively natural state, with limited

³ Jurisdictional Boundaries include areas within the City’s UGA, as the City has decided to “pre-designate” these areas pursuant to WAC 173-26-150.

future development associated with park trail improvements, interpretive signs and accessory parking to serve the public recreational use.

SMZ-1/Area-2 consists of primarily “undeveloped” or “low density” developed areas, which are currently in the process of being annexed into the City and will be zoned “Urban Reserve” (Landau Associates, 2010a). The City acknowledges that future development within this area will need to be consistent with the updated SMP and will not be allowed until the City can finish the annexation process and establish sewer and stormwater utilities within the area (Landau Associates, 2010a).

SMZ-1/Area-3 is described by the City as; “similar to Area 2, [SMz-1/Area-2] except that it [the area] is already located within the City” (Landau Associates, 2010a; 3-14).

SMZ-1/Area-4 is described by the City (2010a) as; “undeveloped or developed at a very low density”, within a yet to be annexed Urban Growth Area (UGA) of the City. The City does not report any current plans to proceed with annexation of this area, but have decided to ‘pre-designating’ the UGA area through the SMP-update, pursuant to WAC 173-26-150 (Landau Associates, 2010a).

SMZ-1/Area-5 is described by the City as; “similar to Area 2, [SMz-1/Area-2] except that it [the area] is already located within the City” (Landau Associates, 2010a; 3-14).

Land-use for the **Boise Creek** SMZ and sub- areas are generally characterized by the City as follows:

Shoreline Uses: For SMZ-2/Area-6, the City describe existing uses within this area that is zoned “Public Use” as consisting of an existing Golf Course, located adjacent to both sides of Boise Creek at river mile 4.3 (Landau Associates, 2010a). Because the Golf Course is currently fully developed, the City does not anticipate any changes in land-use or shoreline modification (Landau Associates, 2010a).

SMZ-2/Area-7, is described as an areas zoned “Public Use” that is located within the 100-year floodplain of Boise Creek. Current land-use within this area is generally described as developed “Public Park” consisting of the (public) “Foothills Trail”, a large wetland mitigation project, and some segments of Transportation infrastructure consisting of State Route 410 and Warner Avenue (Landau Associates, 2011). The City does not anticipate new development within this area, but do foresee future improvements to the existing recreational area (including additional trailhead parking, restrooms, trail improvements), as well as modifications (expansion or improvements) to the existing Transportation uses (i.e. SR-410 and Warner Avenue) within this area (Landau Associates, 2010a).

SMZ-2/Area-8 is described as an area that includes portions of the City’s un-annexed Urban Growth Area (UGA), of which the City does not have any current plans to proceed with annexation. Regardless, the City decided to ‘pre-designating’ the UGA area through this SMP-update, pursuant to WAC 173-26-150. The UGA is described by the City as consisting of; “...some area of residential zoning, limited commercial and SR 410... [for which the area is] ...primarily undeveloped or developed at very low density” (Landau Associates, 2010a; 3-15).

Shoreline Ecological Functions: The City’s Cumulative Impact Assessment (Landau Associates, 2010a) describe the current condition of shoreline ecological functions within the City’s jurisdictional area as follows:

Due to the flat terrain, poorly draining soils and geology with low permeability within the Enumclaw Plateau, the SMZ area has historically been dominated by wetlands and likely small waterways, particularly within floodplains and depressions; however, much of the wetland area within the City has been altered by extensive ditching and channelization associated with urban development...Despite alterations, important habitat exists within the SMZ, Streams within SMZ's 1 -3 have anadromous fish species, including species listed as threatened under the Endangered Species Act (ESA). (Landau Associates, 2010a; 3-1)

The City has summarized baseline ecological functions within the SMA portions of Newaukum and Boise Creek drainage basins as having 'moderate' to 'high' degrees of alteration (Landau Associates, 2011). Further the City has identified primary alterations to historical ecological functions within these areas, as typical of those found in urban environments. The City describe primary alterations as consisting of drainage of wetland hydrology, increase in impervious surface areas, loss of forest conditions, channelization and re-routing of streams, and increase in untreated stormwater from urban and rural uses. The City acknowledges that the current status of ecological functions as described through the shoreline characterization report, highlight the importance in the City's implementation of shoreline regulations that will retain or increase riparian vegetation, preserve or enhance wetlands and streams, integrate stormwater management and reduce impervious surfaces.

Ecology finds that the City's 2011 Characterization report provided a sufficient assessment of existing shoreline conditions to adequately inform the SMP update process, as well as provide a basis for future protection and restoration opportunities within the City's shoreline jurisdiction. The 2011 report appears to be consistent with State Guideline requirements of (WAC) 173-26-201 (3) (c) and (d).

Shoreline Environment Designations: Assignments of Environment Designation are a fundamental aspect of the SMP update. Every stretch of shoreline has characteristics that can be used to determine what degree of natural shoreline ecological functions have been altered over time. The SMP update must factor in how shoreline areas have been historically used, including a general distinction between developed areas and undeveloped areas with relatively undisturbed shoreline environments. The SMP Guideline provide criteria in WAC 173-26-211, which typically serves as the primary determinant for assignment of different shoreline environment designations, along with reference to zoning and other overlays.

The City has identified the Urban Conservancy and Aquatic environment designations as appropriate to protect ecological functions and manage future shoreline development within the City's jurisdictional area. According to the City's Cumulative Impact Analysis, the existing land-use pattern within shoreline jurisdictional areas consisting primarily of open space, public recreation and other low-intensity uses, which are well established. These uses are also consistent with the City's *Comprehensive Plan* and are not anticipated to change in the future. Therefore, the City has concluded that through implementation of the updated Shoreline Environment Designations, Shoreline Modification Standards, and applicable Use Standards, the SMP will result in no net loss of shoreline ecological functions (Landau Associates, 2010a).

Ecology finds that a substantive basis for designation of Shoreline Environments was appropriately conducted and assignment of designations within the SMP appear to be appropriately assigned.

Shoreline Uses: As part of the City's *Cumulative Impact Analysis*, the City does not anticipate any significant changes to current uses that are well established within their area today (Landau Associates, 2010a).

As referenced above, the City has concluded that the updated SMP is consistent with existing pattern of development, which primarily consists of Open Space, Public Recreation and other Low-Intensity Land-Uses (Landau Associates, 2010a).

Ecology finds that the City has adequately considered SMA preferred uses and the potential for use conflicts consistent with WAC 173-26-201 (3) (d) (ii).

Shoreline Modifications: Pursuant to WAC 173-26-231, "... Shoreline modifications are generally related to construction of physical elements such as a dike, breakwater, dredged basin, or fill, but they can include other actions such as clearing, grading, application of chemicals, or significant vegetation removal." WAC 173-26-231 (2) (b), states as a general principle that Master programs should; "Reduce the adverse effects of shoreline modifications, and, as much as possible, limit shoreline modifications in number and extent." These shoreline modification principles are reinforced through associated Mitigation Sequencing (WAC 173-26-201.2.e) and No Net Loss (WAC 173-26-186) requirements of the SMP-Guidelines.

