

Attachment 1:

Ecology DRAFT Required Changes on the Enumclaw SMP Periodic Review Amendment

The changes in **red are required** for consistency with the SMA (RCW 90.58) and the SMP Guidelines (WAC 173-26, Part III). Changes in **blue are recommended** and consistent with SMA (RCW 90.58) policy and the SMP Guidelines (WAC 173-26, Part III)

ITEM	SMP Submittal PROVISION (Cite)	TOPIC	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)	RATIONALE
Req-1	5.2.1	Critical Areas Incorporation	<p>The Enumclaw Critical Areas Regulations, as codified in Chapter 19.02 of the EMC (passed January 14, 2008, Ordinance #2382 and the update—Ordinance 2572 passed May 18, 2015), found in Appendix A of the SMP, are incorporated into this master program except as noted below. Exceptions to the applicability of Enumclaw Critical Areas Regulations in shoreline jurisdiction are the following:</p> <p>A. — If provisions of the Critical Areas Regulations and other parts of the master program conflict, the provisions most protective of the ecological resource shall apply, as determined by the City.</p> <p>B. — Provisions of the Critical Areas Regulations that are not consistent with the SMA, Chapter, 90.85 RCW, and supporting Washington Administrative Code (WAC) chapters shall not apply in shoreline jurisdiction.</p> <p>C. — The provisions of Enumclaw Critical Areas Regulations do not extend shoreline jurisdiction beyond the limits specified in this SMP. For regulations addressing critical area buffer areas that are outside shoreline jurisdiction, see the Enumclaw Critical Areas Regulations.</p> <p>D. — Provisions of Enumclaw Critical Area Regulations that include “reasonable use” provisions contained in EMC 19.02.030(B) & 19.02.030(B) shall not apply within shoreline jurisdiction. Refer to Section 6.2, Variances.</p> <p>E. — Provisions of Enumclaw Critical Areas Regulations relating to “variance” and “exemption” procedures and criteria contained in EMC 19.02.020(B), 19.02.030(B), and 19.2.170 do not apply in shoreline jurisdiction.</p> <p>F. — Provisions of Enumclaw Critical Areas Regulations relating to wetland buffers (EMC 19.02.090.C and 19.02.100.C) and Mitigation (EMC 19.02.250) shall not apply as they are addressed by the regulations in this section.</p> <p>G. — Provisions of Enumclaw Critical Areas Regulations relating to monitoring of compensatory mitigation (EMC 19.02.240, Appendices B and C) shall not apply as they are addressed by regulations in this section.</p> <p>H. Identification of wetlands and delineation of their boundaries shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements (RCW 36.70A.175).</p> <p>5.2.1.1 Applicability <u>The following policies and regulations, as well as the shoreline-specific Critical Areas Regulations as contained in Appendix A,</u> apply to all uses and development in shoreline jurisdiction.</p>	<p>As currently proposed, the SMP amendment would result in the direct incorporation of two sets of critical areas ordinances, as well as refer to an Appendix A with a third set or critical areas regulations. The three sets of regulations contain duplicative and sometimes conflicting regulations. For internal consistency, a change to the amendment is necessary.</p> <p>Ecology confirmed in conversations with City staff the City’s intent is to have a separate shoreline-specific set of critical areas regulations that are located in an appendix and to not directly incorporate the City’s CAO. Ecology has proposed a change that will ensure internal consistency of the SMP and that should be consistent with the City’s intent.</p> <p style="text-align: center;">Complete see page 5-8/5-9</p>

