

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

ITEM	PROVISION	TOPIC	BILL FORMAT CHANGES [ <u>underline-additions</u> ; <del>strikethrough-deletions</del> ]	ECOLOGY - DISCUSSION/RATIONALE
1	25.01.060	Incorporation by reference	<p><b>25.01.060 Relationship to Plans, Policies and Regulations</b></p> <p>(5) The following provisions of the Sammamish Municipal Code are adopted as part of this SMP, and attached herein: SMC 13 (Surface Water Management, adopted by Ord 2011-304, on May 16, 2011), SMC 21.10.120 (Historic Resources, adopted by Ord 2008-240, on Dec 16, 2008) and sections of the City’s Critical Areas Ordinance as described within this program 25.01.070 (adopted by Ord 2005-193, on December 20, 2005 and revised by Ord 2009-264 on October 6, 2009, and Ord 2009-274 on December 1, 2009, <u>and Ord 02013-350 on July 9, 2013</u>).</p>	<p>Ecology’s guidelines at WAC 173-26- 191(2) (a) require that documents incorporated by reference must indicate the specific ordinance that will apply. This change is the mechanism for formally acknowledging the critical area ordinance amendments adopted July 9, 2013 that will apply within shoreline areas.</p>
2	25.01.070	Exceptions to critical areas regulations	<p><b>25.01.070 Critical Areas Regulations Incorporated by Reference</b></p> <p>Provisions of the Sammamish Critical Areas Ordinance codified in SMC 21A.50 exclusive of SMC 21A.50.050 (Complete exemptions), SMC 21A.50.060 (Partial Exemptions), SMC 21A.50.070 (Exceptions), and SMC 21A.50.400 (Sunset provisions) are considered part of this SMP.</p> <p><u>In shoreline jurisdiction, the critical area shall be implemented consistent with the following:</u></p> <ul style="list-style-type: none"> <li>• <u>Under 21A.50.320 (1) and 21A.15.1410, isolated wetlands shall be determined by the United States Army Corps of Engineers.</u></li> <li>• <u>Pilot projects under 21A.50.320 (3) shall require approval of a shoreline conditional use permit if located within shoreline jurisdiction. The applicant shall obtain all necessary state and federal authorizations for isolated wetland impacts prior to beginning any ground disturbing activities or timber harvest.</u></li> </ul>	<p><b>Regulations addressing isolated wetlands:</b> This change is required because under the City’s Critical Areas Code 21A.50.320 (1) and 21A.15.1410, federal authority in determining Clean Water Act (CWA) jurisdiction is deferred to a “qualified professional.” This change would be inconsistent with a 2001 US Supreme Court decision” (<a href="#">Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers et al., 531 U.S. 159</a>). As established by the Court in 2001, the United States Army Corps of Engineers (USACOE) has authority to determine CWA jurisdiction, including the authority to designate a wetland as “isolated” or not a jurisdictional water of the United States. Further, as described in previous communication to the City (letters dated October 3, 2012 and April 23, 2013), the wetland rating system is not an appropriate tool for determining hydrological isolation or regulatory authority of isolated wetlands. A qualified professional can assess the likelihood of jurisdiction, but lacks the authority to make a regulatory decision affecting the jurisdiction of the CWA. Therefore, the identified change is necessary to assure consistency with SMP-Guidelines requirements at WAC 173-26-186 (8) (b) and WAC 173-26-221 related to designing SMP provisions to achieve no net loss of shoreline ecological functions and consistency with wetland development standards, Further confirmation of “isolated” wetland determination from state and/or federal agencies is recommended in the City’s Cumulative Impact Analysis (ESA, 2013; 22).</p> <p><b>Requirement for a CUP for pilot projects:</b> As described in the City’s Cumulative Impact Analysis (ESA, 2013) and in Ecology’s Findings &amp; Conclusions (attachment A), “isolated wetlands” are not expected to be found within shoreline jurisdiction. Despite this conclusion, the City has adopted a Pilot Program as defined under section 21A.50.320 (3). Therefore, to accommodate the City’s request, Ecology has incorporated this requirement for a shoreline Conditional Use Permit (CUP) that would be required for review of any isolated wetland alterations within shoreline jurisdiction. A shoreline CUP requires that a unique or unanticipated proposal demonstrate consistency with the local master program and shoreline management act goals through evaluation of CUP approval criteria listed in WAC 173-27-160. This criteria includes consideration of “cumulative impacts”, which would be appropriate in this case, as the City’s CIA (ESA, 2013) did not anticipate the occurrence of isolated wetlands within shoreline jurisdiction and therefore did not attempt to characterize potential cumulative impacts resulting from this provision.</p>

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3	25.01.080	Effective Date	<p>25.01.080 <i>Effective Date</i></p> <p>This Program and all amendments thereto shall become effective <del>immediately upon</del> <u>fourteen days from the date of the Department of Ecology's written notice of</u> final approval <del>by the Department of Ecology.</del></p>	<p><i>Required for consistency with RCW 90.58.090 (7).</i></p>