

Attachment B: 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 [<u>underline</u> -additions; strikethrough -deletions]	ECOLOGY - DISCUSSION/RATIONALE
1.	16.04.045 References to plans, regulations or information sources	SMP/Critical Areas relationship	Add the following to 16.04.045: -Critical areas within the City’s shoreline jurisdiction should be managed and protected to ensure no net loss of ecological functions. When feasible, restore degraded ecological functions and ecosystem-wide processes. i. Where the Critical Areas Regulations or Flood Damage Prevention Regulations conflict with other parts of the SMP, the requirement that most supports the provisions of the SMA as stated in RCW 90.58.020 shall apply, as determined by the Shoreline Administrator.	RCW <u>36.70A.480</u> governs the relationship between shoreline master programs and development regulations to protect critical areas that are adopted under chapter <u>36.70A</u> RCW.
2.	SMP 16.04.045 (1) (References to plans, regulations or information sources)	SMP CAO exceptions Single family Residencies exceptions	16.04.045 (1) <u>18.36.110 Single-family residence administrative exception, when the single family residence exceptions provisions of 18.36.110 are utilized for a project proposal, a shoreline variance permit is required.</u>	Scientific and technical information demonstrates that buffer degradation can occur when buffer reductions exceed 25%. This change requires that buffer reductions under 18.36.110 would require a shoreline variance. WAC 173-26-201(2)(c)(i)(D). See Western Washington Growth Management Hearings Board, <i>RE Sources v. City of Blaine, Case No. 09-2-0015, Final Decision and Order, March 29, 2010, pg. 18..</i>
3.	SMP 16.04.045 (1) (References to plans, regulations or information sources)	SMP CAO Revisions Wetlands designation and classification	16.04.045 (1) 18.36.310 (2) Wetlands Classification. Wetlands shall be rated according to the Washington State Wetland Rating System for Western Washington (Department of Ecology 2004 Hruby 2014; Ecology Publication no. 14-06-029), or as revised). [Scores in wetland category definitions need to be changed to reflect 2014 rating system categories]	This change is required to reflect the 2014 update to the state wetland rating system. WAC 173-26-221(2)(c)(i)(B)
4.	SMP 16.04.045 (1) (References to plans, regulations or information sources)	SMP CAO Revisions Performance standards	SMP 16.04.045 (1) These revisions to the Critical Areas Code apply and supersede the NPMC 18.36: <u>18.36.330(3) (f) & (g) and 18.36.640 (4) (d) & (e) Buffer width reductions will be allowed to no more than 25 percent of the standard buffer width, unless approved by Variance.</u>	This change addresses SMP guidelines requirements for “no net loss of ecological functions.” Buffer degradation can occur when buffer reductions exceed 25%. The requirement for a Variance will help ensure impacts to wetlands within

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				<p>shoreline jurisdiction will be fully mitigated. WAC 173-26-201 (2) and WAC 173-26-221(2)(c)(i)(B)</p> <p>See Western Washington Growth Management Hearings Board, <i>RE Sources v. City of Blaine, Case No. 09-2-0015, Final Decision and Order, March 29, 2010</i>, pg. 18.</p> <p>Recent Ecology Wetland Guidance for CAO Updates recommends that the width of the buffer at any given point after averaging should be no smaller than 75% of the standard buffer. (June 2016. <i>Wetland Guidance for CAO Updates, Western Washington Version. Washington State Department of Ecology Publication No. 16-06-001</i>).</p>
5.	SMP 16.04.045 (1) (References to plans, regulations or information sources)	SMP CAO Revisions Wetland mitigation requirements	<p>SMP 16.04.045 (1)</p> <p>These revisions to the Critical Areas Code apply and supersede the NPMC 18.36:</p> <p>18.36.340.</p> <p>(3) Mitigation Ratios.</p> <p>(c) Decreased Replacement Ratio</p> <p>(i) Documentation by a qualified professional demonstrates that the proposed mitigation actions have a very high likelihood of success;</p> <p>(ii) Documentation by a qualified professional demonstrates that the proposed mitigation actions will provide functions and values that are significantly greater than the wetland being impacted;</p> <p>or</p> <p>(iii) The proposed mitigation actions are conducted <u>at least two years</u> in advance of the impact and have been shown to be successful.</p> <p>(5) Out-of-kind compensation (i.e., not of the same aquatic resource type) can be allowed when out-of-</p>	<p>Required changes ensure consistency with WAC 173-26-201 (2) (e) Environmental impact mitigation.</p>