			<p>5.2.1.3 Regulations <u>The following regulations, as well as the shoreline-specific Critical Areas Regulations as contained in Appendix A shall apply:</u></p>	Complete see page 5-9
Rec-1	5.2.1.3 Wetland Buffers B.	Wetland Buffers	<p>1. The use of the standard buffer widths requires: a. Tthe implementation of the measures in Table 2B, <u>and</u> b. <u>For wetlands with a habitat score of 6 or more, if in addition to</u> a relatively undisturbed, protected vegetated corridor at least 100-foot wide <u>exists</u> between the wetland and any other Priority Habitats as defined by the Washington Department of Fish and Wildlife, <u>then the portion on the subject property must be protected, where applicable, to minimize the impacts of the adjacent land uses. The corridor must be protected for the entire distance between the wetland and the Priority Habitat by some type of legal protection such as a conservation easement.</u></p>	<p>The current wording of this section may be confusing for applicants. Ecology recommends that the City re-word this section and we have provided suggested language that is consistent with Ecology’s wetland guidance.</p> <p>Agreed, however i left language regarding a conservation easement.</p>
Rec-2	6.3.2	Moratoria Authority	<p>The City has authority to adopt a moratorium control or other interim control on development under RCW 90.58.590.</p> <p>A. Before adopting the moratorium must: i. Hold a public hearing on the moratorium or control; ii. Adopt detailed findings of fact that include, but are not limited to justifications for the proposed or adopted actions and explanations of the desired and likely outcomes; iii. Notify the department of Ecology of the moratorium or control immediately after its adoption. The notification must specify the time, place, and date of any public hearing. a. The public hearing must be held within sixty days of the adoption of the moratorium or control.</p> <p>B. A moratorium or control adopted under this section may be effective for up to six months if a detailed work plan for remedying the issues and circumstances necessitating the moratorium or control is developed and made available for public review.</p> <p>C. A moratorium or control may be renewed for one or more six-month period if the City complies with the requirements in subsection (2A) above before each renewal.</p>	<p>The recommended change is for clarification of the correct reference. Regardless, the moratoria procedures in RCW 90.58.590 and WAC 173-27-085 apply.</p> <p>Complete. See page 6-10</p>
Rec-3	7.0	Definitions	<p>Appurtenance. A structure or development that is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and also of the perimeter of any wetland. (On a state-wide basis, normal appurtenances include a garage, deck, driveway, utilities, fences, and grading that does not exceed 250 cubic yards.)</p> <p>Accessory dwelling units (ADUs): Structures and activities considered normal residential appurtenances include accessory dwelling units or other detached residential structures, garages, sheds, decks attached to primary structures, private pedestrian pathways, stairways to access shorelines, ramps, patios, fences, driveways, utilities, on-site sewage disposal systems, antennas, solar arrays, wind power generators serving a single structure, satellite dishes, boat houses landward of the primary residential structure served by marine railways that require a substantial development permit, official registered historic structures, and grading which does not exceed 250 cubic yards and which does not involve placement of fill in any wetland or waterward of the OHWM.</p>	<p>The sentence following “Accessory dwelling units” does not appear to be about accessory dwelling units. The recommended change is for clarity and to reduce confusion.</p> <p>Note that while the City may identify additional structures appurtenant to single family residences, not all qualify for the single-family exemption in WAC 173-27-040(2)(g). For example, homes with accessory dwelling units are no longer single-family residences as defined by WAC 173-27-040(2)(g) and so do not qualify for this exemption.</p>
Rec-4	19.2.10.D	Critical Areas Policy, Goals,	<p>D. Intent: The regulations detailed in this Chapter are intended to provide the City a basis for protecting, restoring, enhancing, and/or obliterating (with approved mitigation) the designated and</p>	<p>Per RCW 36.70A.480(3) the development regulations adopted under the GMA shall not apply in shoreline jurisdiction. Critical</p>



