

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
A	Chapter 1.6 Page 6	Critical Area Regulations Adopted by Reference	The Critical Areas regulations <u>in effect adopted</u> on October 1, 2013 contained in the Olympia Municipal Code (OMC) Chapters <u>18.32 and 16.70</u> are integral and applicable to this Shoreline Program, and are hereby adopted by reference; provided that the reasonable use provisions set forth in OMC 18.66.040 shall not be available within the shoreline jurisdiction.	<i>The first change is required for compliance with WAC 173-26-191 (2)(a)(ii)(A) - "Master Program regulations shall be sufficient in scope and detail to ensure the implementation of the Shoreline Management Act, statewide shoreline management policies in the SMP Guidelines, and local master program policies." Resolution M1797 passed on October 1, 2013 references OMC 18.32 (critical areas regulations), but did not include adoption of new or revised critical area regulations.</i> <i>The second change is required for consistency with WAC 173-26-221 (2)(a)(ii). See also Ecology's correspondence to the City on this topic dated November 29, 2011 and December 28, 2012.</i>
B	Chapter 1.7 Page 6	Severability	This Shoreline Program and any amendments thereto shall become effective fourteen (14) days following the date of <u>written notice of final action approval</u> by the Washington State Department of Ecology.	<i>This change is required in accordance with RCW 90.58.090 (7).</i>
C	Chapter 2.27 (G) Page 21	Residential Policies	G. 'Live-aboard' vessels associated with marinas may be allowed, but all other overwater residential development including floating homes should be prohibited. <u>A floating home permitted or legally established prior to January 1, 2011 and floating on water residences legally established prior to July 1, 2014 will be considered conforming uses.</u>	<i>These changes are required in accordance with RCW 90.58.270 (5) and (6).</i>
D	Chapter 2.30 Page 22	Shoreline Modification Policies	<u>F. Give preference to nonstructural flood hazard reduction measures over structural measures, where feasible.</u>	<i>This change/addition is required for consistency with WAC 173-26-221 (3)(b)(i). See also required change LL.</i>
E	Chapter 2.32 (C) Page 23	Fill Policies	C. Fill should be allowed to accommodate berms or other structures to prevent flooding caused by sea level rise, <u>when consistent with the flood hazard reduction provisions in this Shoreline Program</u> . Any such fill should include mitigation assuring no net loss of ecological functions and system-wide processes.	<i>This change is required in accordance with WAC 173-26-221 (3)(c)(ii), which outlines the criteria for new structural flood hazard reduction measures in shoreline jurisdiction. A flood berm would be considered a structural flood hazard reduction measure; reference to these criteria in this section makes clear the additional conditions that would apply to any such proposal (see also WAC 173-26-191 (2)(a)(ii)(A) and WAC 173-26-221 (3)(b)(i)).</i>
F	Chapter 2.34 (M) Page 25	Restoration and Enhancement Policies	<u>M. Restoration and enhancement projects may include shoreline modification actions provided the primary purpose of such actions is clearly restoration of the natural character and ecological functions of the shoreline.</u>	<i>This change is required in accordance with WAC 173-26-231 (3)(g).</i>
G	Chapter 3.3 (B) Page 27	Interpretation and Definitions	B. For purposes of this Chapter, the City hereby adopts by reference the definitions of the following terms as set forth in the Revised Code of Washington 90.58.030 and the Washington Administrative Code 173-27-030 <u>and 173-26-020</u> : ● Floating Home	<i>These changes are required in accordance with WAC 173-26-191 (2)(a)(ii)(A). With regard to the first change, a number of the listed definitions are not found in either RCW 90.58.030 or WAC 173-27-030 but are found in WAC 173-26-020. The second change (strike through) deletes a term that is not defined in any of the three cited sources. This term will be defined in subsection C of this chapter; see required change H below.</i>
H	Chapter 3.3 (C) Page 27	Interpretation and Definitions	C. For the purposes of this Chapter, the terms defined below shall have the meaning ascribed to them below. Terms not defined in this Chapter nor listed in subsection B above shall be interpreted as set forth in <u>in WACs 173-18-030, 173-20-030 and 173-22-030 or</u>	<i>The changes outlined below are required in accordance with WAC 173-26-191 (2)(a)(ii)(A), unless otherwise noted. The preceding subsection in this chapter (subsection B, chapter 3.3) lists terms adopted by reference from RCW 90.58.030, and WAC 173-27-030 and 173-</i>