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			<p>kind replacement will best meet the provisions of this section and the mitigation sequence outlined in NPMC 18.36.160.</p> <p>(6) Selecting Compensation Sites.</p> <p>(b) Where out-of-kind replacement is accepted, greater restoration/creation ratios may be required.</p> <p><u>Out-of-kind replacement of wetland type or functions will best meet watershed goals formally identified by the City, such as replacement of historically diminished wetland types.</u></p> <p>(8) Alternative Compensation Projects.</p> <p>(e) Conducting compensation as part of a cooperative process does not reduce or eliminate the required replacement ratios outlined above. Exception: where a compensatory mitigation plan including a five-year monitoring agreement is included as a condition of approval, such plan shall allow for one-to-one replacement ratios upon successful completion of the monitoring agreement.</p> <p><u>(f) Prior to selling mitigation credits to other parties, the compensation site(s) sponsor must have received all of the required state and federal approvals to sell credits as a mitigation bank or in-lieu fee site.</u></p>	
6.	Shoreline Environments 16.12.015 Aquatic (2) Criteria for Designation	SMP CAO exceptions FWHCA — Performance standards	<p>An “Aquatic” shoreline environment designation is assigned to lands waterward of the ordinary high water mark for both saltwater and freshwater bodies of water, including any submerged or intertidal areas. For the City of Normandy Park, this designation applies to the portions of Miller and Walker Creeks and adjacent wetlands that meet the criteria for a Shoreline of the State (RCW 90.58.030(2)(f)) and marine areas (Puget Sound) waterward of the ordinary high water mark to <u>the city’s in-water jurisdictional boundary</u>the 100-foot underwater contour (generally, 400 feet seaward of the ordinary high water mark). The Aquatic shoreline environment designation includes the water surface together with the underlying lands and the water column.</p>	<p>Under RCW 90.58.030(2)(f) (Definitions) shoreline jurisdiction includes all marine waters of the state. The city’s SMP jurisdiction extends waterward to the city’s legal in-water jurisdictional boundary. Note that <u>RCW 35.21.160</u> extends jurisdiction to the middle of water bodies such as bays, sounds, lakes and rivers.</p>
7.	<u>16.08</u> Definitions	Aquaculture definition	<p><u>Aquaculture: “Aquaculture” means the culture or farming of fish, shellfish, or other aquatic plants and animals. Aquaculture does not include the harvest of wild geoduck associated with the state managed wildstock geoduck fishery.</u></p>	<p>This change is required to reflect the definition of aquaculture in WAC 173-26-020(6) and WAC 173-26-241 (3)(b)(i)(A).</p>
8.	<u>16.08</u> Definitions	Fill Definition	<p><u>“Fill” means the addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land.</u></p>	<p>This change is required to reflect the definition of “fill” consistent with WAC 173-26-020(16).</p>

