

Attachment B – Ecology Required Changes

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

ITEM	SMP Submittal PROVISION (Cite)	TOPIC	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)	RATIONALE
01	16.04.240.B	Shoreline Environment Designations – Interpretation	5. The boundary of the Natural environment designation adjacent to Breckenridge Creek shall be the line of the vegetated riparian corridor based on aerial imagery by Pictometry, Inc. taken in the spring of 2008.	The Nooksack SMP creates a split environment designation system associated with Breckenridge Creek located within the urban growth area boundary. WAC 173-26-211 requires that master programs include text to provide a clear basis to accurately define and distinguish environment designations on the ground. In order to provide clarity as to where the Natural boundary is located, this provision was developed in consultation with the City.
02	16.04.230	Official Shoreline Map	<i>The following note shall be placed on the Official Shoreline Map:</i> <u>Areas not identified as being included in any specific environment designation shall be assigned a designation based on the criteria outlined in NMC 16.04.230.</u>	WAC 173-26-211 requires that a note be placed on the Official Shoreline Map, in addition to the text of the master program, to address unmapped shoreline areas that may exist. This minor change adds the required map note that references the existing language in the master program.
03	16.04.540.C.3.d	Dredging	No dredging shall be conducted without the responsible person having obtained a shoreline conditional use permit <u>and a substantial development permit</u> or statement of exemption as appropriate, and where required, a Hydraulic Project Approval permit from the State and all other permits required by state and federal agencies.	This change clarifies the fact that a conditional use permit is required in addition to either a substantial development permit or statement of exemption. According to WAC 173-27-040(b), a development or use listed as a conditional use must obtain a conditional use permit even though the development may not require a substantial development permit.
04	16.04.180.A	Conditional Use Permit Criteria	The purpose of a conditional use permit is to allow greater flexibility in the application of the use regulations of this program in a manner consistent with the policies of RCW 90.58.020; PROVIDED that, conditional use permits may also be granted for a use not included in the enumerated permitted and conditional uses in a circumstance where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In authorizing a conditional use, special conditions may be attached by the City or the Department of Ecology to prevent undesirable effects of the proposed use and/or to ensure consistency of the project with the Act and this master program.	These changes delete language that is inconsistent with the review criteria for conditional use permits. WAC 173-27-160(3) allows uses that are not classified or set forth in a master program to be considered through the conditional use permit process as long as the applicant can demonstrate consistency with the conditional use criteria. The requirement to demonstrate extraordinary circumstances that preclude reasonable use of property and approval where denial would thwart RCW 90.58.020, are criteria associated with a shoreline variance request (WAC 173-27-170).
05	16.04.180.C	Conditional Use Permit Criteria	Other uses which are not classified or set forth in this program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the this master program and that extraordinary circumstances preclude reasonable use of the property in a manner consistent with the use regulations of the master program.	
06	16.04.190.E	Variance Permit Criteria	Requests for varying the use to which a shoreline area is to be put are not requests for variances, but rather requests for conditional uses. Such requests shall be evaluated using the criteria set forth in Section 15.04.180 of this program.	WAC 173-27-170(5) prohibits a variance from the use regulations of a master program. The purpose of a conditional use permit is to provide flexibility in the application of use regulations for specific uses classified within a master program or for unlisted uses.
07	16.04.030	Definitions	<u>FLOODWAY, SHORELINE</u> – Means <u>the area that has been designated as a floodway</u>	This change adds the reference to floodway areas mapped by FEMA consistent with