		Purpose, Intent	classified critical areas in accordance with the Growth-Shoreline Management Act and through the application of the best available science, as determined according to WAC 365-195-900 through 365-195-925, and in consultation with state and federal agencies and other qualified professionals.	areas in shoreline jurisdiction are protected solely by the SMA and the City's SMP. The recommended change improves reader understanding of the City's authority to protect critical areas.
Rec-5	19.2.20	Critical Areas Applicability, Regulated Activities, and Exempt Activities	A. All regulated activities in shoreline jurisdiction shall be subject to the provisions of this Chapter. The provisions of this Chapter shall apply to all lands, all land uses, and development activities, and all structures and facilities in the City's shoreline jurisdiction , 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.	Complete. see page 5 App A
Rec-6	19.02.100	Fish and Wildlife Conservation Areas	<p>C. Streams and Watercourses: Streams and watercourses are classified primarily on the basis of salmonid fish use. Formerly these habitat features were classified using the Washington State Department of Natural Resources (DNR) water typing system (WAC 222-16-030), a system designed to regulate forest practices in areas adjacent to wetlands, watercourses, and water bodies. The list below shows the original water type and the revised water type:</p> <ol style="list-style-type: none"> 1. Type 1 Water, which has been changed to Type S for all waters inventoried as "shorelines of the state" under the Enumclaw Shoreline Master Program streams and watercourses of statewide significance; 2. Type 2 Water, which has been changed to Type F for fish bearing streams with perennial flow; 3. Type 3 Water, which has been changed to Type F; for fish bearing streams with intermittent flow; 4. Type 4 Water, which has been changed to Type Np for streams with perennial or intermittent flow, but without direct fish use; 5. Type 5 Water, which has been changed to Type Ns for intermittent and ephemeral streams or watercourses that are not used by fish, but have enough flow energy to scour a stream channel to mineral soil; 6. Type 5 Water, which has been changed to Type O for watercourses that do not have enough flow energy to scour a stream channel to mineral soil or bedrock and that do not have fish use. This latter type is sometimes referred to as a swale or drainage swale. <p>A buffer, consisting of natural vegetation, shall be required along all streams as classified by the DNR water typing classification system (WAC 222-16-030). The native growth buffer shall be established on both sides of the stream or watercourse and shall extend landward from the ordinary high water of the water body. The following buffer widths are the standard buffer width requirements:</p>	<p>The City indicates that the water typing system in WAC 222-16-030 shall be used for typing watercourses. However, the City's definition for Type S waters is inconsistent with the definition in WAC 222-16-030. In particular, Type S waters are all shorelines of the state, not just shorelines of statewide significance. Buffer requirements are based on the statutory definition. We recommend the City update its definition for Type S streams to reduce confusion and improve implementation.</p> <p>Complete, see page 10 App A</p>

			DNR Water Type S 100-foot buffer DNR Water Type F 75-foot buffer DNR Water Type Np 50-foot buffer DNR Water Type Ns 25-foot buffer	Complete, included from Attachment 2, see pages 9-13 in App A
Req-2	Article III	Critical Area Permits	[See Attachment 2 for suggested text edits.]	Per RCW 36.70A.480(3) the development regulations adopted under the GMA shall not apply in shoreline jurisdiction. Critical areas in shoreline jurisdiction are protected solely by the SMA and the City's SMP. As such, the permitting and appeal procedures of the CAO do not apply in shoreline jurisdiction. A change is necessary for consistency with the permitting requirements of the SMA. See Attachment 2 for suggested text changes that could address this required change.
Req-3	19.2.140	Application	<p>D. Critical Area Boundary. Critical area boundary shall be determined by the Applicant through the performance of a field investigation.</p> <ol style="list-style-type: none"> 1. The Administrator, when requested by the Applicant, may waive the delineation of the boundary requirement for the Applicant and, in lieu of delineation by the Applicant, perform the delineation. <ol style="list-style-type: none"> a. All wetland delineations will be completed in accordance with the <u>approved wetland delineation manual and applicable regional supplements, methodologies defined in the U.S. Army Corps of Engineers Wetland Delineation Manual (RCW 36.70A.175) and the Washington State Wetlands Identification and Delineation Manual (WDOE Publication No. 96-94); or in accordance with future revised delineation manuals required by Federal and State agencies.</u> 2. The Administrator shall consult with qualified critical areas consultant and technical experts or other experts as needed to perform the delineation. 3. The applicant may be charged for the costs incurred in accordance with the provisions of this section. 4. Where the Administrator delineates a wetland at the request of the applicant, such delineation shall be considered a final determination. 5. Where the applicant delineates the critical area boundary, the administrator shall verify the accuracy of, and may adjust, the boundary. If the applicant contests the adjusted boundary, the administrator shall, at the applicant's expense, obtain expert services to render a final delineation. 	<p>The required change is necessary for consistency with WAC 173-22-035 and with the periodic review requirements.</p> <p>An alternative option the City could choose is to delete sub-section (a) all together. The SMP already contains the necessary language in Section 5.2.1.H.</p> <p>Complete See page 16</p>