The City's Cumulative Impact Assessment provides general conclusions related to the SMP update, which support no net loss of shoreline ecological function, subject to adherence to Shoreline Modification and Shoreline Use development standards provided within the updated SMP (Landau Associates, 2010a).

The updated SMP provides development standards applicable to Shoreline Modifications such as grading and shoreline stabilization, which are consistent with mitigation sequencing requirements and no net loss standards from the SMP-Guidelines. The updated SMP incorporates by reference (SMP provisions 5.2.1) the City's Critical Areas standards applicable to Fish and Wildlife Habitat Conservation Areas, which will result in application of a 100-foot buffer (see SMP standard 19.02.100.C) extending upland from the Ordinary High Water Mark for all shoreland areas along Boise and Newaukum Creek (see standard 19.02.100.C.1 "Type S Waters").

Assuming the City's acceptance of required changes listed in Attachment B, Ecology finds that the City's Shoreline Modification standards to be consistent with mitigation sequencing principles provided for in WAC 173-26-201 (2) (e). Further, the City's Cumulative Impact Assessment has identified and analyzed anticipated future development allowed through the updated SMP and have concluded that the program is consistent with the no net loss goal.

Cumulative Impact Evaluation: Listed as a Governing Principle of the SMP Guidelines, WAC 173-26-186 (8) (b) states, "Local master programs shall include policies and regulations designed to achieve no net loss of those ecological functions."

As described within Section 4.0 of the City's updated SMP, all shoreline development has to be consistent with general standards of the SMP provided in Section 5.1, as well as shoreline environment specific standards and applicable use standards. The City's general SMP standards related to *No-Net-Loss of Shoreline Functions and Values* (Section 5.1.1): establishes that all proposed shoreline uses must be consistent with the SMP and RCW 90.58, establishes that new shoreline modifications must be

consistent with the SMP and in support of an allowed shoreline use, clarifies that “prohibited” uses cannot be considered through a shoreline variance or conditional use permit, reinforces that SMP policies provide broad guidance and direction in applying the SMP regulations, and clarify that in case of conflicts, provisions most directly implementing the objectives of the SMA shall rule.

Assuming the City’s acceptance of required changes listed in Attachment B, Ecology finds that the City’s Cumulative Impact Assessment provides adequate analysis of anticipated development and potential effects on shoreline ecological functions. This finding is based on review of analysis of Shoreline setback standards, setback reduction standards, Shoreline stabilization standards and private pier/dock development standards, which are shown to satisfy no net loss of shoreline ecological function requirements as provided by the SMP Guidelines.

Restoration Plan: Pursuant to WAC 173-26-201 (2) (c), “Master programs shall also include policies that promote restoration of ecological functions, as provided in WAC 173-26-201 (2) (f), where such functions are found to have been impaired based on as jurisdictions Inventory and Characterization as described in WAC 173-26-201(3) (d) (i).

It is intended that local government, through the master program, along with other regulatory and non-regulatory programs, contribute to restoration by planning for and fostering restoration and that such restoration occur through a combination of public and private programs and actions. Local governments should identify restoration opportunities through the shoreline inventory process and authorize, coordinate and facilitate appropriate publicly and privately initiated restoration projects within their master program. The goal of this effort is to produce master programs which include planning elements that, when implemented, serve to improve the overall condition of habitat and resources within the shoreline area of each city and county.

The City has identified priority restoration planning actions consistent with the requirements of the SMP Guidelines through production of a *Shoreline Restoration Plan* (Landau Associates, 2010b). The plan builds on information gathered through the City’s *Inventory and Characterization Report* and provides a framework to guide future improvements to shoreline ecological functions of impaired shoreline areas.

Ecology finds that the Final Shoreline Restoration Plan is based on appropriate technical information available to the City during the SMP update. The Final Restoration Plan can serve as an effective tool for the City, non-profit organizations and the public to collectively improve shoreline conditions over time. Such restoration efforts are understood to help achieve the no-net-loss standard of the SMP-Guidelines (WAC 173-26-186).

AMENDMENT HISTORY AND REVIEW PROCESS:

The City initiated the comprehensive SMP update consistent with a scope of work described within *SMA Grant No. G0800095*. The grant agreement (as amended) provided \$60,000 to be allocated to the City between July 1st, 2007 and June 30th, 2010. In response to requests from the City, Ecology approved two amendments to the original grant agreement with the City. The amendments allowed for extension of the standard 3-year grant timeframe to 4-years and redistribution of funding through the end of the 4-year period to accommodate the City’s SMP update schedule.

Amendment History: As part of this effort, the City prepared an inventory of shoreline features, characterizing shoreline conditions jurisdiction wide. Based on the *Inventory/Characterization* report, the City then prepared shoreline environment designations, corresponding policies and regulations as part of a *Draft SMP*. Finally, the City prepared a *Restoration Plan* and *Cumulative Impact Assessment* to analyze anticipated future development with the draft SMP policies and regulations to inform a final conclusion related to the programs' consistency with the No Net Loss of shoreline ecological function policy goal of the SMP-Guidelines.

The City carried the comprehensive SMP-update through 4-years of local development, with final local approval by their City Council on September 13th, 2011 (Resolution No. 1431).

This public process started with establishment of a technical review committee and review of City staff and consultants work on the SMP-update through the City's Planning Commission. According to the SMP-update materials provided by City, the Planning Commission reviewed the SMP through five meetings between March 2010 and November 2010. The Planning Commission also held a Public Hearing on June 23rd, 2011, after which the Commission finished their review of the SMP by forwarding a recommendation to the City Council to consider the draft SMP for local approval. The City Council began review of the SMP on July 11th, 2011 and subsequently passed Resolution No. 1431 on September 13th, 2011, authorizing City staff to forward the SMP on to Ecology for formal review and adoption of the updated SMP.

Independent of the SMP open-house, public hearing, City Council meetings, and Planning Commission meetings, notice throughout the SMP-update was also provided on the City's website, as well as mailings and advertisements that were distributed interested parties to encourage participation in development of the SMP.

Ecology received an initial submittal of the SMP amendment on October 14th, 2011. Consistent with WAC 173-26-120, Ecology reviewed the submittal for consistency with WAC 173-26-110 and notified the City on October 21st, 2011 that the submittal was complete, thus initiating formal State review of the SMP-amendment.

Ecology finds that the City satisfied the minimum SMP-Guideline standards related to public process (WAC 173-26-201 (3) b) and submittal (WAC 173-26-110) of the SMP to the Department for review.

DEPARTMENT OF ECOLOGY REVIEW PROCESS

Ecology acknowledged the complete submittal of the City's SMP amendment and supporting materials as consistent with WAC 173-26-110 in a letter to the City dated October 21st, 2011, initiating formal State review of the proposed SMP.

Notice of the State (Ecology) comment period was distributed⁴ to 54 individual state task force members and local interested parties identified by the City in compliance with the requirements of WAC 173-26. In addition to individual notices mailed to interested parties, Ecology also provided notice on the agencies Public Involvement Calendar and created a webpage⁵ that provided information related to the

⁴ Notice postcards were mailed to Interested Parties on November 10, 2011.