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9.	Definitions 16.08.200 Height.	Height Definition	Height” means the distance measured from average grade level to the highest point of a structure; provided, that appurtenances such as television antennas and chimneys shall not be used in calculating height, except where it obstructs the view of a substantial number of residences on areas adjoining such shorelines. <u>Temporary construction equipment is excluded from these calculations.</u>	This change is required for consistency with the definition of “height” in WAC 173-27-030 (9).
10.	Definitions 16.08.380 Shorelines of Statewide significance	Shorelines of Statewide significance	“Shorelines of statewide significance” means those areas described in WAC 173-16-030(13) or as hereafter amended. (Ord. 539 § 2, 1991) RCW 90.58.030 (2) (f) (iii). <u>(f) "Shorelines of statewide significance" means the following shorelines of the state:</u> <u>(iii) Those areas of Puget Sound and the Strait of Juan de Fuca and adjacent salt waters north to the Canadian line and lying seaward from the line of extreme low tide.</u>	This change is required to remove a dated reference to WAC 173-16, which has been repealed and replaced with WAC 173-26. Revisions cite the statutory definition in RCW 90.58.030(2)(f) (iii), and clarify the area applicable to Normandy Park.
11.	Definitions 16.08.480 Wetlands or wetland areas.	Wetlands Definition.	“Wetlands or wetland areas” means those lands extending landward for 200 feet in all directions, as measured on a horizontal plane from the ordinary high water mark; floodways; and including all 100-year floodplain areas; and all marshes, bogs, swamps, and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of the Shoreline Management Act; the same to be designated as to location by the Department of Ecology. (Ord. 539 § 2, 1991) <u>"Wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from non-wetland areas to mitigate the conversion of wetlands.</u>	This change is required to replace a dated definition of “wetlands” with the current statutory definition consistent with RCW 90.58.030 (2) (h).
12.	Chapter 16.12 Shoreline Environmental Designation	Description of shorelines of statewide significance.	16.12.001 Shorelines of statewide significance. The State of Washington Shoreline Management Act (SMA) designates certain shoreline areas as shorelines of statewide significance. These shorelines are considered important major resources from which all people in the state derive benefit. The SMA states that local shoreline master programs must give preference to uses which favor public and long-term interests of the people of the state. In the City	This change is required for consistency with RCW 90.58.030 definition for shorelines of statewide significance.

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			of Normandy Park, only the marine shorelines between the ordinary high water mark and waterward of the line of extreme low tide are designated shorelines of statewide significance. The lower portions of Miller and Walker Creeks where flow is equal to or exceeds 20 cubic feet per second are “shorelines of the state” and are not “shorelines of statewide significance.” The following policies apply to Normandy Park’s shoreline areas:	
13.	SMP 16.20.015	Shoreline permit matrix	(*) Shoreline uses not listed in the matrix above are subject to a shoreline conditional use permit. <u>Note: work in wetlands and waterward of the OHWM may require separate state and federal authorization and it is the applicant’s responsibility to obtain all necessary approvals before beginning work.</u>	The recommended change acknowledges the need for other permits for projects waterward of the OHWM.
14.	NEW 16.20.185 (3)	General Development Standards Critical areas	16.20.185 (3) (3) Critical areas. Activities and development in critical areas found within shoreline jurisdiction are required to comply with the development standards outlined in Chapter 18.36 NPMC – Critical Areas (<u>Ordinance #825 (April 2009)</u>) and Chapter 9.02 NPMC – Construction in Flood Hazard Areas.	This change is required for correct referencing of the City’s critical areas adoption ordinance. WAC 173-26-191(2)(b)
15.	SMP § 16.20.190(1)	Shoreline protection and stabilization	(a) Shoreline stabilization (iv) In the case of bulkheads and riprap, the proposed shoreline stabilization is located landward of the ordinary high water mark <u>as determined through a site visit;</u> (b) When a bulkhead or other structural alternative is permitted subject to subsection (a) above, the 1226 following standards shall apply: (i) The maximum height of the proposed bulkhead or other stabilization structure is no more than <u>is necessary three feet</u> above the <u>Ordinary High Water Mark</u> elevation of mean higher high water on tidal waters measured from grade on the waterward side of the bulkhead or structure, <u>for the purpose protecting an existing structure.</u>	This change clarifies the height of the bulkhead is measured from the ordinary high water mark rather than mean higher high water. RCW 90.58.030
16.	SMP § 16.20.200	Shoreline modification activities	16.20.200 (5) Dredging and filling. (i) Dredging activities may occur in the <u>Aquatic</u> , Rural Residential, Urban Conservancy, and Beach Community environments and are subject to a conditional use permit. Dredging is not permitted in the Bluff Conservancy and Aquatic environments.	This change corrects an inadvertent prohibition. Dredging can only be done in the Aquatic environment (i.e., below the high water mark).
17.	16.20.240 (2) Public Access.	Public Access Regulations	<u>(2) Public access shall consist of a dedication of land or a physical improvement in the form of a walkway trail bikeway viewpoint park or other area serving as a means of view and or physical approach to shorelines of the state and may include</u>	Policies and regulations protect and enhance both physical and visual