Req-4	19.2.230	Mitigation of Reasonable Use Exception	<p>A. Eligibility for Reasonable Use Exception Application. <u>Reasonable use exceptions do not apply in shoreline jurisdiction.</u></p> <p>1. It is the City's responsibility to review all regulated land use activities and approve only those land use proposals that will not adversely impact public health and safety, public investments in infrastructure, and natural resources managed as a public trust.</p> <p>2. It is the responsibility of an Applicant requesting plan approval and development permits for a proposed land use action to ensure that all reasonable and practical project alternatives have been thoroughly evaluated in an effort to avoid adversely impacting public health and safety, public investments in infrastructure, and natural resources managed as a public trust.</p> <p>3. To be consistent with the goals and objectives of its current Comprehensive Plan and the provisions of this Chapter the City shall require an Applicant to clearly demonstrate that all efforts have been exhausted in the process of preparing a proposed development plan (land use activity).</p> <p>4. The Applicant having exhausted all reasonable and practical efforts to avoid impacts, it is the responsibility of the Administrator to ensure that all unavoidable impacts to regulated critical areas are mitigated.</p> <p>D. ——— Mitigation of Unavoidable Critical Area Impacts as Part of a Reasonable Use Exception: If the Administrator has determined that implementation of an Applicant's land use proposal results in adverse impacts to critical areas identified within, or immediately adjacent to the proposed project site and the application of the provisions of this Chapter would deny all reasonable use of the property, the Administrator may allow a proposed development that is consistent with the general purposes of this chapter and the public interest; to proceed provided, that the City Council finds that:</p> <p>1. ——— Enforcement of the provisions of this chapter would otherwise deny all reasonable use of the property;</p> <p>2. ——— There is no other reasonable use with less impact on the wetland;</p> <p>3. ——— The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the property;</p> <p>4. ——— Any proposed alteration of the wetland is the minimum necessary to allow for reasonable use of the property;</p> <p>5. ——— There is no feasible on-site alternative, including reduction in density and site planning considerations;</p> <p>6. ——— The inability to derive reasonable economic use from the property is not the result of actions by the applicant in segregating or dividing the property and creating the undevelopable condition after the effective date of the ordinance codified in this chapter.</p>	<p>Reasonable use exceptions are not consistent with the permitting procedures of the SMA. The City has removed most sections referring to these exceptions, but missed these sections.</p> <p>Complete, see page 25 App A</p>
Req-5	Appendix D of Appendix A	Definitions	<p>Development means any man-made change to improved or unimproved real estate in the Special Flood Hazard Area (SFHA), including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, storage of equipment or materials.</p>	<p>The proposed definition is inconsistent with RCW 90.58.030(3) and with the definition for development in SMP Chapter 7.</p>

Complete see page 36 of App A, within App D "Development: See RCW 90.58.030(3)."

Rec-7	Appendix D of Appendix A	Definitions	<p>Wetland Biologist: A wetland biologist or ecologist is a “Qualified Professional” with a minimum of a Bachelor of Science degree from an accredited college or university in a program that includes coursework in wetland biology. Post graduate training or certification and experience in the delineation of wetland habitats may be substituted for college or university coursework.</p> <p>Professional, Qualified: “Qualified Professional” means a person with training and experience in the scientific discipline, and who is a qualified scientific expert with expertise in streams, wetlands or lakes subject matter in accordance with WAC 365-195-905(4). A qualified professional must have obtained a Bachelor of Science degree in hydrology, soil science, botany, ecology, or related field from an accredited college or university or who has equivalent educational training and professional experience related to the subject of habitat or species. Also includes fluvial morphologist if stream relocation is involved. Geologists are included as those professionals who hold active license from the state of Washington Geology Board. <u>A qualified professional for wetlands must be a professional wetland scientist with at least two years of full-time work experience as a wetlands professional, including delineating wetlands using the federal manual and supplements, preparing wetlands reports, conducting function assessments, and developing and implementing mitigation plans.</u></p>	<p>“Wetland Biologist” is not found in the SMP or Appendix A. Further, Ecology’s Wetland Guidance for CAO Updates (Publication No. 16-06-001) recommends using the definition added here.</p> <p>Complete. Definition deleted and language included here under Professional, qualified. See page 40</p>
Rec-8	5.2.1 and Appendix A	Organization of Critical Areas Regulations	<p>[See Attachment 2 for Ecology’s recommended language]</p>	<p>The current SMP amendment splits wetland regulations between the main body of the SMP and Appendix A. This may cause confusion for applicants and the City and could result in some regulations being missed. Ecology recommends that the City remove the wetland regulations from the main body of the SMP in Section 5.2.1 and rely solely on Appendix A. This would necessitate some provisions be added to Appendix A. Ecology has added the necessary provisions in Attachment 2 to this initial determination. Attachment 2 also contains some of the above required and recommended changes. These are noted in comment bubbles.</p> <p>Completed</p>