⁵ Ecology - City of Enumclaw SMP update website, available for public viewing as of October 21, 2011:
<http://www.ecy.wa.gov/programs/sea/shorelines/smp/mycomments/Enumclaw.html>

City's SMP-update and providing notice of the Ecology comment period. Ecology provided an opportunity for the public to submit comments on the City's SMP between November 15th and December 15th, 2011. Ecology only received one comment on the City's SMP update from the Muckleshoot Indian Tribes Fisheries Department (MITFD), which was received on December 27th, 2011 (Attachment C).

Summary of issues raised during the Ecology Public Review Process: Pursuant to SMP Guidelines (WAC 173-26-120) on December 27, 2011, Ecology provided to the City for response, a summary of issues raised through one set of comments submitted to Ecology during the public comment period. Below is a general list of SMP topics raised:

- **SMP Update Process/Implementation** (Notification, Coordination, SMP-Administration);
- **SMP Protections** (Critical Areas protection);
- **Shoreline Modifications** (Dredging standards); and
- **Shoreline Uses** (Transportation standards).

The City provided a final response to Ecology's comment summary as part of their final submittal that was received by Ecology on January 11th, 2012. The complete record of Ecology's comment summary and the City's response are provided in **Attachment C**.

Summary of Issues Identified by Ecology as Relevant To Its Decision: Based on review of draft SMP deliverables for consistency with applicable SMP-Guideline requirements, and consideration of issues raised during Ecology's public comment period (Attachment D), Ecology concurs with the City's recommendation to delete one SMP (Transportation use) standard and revise a Shoreline Modification (Dredging) standard as provided within Attachment B (Required Changes).

Therefore, Ecology finds that the SMP can be amended to be consistent with the SMP-Guidelines through the City's acceptance of "Required Changes" listed within Attachment B.

Consistency with Chapter 90.58 RCW: The proposed amendments have been reviewed for consistency with the policy and procedural requirements of RCW 90.58.020 and the approval criteria of RCW 90.58.090.

Consistency with "applicable guidelines" (Chapter 173-26 WAC, Part III): The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program guidelines (WAC 173-26-171 through 251 and -020 definitions; see especially WAC 173-26-201, WAC 173-26-231 Shoreline modifications (including Piers and docks), WAC 173-26-241(3) (b) Shoreline Uses - Aquaculture). This included review of a SMP Submittal Checklist, which was completed by the City and submitted to Ecology on October 13th, 2011.

Consistency with SEPA Requirements: The City submitted evidence of SEPA compliance. The City originally issued a Determination of Non-Significance (DNS) for the proposed SMP amendment on December, 7th, 2009. However, after publication of the original DNS, the City incorporated additional information/analysis into the project and therefore produced an addendum to the original SEPA determination on August 17th, 2011. Notice of both the original DNS and SEPA-amendment was provided to the Public and interested parties along with an opportunity to comment within 14-days of

issuance of the DNS or SEPA-addendum. Ecology did not comment on either the DNS or the SEPA-addendum.

Other Studies or Analyses supporting the SMP update: In addition to multiple drafts of the proposed SMP (Policies & Regulations), Ecology reviewed the following reports, studies, map portfolios and data prepared by the City in support of the SMP amendment:

- *City of Enumclaw Shoreline Inventory & Characterization dated June 10, 2011* (Landau Associates, 2011);
- *City of Enumclaw, SMP Update – Cumulative Impacts dated October 28, 2010* (Landau Associates, 2010a);
- *City of Enumclaw SMP Update – Public Access Plan dated October 22, 2010* (Landau Associates, 2010c);
- *City of Enumclaw, SMP Update - Restoration Plan dated October 22, 2010* (Landau Associates, 2010b); and
- *Final SMP-checklist dated February 2011.*

REFERENCES

- Landau Associates. (2011) *City of Enumclaw Shoreline Master Program Characterization Report Enumclaw*. Prepared for the City of Enumclaw Shoreline Master Program Update, Edmonds, Washington.
- Landau Associates. (2010a) *City of Enumclaw Shoreline Master Program Cumulative Impacts Analysis*. Prepared for the City of Enumclaw Shoreline Master Program Update, Edmonds, Washington.
- Landau Associates. (2010b) *City of Enumclaw Shoreline Master Program Restoration Plan*. Prepared for the City of Enumclaw Shoreline Master Program Update, Edmonds, Washington.
- Landau Associates. (2010c) *Appendix C: City of Enumclaw Shoreline Master Program Public Access Plan*. Prepared for the City of Enumclaw Shoreline Master Program Update. Edmonds, Washington.

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the City's SMP proposal, subject to and including Ecology's required changes (itemized in **Attachment B**), is consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions). This includes a conclusion that the proposed SMP, subject to required changes, contains sufficient policies and regulations to assure that no net loss of shoreline ecological functions that is anticipated to result from implementation of the new master program amendments (WAC 173-26-201 (2) (c)).

Ecology concludes that the proposed SMP amendment, subject to the required changes in Attachment B and recommended changes in Attachment C, meet the intent of the provision for no net loss of shoreline ecological functions (WAC 173-26-201 (2) (c)).

Ecology concludes that the City of Enumclaw has chosen not to exercise its option pursuant to RCW 90.58.030 (2) (f) (ii) to increase shoreline jurisdiction to include land necessary for buffers for critical areas located within shorelines of the state. Therefore, as required by RCW 36.70A.480 (6), for those designated critical areas with buffers that extend beyond SMA jurisdiction, the critical area and its associated buffer shall continue to be regulated by the City's critical areas ordinance. In such cases, the updated SMP shall also continue to apply to the designated critical area, but not the portion of the buffer area that lies outside of SMA jurisdiction. All remaining designated critical areas (with buffers NOT extending beyond SMA jurisdiction) and their buffer areas shall be regulated solely by the SMP.

Ecology concludes that those SMP segments relating to shorelines of statewide significance provide for the optimum implementation of Shoreline Management Act policy (RCW 90.58.090 (5)).

Ecology concludes that the City of Enumclaw have complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the City of Enumclaw have complied with the requirements of RCW 90.58.130 and WAC 173-26-090 regarding public and agency involvement in the SMP amendment process.

Ecology concludes that the City of Enumclaw have complied with the purpose and intent of the local amendment process requirements contained in WAC 173-26-100, including conducting open houses and public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

Ecology concludes that the City of Enumclaw have complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the City of Enumclaw SMP amendment submittal to Ecology was complete pursuant to the requirements of WAC 173-26-110 and WAC 173-26-201 (3) (a) and (h) requiring a SMP Submittal Checklist.

Ecology concludes that it has complied with the procedural requirements for state review and approval of shoreline master program amendments as set forth in WAC 173-26-120.

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendments are consistent with the policies of the Shoreline Management Act, the applicable guidelines and implementing rules, once changes set forth in **Attachment B** are accepted by the City. Ecology's approval of the proposed amendment with required changes is effective 14-days after the date on which Ecology receives written notice that the City has agreed to the required changes.