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			<p><u>interpretive centers and displays</u></p> <p>A. <u>Developments, uses, and activities shall be designed and operated to avoid blocking, reducing, or adversely interfering with the public's visual or physical access to the water and the shorelines. In providing visual access to the shoreline, natural vegetation shall not be excessively removed either by clearing or by topping.</u></p> <p>B. <u>Public access sites shall be connected directly to the nearest public street through a parcel boundary, tract, or easement.</u></p> <p>C. <u>Public access sites shall be made barrier free for the physically disabled where feasible.</u></p> <p>D. <u>Required public access sites shall be fully developed and available for public use at the time of occupancy or use of the development or activity.</u></p>	<p>access are needed. WAC 173-26-221(4)(d) (i).</p>
18.	16.20.240 (1) Public Access.	Public Access Regulations	<p>(1) <u>Public access shall be required for all shoreline development and uses, except for a single family residence or residential projects containing less than four (4) dwelling units. Public access provisions shall be required for all new public shoreline development and uses, unless such access is shown to be incompatible due to reasons of safety, security or impact to the shoreline.</u></p>	<p>Provide standards for the dedication and improvement of public access in developments for water-enjoyment, water-related, and nonwater-dependent uses and for the subdivision of land into more than four parcels. In these cases, public access should be required [with certain exceptions]. WAC 173-26-221(4) (d) (iii) and (C).</p> <p>Public access required as part of publicly financed shoreline erosion control measures. WAC 173-26-231(3)(a)(iii)(E).</p>
19.	16.20.240 (3) Public Access.	Public Access Regulations	<p>(3) <u>A shoreline development or use that does not provide public access may be authorized provided it is demonstrated by the applicant and determined by the City that one or more of the following provisions apply.</u></p> <p>a. <u>Unavoidable health or safety hazards to the public exist which cannot be prevented by any practical means;</u></p>	<p>Public entities are required to incorporate public access measures as part of each development project, unless access is incompatible with safety, security, or environmental protection. WAC 173-26-221(4)(d)(ii).</p>

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			<p>b. <u>Inherent security requirements of the proposed development or use cannot be satisfied through the application of alternative design features or other solutions;</u></p> <p>c. <u>The cost of providing the access, easement, or an alternative amenity is unreasonably disproportionate to the total long-term cost of the proposed development.</u></p> <p>d. <u>Unacceptable environmental harm will result from the public access which cannot be mitigated; or</u></p> <p>e. <u>Significant undue and unavoidable conflict between the proposed access and adjacent uses would occur and cannot be mitigated.</u></p>	
20.	16.20.190 (1) (b) (vi).	Shoreline stabilization	(iv) If an existing bulkhead or other stabilization structure is destroyed it may be replaced as it existed prior to destruction, provided application for required permits is made within two years of destruction and the applicant has demonstrated <u>the need to protect principle uses or structures from tidal action or waves</u> , and that soft shoreline armoring is not feasible. Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.	This change is required for consistency with WAC 173-26-231 (3) (a) (iii).
21.	16.20.270 Transportation facilities	Parking	16.20.270 Transportation Facilities <u>(2) (i) Parking facilities in shorelines are not a preferred use and shall only be allowed as necessary to support an authorized use.</u>	Parking facilities in shorelines are not a preferred use and shall only be allowed as necessary to support an authorized use. WAC 173-26-241(3)(k).
22.	Archaeological resources and historic sites. 16.20.290 (2)	Archaeological resources and historic sites.	(2) If archaeological resources are discovered during excavation or construction within the shoreline environment, a work stoppage is required and a shoreline conditional use permit shall be obtained. <u>The applicant shall notify the local government, state office of archaeology and historic preservation, and affected Indian tribes if archaeological resources are uncovered during excavation.</u>	<p>The requirement for a a shoreline conditional use permit (CUP) when archaeological resources are discovered on a project site is an inappropriate use of the CUP process. The review criteria in WAC 173-27-160 do not add additional substance to evaluating archaeological resources discovery.</p> <p>The additional sentence adds the proper response, which is a requirement to stop work and notify the local government, state office of archaeology and historic preservation, and affected Indian tribes. WAC 173-26-221(1)(c)(i).</p>