			<u>in federal emergency management agency flood insurance rate maps or floodway maps currently in effect or as subsequently updated by FEMA and thereafter adopted by the City; or those portions of a floodplain upon which flood waters are carried during periods of flooding that occur with reasonable regularity, said floodways being identified under normal circumstances by changes in soil or vegetation; PROVIDED that, floodways shall not include areas protected from flooding by flood control devices maintained or licensed by a government agency.</u>	the definition in WAC 173-26-020(18).
08	16.04.030	Definitions	<u>SHORELANDS – Means those lands extending landward for 200 feet in all directions, measured on a horizontal plane, from the ordinary high water mark of the Sumas River or Breckenridge Creek; floodways and contiguous floodplain areas landward 200 feet from such floodways; and those land areas extending fifty feet from the delineated edge of the Nooksack Slough and those wetlands associated with any of these water bodies.</u>	These changes area required in order to be consistent with the minimum shoreline jurisdictional area as defined by 90.58.030(2)(d).
09	16.04.060	Geographic Jurisdiction	The provisions of this Program shall apply to all shoreline areas within the corporate limits of the City of Nooksack. The location and extent of known shoreline jurisdiction are shown on the Official Shoreline Map. Shoreline jurisdiction includes the water areas of the Sumas River and Breckenridge Creek, together with the lands underlying them, plus those lands within 200 feet of the ordinary high water mark of the above water bodies, <u>plus floodways and contiguous floodplain areas landward 200 feet from such floodways</u> , plus those wetlands associated with any of the above water bodies, including, but not limited to, the Nooksack Slough. As a local option, the adjacent land area within fifty (50) feet of the delineated edge of such associated wetlands is also included in shoreline jurisdiction.	
10	SMP Part I, 5.1	Shoreline Jurisdiction	Consistent with the definitions established in the Shoreline Management Act and implementing regulations, those areas that are within the jurisdiction of the Nooksack Shoreline Management Master Program generally include those areas within the corporate limits of the City of Nooksack as it currently exists, or as subsequently modified through annexation, including: A. All river and stream segments having a mean annual flow of at least 20 cubic feet per second, including the Sumas River and Breckenridge Creek, plus those adjacent land areas within 200 feet of the ordinary high water mark of all such river and stream segments; and B. <u>All floodways and contiguous floodplain areas landward 200 feet from such floodways, and</u> B C. Those wetland areas associated with any of the above aquatic areas, including, but not limited to, the Nooksack Slough; and C D. As a local option, the adjacent land area within fifty (50) feet of the delineated edge of such associated wetlands.	
11	16.04.470.A	Critical Areas – Generally	Critical Areas include wetlands, fish and wildlife habitat conservation areas, frequently flooded areas, aquifer recharge areas and geologically hazardous areas.	These changes eliminate redundant and/or conflicting sections of the City of Nooksack CAO incorporated by reference into the SMP.

			<p>Where not specifically addressed within this Chapter, either directly or through reference, regulation of critical areas within shoreline jurisdiction shall be pursuant to applicable provisions codified in Chapter 16.08 NMC adopted by Ordinance Nos. 346 in 1991, 441 in 1996, 538 in 2001, 595 in 2005 and 607 in 2006; provided, that the following sections shall not apply: projects that would otherwise require approval of a reasonable use exceptions pursuant to Section 16.07.087 shall be processed as and require approval of a shoreline variance pursuant to Section 15.04.190 of this chapter.</p> <ol style="list-style-type: none"> 1. <u>Section 16.08.080 – Development Exceptions.</u> 2. <u>Section 16.08.085 – Variances.</u> 3. <u>Section 16.08.087 – Reasonable Use Development Proposals.</u> 4. <u>Section 16.08.100 – Nonconforming Uses/Structures.</u> 5. <u>Section 16.08.120 – Appeals.</u> 	
12	16.04.470.A	Critical Areas – Generally	<u>When a conflict exists between the provisions of this chapter and those adopted by reference above, the most ecologically protective provision shall prevail.</u>	This change ensures consistency between the City’s Critical Areas regulations and the SMP as required under RCW 90.58.090(4) and WAC 173-26-191(2)(b).
13	16.04.470.B	Wetlands	<p>Development within wetlands within shoreline jurisdiction shall be as follows:</p> <ol style="list-style-type: none"> 1. The regulation of wetlands within shoreline jurisdiction shall be pursuant to Chapter 16.08 NMC, adopted pursuant to the ordinances referenced above, which are incorporated by reference as part of the Nooksack Shoreline Management Master Program, except as provided in subsections (B)(2) and (B)(3) <u>through (B)(7), below.</u> 2. Wetlands shall be identified and delineated according to Corps of Engineers Wetlands Delineation Manual (Environmental Laboratory 1987) and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0, 2010 or as revised). 3. In addition to the requirements set forth in Chapter 16.08 NMC, mitigation for Impacts to wetlands shall include compensation for lost time when the wetland is unavailable to perform its function. 4. <u>Wetlands shall be classified (rated) based upon Washington State Department of Ecology’s <i>Washington State Wetland Rating System for Western Washington (2014)</i> or most recent update. References to the previous 2004 rating system within Chapter 16.08.071 shall use the conversion tables provided by the Department of Ecology until such time as 16.08 NMC can be updated to reflect these changes.</u> 5. <u>When the buffer reduction and averaging provisions outlined in 16.08.071.D.3 apply, the maximum reduction shall be no more than 25% or the standard buffer or 25-feet, whichever is greater, provided that it has been demonstrated that impacts to buffers have first been avoided,</u> 	These changes are necessary to make the SMP consistent with the most current, accurate and complete scientific and technical information available as required by RCW 90.58.100(1) and WAC 173-26-201(2)(a).

			<p><u>minimized and mitigated as appropriate.</u></p> <p>6. <u>Fill of Category 4 wetlands pursuant to 16.08.071(E)(4) shall be allowed only when impacts have first been avoided, minimized and fully mitigated.</u></p> <p>7. <u>The mitigation ratio associated with impacts to Category 4 wetlands per 16.08.071(F)(3) shall be 1.50:1 for creation or restoration. Alternatively, the Department of Ecology's Credit/Debit method can be utilized for all wetland categories in lieu of the standard ratios listed in 16.08.071(F)(3).</u></p>	
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