As provided in RCW 90.58.090 (2) (e) (ii) the City may choose to submit an alternative to all or part of the changes required by Ecology. If Ecology determines that the alternative proposal is consistent with the purpose and intent of Ecology's original changes and with RCW 90.58, then the department shall approve the alternative proposal and that action shall be the final action on the amendment.

The following changes are required to comply with the SMA (RCW 90.58) and the SMP Guidelines (WAC 173-26, Part III);

ITEM	SMP PROVISION	TOPIC	BILL FORMAT CHANGES (underline=additions; strike=through=deletions)	ECOLOGY DISCUSS
1	Transportation - Regulation 5.3.16.3.O	Use Standard Delete standard (Pg. 5-47)	○. Culverts and similar devices shall be designed with regard to the 25-year storm frequencies and allow continuous fish passage.	This change was suggested by City as part of their City agreed to delete the Transportation development design standards identified by the Muckleshoot (MITFD) in their comments to Ecology dated December 2010. Ecology concurs with both MITFD's comment and amendment has been incorporated into Ecology's
2	Dredging and Disposal - Regulation 5.3.9.3.A.4	Shoreline Modification Revise Dredging Standard (Pg. 5-36)	4. To improve water flow and/or manage flooding only when consistent with an approved flood/stormwater comprehensive management plan. An approved comprehensive flood management plan meeting the requirements of Section 5.2.3 Flood Hazard Reduction and River Corridor Management.	This change was suggested by City as part of their City agreed to revise the (Shoreline Modification) comments provided by MITFD. Ecology concurs with MITFD's comment and the City will ensure consistency between Flood Management proposals. Therefore the amendment has been incorporated into Ecology's
3	Shoreline Jurisdiction - Definition Section 7.0	Shoreline Jurisdiction (Pg. 7-8)	Shoreline jurisdiction. The term describing all of the geographic areas covered by the SMA, related rules and the applicable master program. Also, such areas within a specified local government's authority under the SMA. See definitions of "shorelines", "shorelines of state-wide significance" and "wetlands." See also the "Shoreline Management Act Scope Jurisdiction" section (1.2) in the "Introduction" of this master program.	This change will correct a reference within the SMA of the Master Program.

REFERENCE

Attachment C: City of Enumclaw's response to comment received by Ecology related to the SMP-update.

Responsiveness Summary to Public Comments

The City of Enumclaw adopted Resolution #1431 on September 13, 2011 authorizing submittal of the updated Shoreline Master Program (SMP) to the Department of Ecology (Ecology) for review. Ecology received the complete submittal on October 14, 2011, initiating formal review of the updated SMP. The Department of Ecology accepted public comments on the City of Enumclaw's SMP-update for 30-days between November 15, 2011 and December 15, 2011. Ecology did not hold a public hearing for this SMP amendment. Notice of the comment period was provided by mail to 54 individuals listed as regional or local interested parties. Ecology received written comments from one individual as summarized below.

Please note, the statements below are not the opinions or comments of Ecology, but rather summary of comments received during the public comment period.

One written comment was received by Ecology on December 15, 2011 from the Muckleshoot Indian Tribe Fisheries Division (MITFD) submitted by Representative Karen Walter.

1. SMP Administration: MITFD request to receive all (regardless of the type¹ of permit) notices of applications for proposed shoreline projects within the City's jurisdiction. MITFD notes that Administrative standards within Section 6.0 of the updated SMP do not require the City to provide notice to the Muckleshoot Indian Tribe, for which MITFD request that the City amend this section to ensure future notice is provided to the Tribe.

City Response: An amendment to the Shoreline Master Program is not necessary to ensure that notice of application is provided to MITFD. The City has an established public notification process. Upon receipt of a formal request to receive notice of applications for all shoreline permits, the City will add MITFD to its interested party list. Amending the SMP to require notification of a specific organization increases the City's potential liability related to challenges and appeals. It should be the responsibility of the interested party to request notification. The City will add the following text to EMC 15.30.030.C:

"4. Mailing notice of application with information included in this section to each person or entity who has requested such notice and paid any applicable fee as established by the city."

ECOLOGY CONCLUSION: Ecology agrees with the City's response and support the decision to amend section 15.30.030.C² by adding the statement provided above. Note this change is not part of the SMP.

2. Critical Areas: MITFD suggest that specific numeric requirements for stream buffers (similar to SMP's wetland standards) should be included in the updated SMP. MITFD could not find any reference within the SMP to stream buffer requirements, for which the Tribe notes that the City's Critical Areas stream buffers (19.02.100.C) would not provide adequate protection of riparian functions, which was highlighted as a need within the City's Cumulative Impact report. MITFD states that they typically *"...recommend a vegetated buffer of 200-feet for all fish-bearing and potential fish bearing streams, based on the site potential tree height of most areas/soils types that would protect future wood recruitment functions."*

City Response: The City has chosen to adopt its existing critical areas ordinance as Appendix A to the shoreline master program, with some exceptions (reference page 5-8 and Appendix A of the draft SMP). The text of the SMP includes only the exceptions where the SMP has a different standard than what is contained in the City's Critical Areas ordinance. The stream buffer requirements are contained in

¹ Shoreline Variance, Conditional Use, Exemption or Substantial Development Permit

² The proposed change is to the City's municipal code under a section titled "Method of publication".

Responsiveness Summary to Public Comments

Appendix A at EMC 19.02.10 and are the same for all areas within the City. The City is not in possession of any studies or scientific reports that state that a 200 foot vegetated buffer is the minimum necessary to protect functions and values of streams within a developed urban area such as the City of Enumclaw. The minimum widths required by the City ordinance are sufficient to protect functions and values of most streams within Enumclaw taking into consideration local conditions. The buffer width necessary to protect functions and values will depend on the existing conditions, the stream type and the geomorphology of the specific reach. The City's ordinance recognizes that evaluation of the functions and values of a stream or wetland needs to occur on a site by site basis and provides for additional buffers beyond the minimums found in the ordinance when necessary to protect stream functions and values based on local conditions (EMC 19.02.100.D and EMC 19.02.090.C.5). In addition, most shoreline areas within the City have associated wetlands which will require larger buffers than would be required for the stream alone. We believe our draft SMP meets the requirements of the SMA.

ECOLOGY CONCLUSION: Ecology concurs with the City's response. See Ecology's *Findings and Conclusions* (Attachment A) recognizing the City's *Cumulative Impact Assessment* and No Net Loss of Shoreline Ecological Functions conclusion as consistent with SMP-Guideline requirements.