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23.	16.24 Users Guide to Program Administration	<u>16.24.090 Review criteria for conditional use permits.</u>	<p><u>16.24.090 Review criteria for conditional use permits.</u></p> <p><u>Conditional use permits shall be granted only when the development proposed is consistent with WAC 173-27-160, as stated below or as amended hereafter:</u></p> <p><u>(1) Uses which are classified or set forth in a master program as conditional uses may be authorized provided that the applicant demonstrates all of the following:</u></p> <p style="padding-left: 40px;"><u>(a) That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;</u></p> <p style="padding-left: 40px;"><u>(b) That the proposed use will not interfere with the normal public use of public shorelines;</u></p> <p style="padding-left: 40px;"><u>(c) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;</u></p> <p style="padding-left: 40px;"><u>(d) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and</u></p> <p style="padding-left: 40px;"><u>(e) That the public interest suffers no substantial detrimental effect.</u></p> <p><u>(2) In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.</u></p> <p><u>(3) Other uses which are not classified or set forth in the applicable master 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 master program.</u></p> <p><u>(4) Uses which are specifically prohibited by the master program may not be authorized pursuant to either subsection (1) or (2) of this section.</u></p>	Administrative section needed to comply with WAC 173-27-160. (Review criteria for conditional use permits).

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24.	16.24 Users Guide to program Administration	<u>16.24.095 Review criteria for variance permits.</u>	<p><u>16.24.095 Review criteria for variance permits.</u></p> <p><u>The purpose of a variance permit is strictly limited to granting relief from specific bulk, dimensional or performance standards set forth in the master program where there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of the master program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020.</u></p> <p><u>Variance permits shall be granted only when the development proposed is consistent with WAC 173-27-170, as stated below or as amended hereafter.</u></p> <p><u>(1) Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect.</u></p> <p><u>(2) Variance permits for development and/or uses that will be located landward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(b), and/or landward of any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:</u></p> <p><u>(a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property;</u></p> <p><u>(b) That the hardship described in (a) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;</u></p> <p><u>(c) That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment;</u></p>	Administrative section needed to comply with WAC 173-27-170 (Review criteria for variance permits).

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			<p><u>(d) That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;</u></p> <p><u>(e) That the variance requested is the minimum necessary to afford relief; and</u></p> <p><u>(f) That the public interest will suffer no substantial detrimental effect.</u></p> <p><u>(3) Variance permits for development and/or uses that will be located waterward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(b), or within any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:</u></p> <p><u>(a) 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;</u></p> <p><u>(b) That the proposal is consistent with the criteria established under subsection (2)(b) through (f) of this section; and</u></p> <p><u>(c) That the public rights of navigation and use of the shorelines will not be adversely affected.</u></p> <p><u>(4) In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example if variances were granted to other developments and/or uses in the area where similar circumstances exist the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.</u></p> <p><u>(5) Variances from the use regulations of the master program are prohibited.</u></p>	