3. Shoreline Uses (Transportation): (Culverts) MITFD have commented that the SMP's culvert standard (5.3.16.3.O) is inconsistent with standard (5.3.16.3.Q), which requires consistency with WDFW standards, as WDFW standards require 100-year flood flow capacity, for which the 25-year storm standard is insufficient. MITFD recommend the following hierarchy when considering stream crossings:

- a. *No crossing at all; use and upland location for access;*
- b. *Bridges or culvert structures that fully span the waterbody, including floodplains and channel migration zones;*
- c. *Culvert structures that meet the WDFW definition of stream simulation using an average bankfull measurement based on unconstrained portions of the waterbody representative of the natural condition.*

City Response: *Thank you for your comment. The City will delete 5.3.16.3.O as it is addressed sufficiently by 5.3.16.3.Q. Regulations 5.3.16.3.A and B require an alternatives analysis for all transportation projects that considers location outside of shoreline jurisdiction. A transportation facility cannot be located within shoreline jurisdiction unless there is no other feasible location. Regulation 5.3.16.3.D requires mitigation for significant impacts, which would include impacts to floodplains and channel migration zones and which may include the suggested mitigation or different mitigation depending on the project and location. The City prefers an approach that allows a variety of mitigation options, not just a single solution.*

ECOLOGY CONCLUSION: A required change to the locally adopted SMP has been drafted consistent with the City's response and will need to be accepted by the City as part of Ecology's approval of the updated SMP. See Item 1 within Attachment B – Required Changes.

4. (Bridge Abutments) In response to regulation (5.3.16.3.T), MITFD recommend that the City rewrite the standard "...to require that all bridge abutments to be located outside of floodplains and channel migration zones, unless there are real physical limitations to locating the abutments outside of these areas."

City Response: *See previous response. Regulation 5.3.16.3.D applies to all transportation projects, including bridges.*

ECOLOGY CONCLUSION: Ecology concurs with the City's response.

Responsiveness Summary to Public Comments

5. Shoreline Modifications (Dredging): MITFD have noted an inconsistency between gravel removal regulations (5.2.3.2.O) and dredging regulations (5.3.9.2.A) through the following statement:

“The dredging regulations do not allow any dredging in critical areas unless one of four exceptions is met. The fourth condition regarding flood control does not consider potential impacts to salmon habitat, rather only that dredging be consistent with a flood control or stormwater plan. This approach will likely result in a net loss of salmon habitat and does not explicitly require mitigation sequencing to be followed which may include other less impacting measures than dredging.”

City Response: Thank you for your comment. Any flood management plan would be required to comply with Section 5.2.3 which includes Regulation 5.2.3.3.O. Regulation 5.3.9.3 limits dredging to four situations, one of which is flood control; 5.2.3.3.O allows dredging for flood control only if four conditions are met. All four conditions required by 5.2.3.3.O will protect salmon habitat. The City will clarify Regulation 5.3.9.3.4 by revising it to read:

“4. An approved comprehensive flood management plan meeting the requirements of Section 5.2.3 Flood Hazard Reduction and River Corridor Management”.

ECOLOGY CONCLUSION: A required change to the locally adopted SMP has been drafted consistent with the City's response and will need to be accepted by the City as part of Ecology's approval of the updated SMP. See Item 2 within Attachment B – Required Changes.

ORDINANCE 2509
EXHIBIT B
A NEW CHAPTER IS ADDED TO ENUMCLAW MUNICIPAL CODE:

SHORELINE MASTER PROGRAM

Sections:

- 15.36.010 Purpose
- 15.36.020 Shoreline Master Program Adopted
- 15.36.030 Permits Required
- 15.36.040 Appeals
- 15.36.050 Time Limits
- 15.36.060 Revisions to Permits
- 15.36.070 Non-Conforming Uses
- 15.36.080 Enforcement

15.36.010 Purpose

The purpose of this chapter is to establish an administrative system designed to assign responsibilities for implementation of the Shoreline Master Program and shoreline permit review within the City of Enumclaw, to provide an orderly process by which to review proposals and permit applications, and to ensure all persons affected by the Shoreline Master Program are treated in a fair and equitable manner. All permits must be consistent with:

- A. The legislative policies stated in the SMA, RCW 90.58.020 (SMA); and
- B. The Shoreline Master Program of the City of Enumclaw.

15.36.020 Shoreline Master Program Adopted

The City of Enumclaw Shoreline Master Program adopted by Ordinance No. 2509 is herein incorporated by reference as set forth in full.

15.36.030 Permits Required

Any person wishing to undertake development within shoreline jurisdiction shall apply for a Substantial Development Permit, a Shoreline Conditional Use Permit, a Shoreline Variance permit, or a Statement of Exemption. Based on the City's Comprehensive Plan and Shoreline Master Program, the Administrator shall determine which permit is required or if the proposal is exempt from a shoreline permit.

A. Substantial Development Permit. Any development of which the total cost or fair market value exceeds five thousand dollars, or any development, which materially interferes with the normal public use of the water or shorelines of the state. No substantial development shall be undertaken on shorelines of the City without first obtaining a Substantial Development Permit from the City. Applications for such permits shall be made on forms provided by the Administrator. An application shall provide the information necessary to be considered complete as specified in the application process.

1. Review Process and Notice Provisions. A Substantial Development Permit is a Type II permit subject to the review process and notice requirements found in Chapter 15.20 EMC. In the event of a conflict between EMC 15.20 and this Chapter, this Chapter prevails.

2. Decision Criteria. A Substantial Development Permit must be consistent with the policies and regulations contained within the City's Shoreline Master Program and the requirements of the RCW 90.58.

3. Decision. The Administrator shall file the permit decision with the Department of Ecology and the Attorney General. Construction of development authorized by a shoreline substantial development permit shall not begin until twenty-one (21) days from the date that the permit is received by the Department of Ecology or until after all properly filed appeals are terminated.

B. Shoreline Conditional Use Permit. A shoreline conditional use is any use, development, or substantial development classified as a conditional use or any use not classified within the SMP. A Shoreline Conditional Use Permit allows flexibility in varying the application of the use regulations consistent with the shoreline master program, the comprehensive plan, and the SMA. Shoreline Conditional Use Permits should also be granted in a circumstance where denial of the permit would result in a thwarting of those same policies. In authorizing a Shoreline Conditional Use, special conditions may be attached to the permit to prevent undesirable effects of the proposed use. Uses that are specifically prohibited may not be authorized with approval of a Shoreline Conditional Use Permit. Applications for such permits shall be made on forms provided by the administrator. An application shall provide the information necessary to be considered complete as specified in the application process.

1. Review Process and Notice Provisions. A Shoreline Conditional Use permit is a Type IV permit subject to the review process and notice requirements found in Chapter 15.24 EMC. In the event of a conflict between Chapter 15.24 EMC and this Chapter, this Chapter will prevail.

2. Decision Criteria.

a. Uses classified as Shoreline Conditional Uses may be authorized provided the applicant can demonstrate all of the following:

i. That the proposed use will be consistent with the policies of the SMA and the policies of the master program;

ii. That the proposed use will not interfere with the normal public use of public shorelines;

iii. That the proposed use of this site and design of the project will be compatible with other permitted uses within the area;

iv. That the proposed use will cause no unreasonably adverse effects to the shoreline environment designation in which it is to be located; and

v. That the public interest suffers no substantial detrimental effect.

b. Other uses that are not classified or set forth in the master program may be authorized as conditional uses provided that the applicant can demonstrate, in addition to the criteria set forth in Subsection a of this section, that extraordinary circumstances preclude reasonable use of the property in a manner consistent with the use regulations of the master program.

c. In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests or like actions in the area.

3. Decision. All Shoreline Conditional Uses issued by the City must be submitted to the Washington State Department of Ecology (Ecology) for its approval or disapproval. A decision is not final until submitted to and approved by the Washington State Department of Ecology. Construction of development authorized by a shoreline conditional use permit shall not begin until twenty-one (21) days from the date that the decision by the Department of Ecology is transmitted to the Administrator, or until after all properly filed appeal proceedings are terminated.

C. Shoreline Variance. The purpose of a variance is strictly limited to granting relief to specific bulk, dimensional, or performance standards set forth in the master program where there are extraordinary or unique circumstances relating to the properties such that the strict implementation of the master program would impose unnecessary hardships on the applicant or thwart the policies set forth in the SMA.

1. Review Process and Notice Provisions. A Shoreline Variance permit is a Type IV permit subject to the review process and notice requirements found in Chapter 15.24 EMC. Where there is a conflict between Chapter 15.24 EMC and this Chapter, this Chapter will prevail.

2. Decision Criteria. The criteria for granting variances shall be consistent with WAC 173-27-170 and include the following:

a. Variances should be granted in a circumstance where denial of the permit would result in a thwarting of the policy enumerated in the SMA. In all instances, extraordinary circumstances should be shown, and the public interest shall suffer no substantial detrimental effect.

b. Variances for development that will be located landward of the ordinary high-water mark may be authorized provided the applicant can demonstrate all of the following:

i. That the strict application of the bulk, dimensional, or performance standards as set forth in the master program precludes or significantly interferes with a reasonable permitted use of the property;

ii. That the hardship is specifically related to the property and is the result of unique conditions, such as irregular lot shape, size, or natural features, in the application of the master program and not, for example, from deed restrictions or the applicant's own actions;

iii. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment designation;

iv. That the variance authorized does not constitute a grant of special privilege not enjoyed by other properties in the area, and will be the minimum necessary to afford relief; and

v. That the public interest will suffer no substantial detrimental effect.

c. Variances for development that will be located waterward of the ordinary high-water mark may be authorized provided the applicant can demonstrate all of the criteria specified in Subsection C.2.b, above. The applicant must also demonstrate that the public rights of use of the shorelines will not be adversely affected by the granting of the variance, and that the strict application of the bulk, dimensional, or performance standards set forth in the applicable master program precludes all reasonable use of the property.

d. In granting of all variances, consideration shall be given to the cumulative impact of additional requests or like actions in the area.

3. Decision. All shoreline variances issued by the City must be submitted to the Washington State Department of Ecology (Ecology) for its approval or disapproval. A decision is not final until submitted to and approved by the Washington State Department of Ecology. Construction of development authorized by a shoreline variance shall not begin until twenty-one (21) days from the date that the decision by the Department of Ecology is transmitted to the Administrator, or until after all properly filed appeal proceedings are terminated.

D. Shoreline Exemption. If a development does not meet the definition of "Substantial Development" (RCW 90.58.030(3)(e)), it may be exempt from the requirement to obtain a Shoreline Substantial Development Permit, but may require a Shoreline Conditional Use Permit, Shoreline Variance, or a Statement of Exemption.

1. Statement of Exemption Required. Applicants for all non-shoreline permits or approvals within the shoreline jurisdiction must obtain a written "Statement of Exemption" from securing a Shoreline Substantial Development Permit. This process verifies the action is exempt and offers the applicant an itemization of shoreline policies and other requirements applicable to the proposed project.

2. Review Process. A statement of exemption is an administrative determination. Before determining a proposal is exempt, the Administrator may conduct a site inspection to ensure the proposal meets the exemption criteria.

3. Decision Criteria. An exemption from the Substantial Development Permit requirements does not constitute an exemption from the policies and use regulations of the Shoreline Management Act, the provisions of this Master Program, and other applicable city, state, or federal permit requirements. The exemption granted may be conditioned to ensure the activity is consistent with the Shoreline Master Program, the City's Comprehensive Plan,

and SMA. The City shall attach shoreline management terms and conditions to the building permits and other permits and approval pursuant to RCW 90.58.140.

4. Exemptions Waterward of OHWM. Whenever a development falls within the exemption criteria and is subject to a US Army Corps of Engineers Section 10 or Section 404 Permit, the Administrator shall prepare a Statement of Exemption, and transmit a copy to the applicant and the Washington State Department of Ecology.

15.36.040 Appeals

A. Local Appeals. Any decision made by the Administrator regarding shoreline exemptions, statement of exemptions, shoreline policy or regulation interpretations may be appealed to the Hearing Examiner pursuant to EMC 15.06.070.

B. Appeal to State Shorelines Hearings Board. Any person aggrieved by the granting, denying, rescinding, or revision of a shoreline substantial development permit, shoreline conditional use permit, shoreline variance or shoreline permit revision may seek review from the State Shorelines Hearings Board by filing an original and one (1) copy of the request with the Hearings Board within twenty-one (21) days of the date that the permit decision is received by Ecology. If the case is a variance or conditional use permit decision, the appeal must be filed within twenty-one (21) days from the date Ecology transmits its decision to the City and applicant.

15.36.050 Time Limits

A. Duration of Permits. The City may issue shoreline permits with termination dates of up to five (5) years. If a permit does not specify a termination date, the following requirements apply, consistent with WAC 173-14-060:

1. Time Limit for Substantial Progress. Construction, or substantial progress toward completion, must begin two (2) years after approval of the shoreline permit; and

2. Extension for Substantial Progress. The City may, at its discretion with prior notice to parties of record and Ecology, extend the two (2) year time period for the substantial progress for a reasonable time up to one (1) year based on factors, including the inability to expeditiously obtain other governmental permits which are required prior to the commencement of construction.

B. Five (5) Year Permit Authorization. If the applicant has not completed construction within five (5) years of approval, the City will review the shoreline permit and, upon showing of good cause, will either extend the permit for one (1) year, or terminate the permit. Prior to the City authorizing any permit extensions, it shall notify any parties of record and Ecology.

15.36.060 Revisions to Permits (See also WAC 173-27-100)

A. When an applicant seeks to revise a substantial development, conditional use, or variance permit, the Planning Department shall request from the applicant detailed plans and text describing the proposed changes in the permit.

B. If the planning staff determines that the proposed changes are within the scope and intent of the original permit, the revision may be approved, provided it is consistent with Chapter 173-27

WAC, the SMA, and this master program. "Within the scope and intent of the original permit" means the following:

1. No additional over-water construction will be involved;
2. Lot coverage and height may be increased a maximum of 10 percent from provisions of the original permit, provided that revisions involving new structures not shown on the original site plan shall require a new permit;
3. Landscaping may be added to a project without necessitating an application for a new permit if consistent with the conditions attached to the original permit and with the Shoreline Master Program;
4. The use authorized pursuant to the original permit is not changed;
5. No additional significant adverse environmental/ecological impact will be caused by the project revision; and
6. The revised permit shall not authorize development to exceed height, lot coverage, setback, or any other requirements of the applicable master program except as authorized under a variance granted as the original permit or a part thereof.

C. If the revision, or the sum of the revision and any previously approved revisions, will violate the criteria specified above, the City shall require the applicant to apply for a new substantial development, conditional use, or variance permit, as appropriate, in the manner provided for herein.

D. Revisions to permits may be authorized after original permit authorization has expired under RCW 90.58.143. The purpose of such revisions shall be limited to authorization of changes which are consistent with this section and which would not require a permit for the development or change proposed under the terms of chapter 90.58 RCW, this regulation and the local master program. If the proposed change constitutes substantial development then a new permit is required. Provided, this subsection shall not be used to extend the time requirements or to authorize substantial development beyond the time limits of the original permit.

E. The revision approval, including the revised site plans and text consistent with the provisions of WAC 173-27-180 as necessary to clearly indicate the authorized changes, and the final ruling on consistency with this section shall be filed with the Department of Ecology in the same manner as required for the original permit. In addition, local government shall notify parties of record of their action.

F. If the revision to the original permit involves a conditional use or variance, local government shall submit the revision to Ecology for the Ecology's approval, approval with conditions, or denial, and shall indicate that the revision is being submitted under the requirements of WAC 173-27-100. Ecology will render and transmit to local government and the applicant its final decision within fifteen (15) days of the date of its receipt of the submittal from local government. Local government shall notify parties of record of the Ecology's final decision.

G. The revised permit is effective immediately upon final decision by local government or, when appropriate under subsection F of this section, upon final action by the department.

15.36.070 Non-Conforming Uses

A. The provisions of the EMC Section 15.10, Non-Conforming Uses, are incorporated into this SMP as though fully set forth herein, with the following exception:

1. If a nonconforming development is damaged to an extent not exceeding seventy-five percent (75%) replacement cost of the original structure, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, provided that application is made for the permits necessary to restore the development within six months of the date the damage occurred, and all permits are obtained and the restoration is completed within two years of permit issuance.

B. All references to provisions contained in the EMC Chapter 18, Enumclaw Zoning Code shall be construed as referring to this SMP (including shoreline permits), and all references to zoning environments shall represent shoreline environment designations as established by this SMP.

15.36.080 Enforcement

A. Enforcement and penalties shall be consistent with WAC 173-27-240 through WAC 173-27-300.

B. The choice of enforcement action and the severity of any penalty should be based on the nature of the violation and the damage or risk to the public or to public resources. The existence or degree of bad faith of the persons subject to the enforcement action, the benefits accrued to the violator, and the cost of obtaining compliance may also be considered.

ORDINANCE 2509

EXHIBIT C

ENUMCLAW MUNICIPAL CODE SECTION 19.02.020 IS HEREBY AMENDED TO READ AS FOLLOWS (TEXT STRUCK IS DELETED, TEXT UNDERLINED IS ADDED):

19.02.020 Applicability, regulated activities, and exempt activities.

A. All regulated activities shall be subject to the provisions of this chapter, except those activities that occur within shoreline jurisdiction. When critical areas occur within shoreline jurisdiction, the critical areas regulations within the City of Enumclaw Shoreline Master program, EMC 15.36 shall apply. The provisions of this chapter shall apply to all lands, all land uses, and development activities, and all structures and facilities in the city, whether or not a permit or authorization is required, and shall apply to every person, firm, partnership, corporation, group, governmental agency, or other entity that owns, leases, or administers land within the city. No person, company, agency, or applicant shall alter a critical area or its associated buffer except as consistent with the purposes and requirements of this chapter and as authorized by the administrator.

1. Regulated Activities. Regulated activities include, but are not limited to, clearing (vegetation), draining, dredging, dumping or stockpiling (native or nonnative organic or inorganic materials), excavating, filling, flooding, grading, harvesting, obstructing, pile driving, or shading (with human-made structures) within critical areas and their associated buffers.

2. The city shall not approve any permit or otherwise issue any authorization to alter the condition of any land, water, or vegetation, or to construct or alter any structure or improvement in, over, or on a critical area or associated buffer, without first ensuring compliance with the requirements of this chapter, including, but not limited to, the following:

- a. Building permit;
- b. Clearing and grading permit;
- c. Forest practices permit;
- d. Conditional use permit;
- e. Shoreline conditional use permit;
- f. Shoreline substantial development permit;
- g. Shoreline exemption;
- h. Shoreline variance;
- i. Short subdivision;
- j. Subdivision;
- k. Planned unit development;

- l. Binding site plan;
- m. Zoning variance;
- n. Zoning code amendment; or
- o. Any other adopted permit or required approval not expressly exempted by this chapter.

3. Approval of a permit or development proposal pursuant to the provisions of this chapter does not discharge the obligation of the applicant to comply with the provisions of this chapter.

4. The city shall not grant any approval or permission to conduct a regulated activity in a critical area unless the activity is in compliance with this chapter or unless the activity is expressly exempted by this chapter.

B. Exempt Activities. With the approval of the administrator (director of community development), the uses listed below, when conducted outside of shoreline jurisdiction as defined by City of Enumclaw Shoreline Master Program EMC 15.36, shall be exempt from the provisions of this chapter and are allowed within a critical area to the extent that the uses are consistent with the provisions of other applicable local, state, and federal laws, regulations and requirements; and are not prohibited by any other chapter or law; and provided they are conducted using best management practices, except where such activities result in the conversion of a critical area to a use to which it was not previously subjected; and provided further, that forest practices and conversions shall be governed by current state regulations. All exempted activities shall use reasonable methods to avoid potential impacts to critical areas. By finding that an activity proposed within a critical area or its associated buffer is exempt from the provisions of this chapter, the administrator is not granting permission to degrade a critical area or ignore risk from natural hazards. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempted activity shall be restored, rehabilitated, or replaced at the responsible party's expense.

The following are exempt activities or allowable uses:

1. Conservation or preservation of soil, water, vegetation, fish, shellfish, and other wildlife including activities undertaken for purposes of habitat enhancement that is part of an enhancement project which has received prior written approval from the city and any other agency with jurisdiction over such activity;
2. Outdoor recreational activities, including fishing, bird watching, hiking, boating, horseback riding, swimming, canoeing, and bicycling;
3. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, or alteration of the wetland by changing existing topography, water conditions or water sources;
4. Existing and ongoing agricultural activities including farming, horticulture, aquaculture, irrigation, ranching or grazing of animals.

a. Cessation of agricultural activities on an area that was previously farmed to allow that area to lie fallow as part of a conventional, rotational cycle (or for any other regular or normal farming practice) is considered to be part of an ongoing agricultural operation and is not to be considered as a cessation of farming or as a change in land use.

b. Cessation of farming activities in response to government programs designed to control commodity production shall not be considered a permanent cessation of farming activity or a change in land use unless the land is left fallow or unfarmed for a period of seven years beyond the termination of the government program. Farming activities can resume after seven or more years, but the administrator has the authority to impose new critical areas regulations on all land use activities initiated at the end of the seven-year period and beyond.

c. Cessation of farming activities in response to market conditions or economic irregularities adversely impacting farming activities will not be considered a cessation of farming activities or a change in land use unless the land is left fallow or unfarmed for a period of five years or longer. Farming activities can resume after five or more years, but the administrator has the authority to impose new critical areas regulations on all land use activities initiated at the end of the seven-year period and beyond.

d. Activities undertaken to bring an area back into agricultural use and production following a period of nonfarm use may not be considered, in the judgment of the administrator, part of an ongoing operation. As a result, such activities may not be exempt from the provisions of this chapter.

e. An operation ceases to be ongoing when the area on which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operations;

5. The maintenance (but not construction) of drainage ditches;

6. Education, scientific research, and use of nature trails;

7. Navigation aids, boundary markers, and boat mooring buoys;

8. Site investigative work necessary for land use application submittals such as surveys, soil logs, percolation tests and other related activities. In every case, impacts shall be minimized and disturbed areas shall be immediately restored;

9. Emergency repair or construction activities or vegetation harvesting (mowing) that the city determines to be necessary to protect the health, safety, or welfare of area residents;

10. Normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved areas. Maintenance and repair does not include any modification that changes the character, scope, or size of the original structure, facility, or improved area and does not include the construction of a maintenance road;

11. Public and private pedestrian trails, except in wetlands, subject to the following:

a. The trail surface shall meet all other requirements including water quality standards set forth in the city's applicable storm water management regulations;

b. Whenever possible the trail surface should be comprised of materials that allow the maximum amount of storm water runoff infiltration;

c. When required by the administrator trails within nonwetland critical areas and/or their associated buffers total widths of the buffers where the trail is located shall be increased, where possible, to a width equal to the width of the trail corridor, including disturbed areas; plus the originally prescribed wetland buffer width; and

d. Trails proposed to be located in landslide or erosion hazard areas shall be constructed in a manner that does not increase the risk of landslide or erosion and in accordance with an approved geotechnical report.

e. Trails may be allowed in wetlands if the administrator can demonstrate that the public education benefits are greater than the detrimental effects of the wetland impacts associated with the construction, maintenance, and long-term operation of the trail. The impacts of administrator-approved trail installation, public or private, shall be mitigated by the project proponent. Mitigation efforts may include unconventional mitigation activities such as:

i. Purchase and installation of educational/interpretive signage within the wetland and the adjacent buffer;

ii. Purchase of materials and construction of unobtrusive viewing platforms and/or blinds; and

iii. Purchase of materials and installation of habitat features such as duck boxes, goose platforms, large woody debris to be installed as downed logs or snags, or native animal species to augment or increase species diversity;

12. The following vegetation removal activities; provided, that no vegetation shall be removed from a critical area or its buffer without approval from the administrator, are allowed:

a. The removal of the following vegetation with hand labor and light equipment:

i. Invasive and noxious weeds;

ii. English Ivy (*Hedera helix*);

iii. Himalayan blackberry (*Rubus discolor*, *R. procerus*); and

iv. Evergreen blackberry (*Rubus laciniatus*);

b. The removal of trees from critical areas and buffers that are hazardous, posing a threat to public safety, or posing an imminent risk of damage to private property; provided, that:

i. The applicant submits a report from a certified arborist, registered landscape architect, or professional forester that documents the hazard and provides a replanting schedule for the replacement trees;

ii. Tree cutting shall be limited to pruning and crown thinning, unless otherwise justified by a qualified professional. Where pruning or crown thinning is not sufficient to address the hazard, trees should be removed or converted to wildlife snags;

iii. All vegetation cut (tree stems, branches, etc.) shall be left within the critical area or buffer unless removal is warranted due to the potential for disease or pest transmittal to other healthy vegetation;

iv. Unless otherwise directed by the administrator, the landowner shall replace any significant trees that are removed as part of an approved land use or development project with new trees at a ratio of two replacement trees for each tree removed (2:1) within one year in accordance with an approved restoration plan.

(A) Significant trees are conifer species greater than six inches in diameter at breast height (dbh) and deciduous species greater than eight inches dbh.

(B) Replacement trees may be planted at a different, but nearby, location than the trees that were removed if it can be determined that planting in the same location would create a new hazard or potentially damage the critical area.

(C) Unless otherwise directed by the administrator, tree species removed will be replaced with the same species.

(D) Replacement trees shall be species that are native and indigenous to the site and a minimum of one inch in diameter at breast height (dbh) for deciduous trees and a minimum of six feet in height for evergreen trees as measured from the top of the root ball;

v. If a tree to be removed provides critical habitat, such as an eagle perch, a qualified wildlife biologist shall be consulted to determine timing and methods of removal that will minimize impacts; and

vi. Hazard trees determined to pose an imminent threat or danger to public health or safety, to public or private property, or of serious environmental degradation may be removed or pruned by the landowner prior to receiving written approval from the city; provided, that within 14 days following such action, the landowner shall submit a restoration plan that demonstrates compliance with the provisions of this title;

c. Measures to control a fire or halt the spread of disease or damaging insects consistent with the State Forest Practices Act, Chapter 76.09 RCW, and any applicable city code sections; provided, that the removed vegetation shall be replaced in-kind or with similar native species within one year in accordance with an approved restoration plan; and

d. Unless otherwise provided, or as a necessary part of an approved alteration, removal of any vegetation or woody debris from a habitat conservation area or wetland shall be prohibited;

13. The application of herbicides, pesticides, organic or mineral-derived fertilizers, or other hazardous substances, if necessary, as approved by the administrator; provided, that their use shall be restricted in accordance with State Department of Fish and Wildlife

Management recommendations and the regulations of the State Department of Agriculture and the U.S. Environmental Protection Agency; and

14. Utility projects which have minor or short-duration impacts to critical areas, as determined by the administrator in accordance with the criteria below, and which do not significantly impact the function or values of a critical area(s); provided, that such projects are constructed with best management practices and additional restoration measures are provided. Minor activities shall not result in the transport of sediment or increased storm water. Such allowed minor utility projects shall meet the following criteria:

- a. There is no practical alternative to the proposed activity with less impact on critical areas;
- b. The activity involves the placement of a utility pole, street signs, anchor, or vault or other small component of a utility facility; and
- c. The activity involves disturbance of an area less than 75 square feet.

C. Exemption Request and Review Process. The proponent of the activity that is not specifically listed above may submit a written request for exemption to the administrator that describes the activity and states the exemption listed in subsection B of this section that may apply.

The administrator shall review the exemption request to verify that it complies with this title and approve or deny the exemption. If the exemption is approved, it shall be placed on file with the administrator. If the exemption is denied, the proponent may continue in the review process and shall be subject to the requirements of this chapter.

D. This chapter is to be administered with flexibility and attention to site-specific characteristics. It is not the intent of this chapter to make a parcel of property unusable by denying its owner reasonable economic use of the property that would otherwise be allowed under the current code and would be consistent with other allowable uses.

E. It is not the intent of this chapter to prevent the provision of public facilities and services necessary to support existing development and planned for by the community without decreasing current service levels below minimum standards (see RCW 36.70A.020(12)).

F. The city's enactment or enforcement of this chapter shall not be construed for the benefit of any individual person or group of persons other than the general public.

G. It is not the intent of this chapter to repeal, abrogate, or impair any existing regulations, easements, covenants, or deed restrictions. Where this chapter provides more protection to critical areas, however, the provisions of this chapter shall prevail unless specifically provided otherwise in this chapter.