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			<p>OMC 18.02. When the definitions in this Chapter conflict with the definitions set forth in OMC 18.02, the definitions herein shall govern for purposes of this Chapter.</p> <p>Cumulative impacts or cumulative effects: The impact on the environment <u>or other shoreline functions or uses</u> which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a long period of time. See WAC 173-26-186(8)(d).</p> <p>Feasible means that an action, such as a development project, mitigation, or preservation requirement, meets all of the following conditions:</p> <p>1. The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;</p> <p>2. The action provides a reasonable likelihood of achieving its intended purpose; and</p> <p>3. The action does not physically preclude achieving the project's primary intended legal use. In cases where the SMP requires certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant. In determining an action's infeasibility, the decision maker may weigh the action's relative public costs and public benefits, considered in the short- and long-term time frames.</p> <p>Floating home: A building on a float used in whole or in part for human habitation as a single-family dwelling <u>that is moored, anchored, or otherwise secured in waters, and is not a vessel, even though it may be capable of being towed.</u> , which is not designed for self-propulsion by wind or mechanical means</p> <p><u>Floating on-water residence: any floating structure other than a floating home that: (i) is designed or used primarily as a residence on the water and has detachable utilities; and (ii) whose owner or primary occupant has held an ownership interest in space in a marina, or has held a lease or sublease to use space in a marina, since a date prior to July 1, 2014.</u></p> <p><u>Flood hazard reduction measure: flood hazard reduction measures may consist of nonstructural measures, such as setbacks, land use controls, wetland restoration, dike removal, use relocation, biotechnical measures and stormwater management programs, and of structural measures, such as dikes, levees, revetments, floodwalls, channel realignment, and elevation of structures consistent with the National Flood Insurance</u></p>	<p>26-020 (see required change G above). Where terms in this subsection (C) were also listed in subsection B, they have been stricken from subsection C to avoid potential conflicts between definitions. Where terms listed in subsection B were not from one of the sources cited in that subsection, they have been inserted here (subsection C). Additional terms used in the SMP that were not defined have also been inserted in subsection C.</p> <p>The change to the definition of cumulative impacts is also necessary to comply with WAC 173-26-201 (3)(d)(iii): "local government shall consider and address cumulative impacts on other functions and uses of the shoreline that are consistent with the Act.. For example, a cumulative impact of allowing development of docks or piers could be interference with navigation on a water body".</p> <p>As outlined above, this change (deletion) is required because the same term has already been defined in subsection B of this chapter.</p> <p>This change is required for conformance with RCW 90.58.270 (5)(b)(ii).</p> <p>This change/addition is required for conformance with RCW 90.58.270 (6)(b).</p> <p>This change/addition is required for consistency with WAC 173-26-221 (3)(a).</p>

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			<p><u>Program (NFIP).</u></p> <p>Grade Level, Average: The average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure. Calculation of the average grade level shall be made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure. In the case of structures to be built over water, average grade level is the elevation of the adjacent Ordinary High Water Mark. Compare "Grade Plane" in OMC 18.02.</p> <p><u>Instream structure: a structure placed by humans within a stream or river waterward of the ordinary high-water mark that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. In-stream structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, or other purpose.</u></p> <p>Water dependent use: Defined by WAC 173-26-020; such as but not limited to aquaculture, beach recreation and swimming, boat ramps and launch facilities, ferry terminals, hydroelectric power plants, marinas, marine construction, dismantling and repair, marine and limnological research and education, private and public docks for public moorage, terminal and transfer facilities for marine commerce and industry, water intakes and outfalls, tug and barge facilities, and log booming. (Log booming is placing logs into and taking them out of the water, assembling and disassembling log rafts before or after their movement in water borne commerce, related handling and sorting activities taking place in the water, and the temporary holding of logs to be taken directly into a processing facility. It does not include the temporary holding of logs to be taken directly into a vessel.)</p> <p>Water enjoyment use: Defined by WAC 173-26-020; such as but not limited to aquariums with direct water intake, restaurants, museums, shared use paths and trails, boardwalks (over water structures generally parallel to the shoreline for public pedestrian access) and viewing towers.</p> <p>Water oriented use: A use that is water dependent, water related, or water enjoyment, or a combination of such uses.</p> <p>Water related use: Defined by WAC 173-26-020; such as but not limited to warehousing and storage facilities, support services for fish hatcheries, seafood processing plants, wood products manufacturing, watercraft and boating supply sales, and log storage. (Log storage is the water storage of logs in rafts or otherwise prepared for shipment in water borne commerce, but not including the temporary holding of logs to be taken directly to or from a vessel or processing facility.)</p>	<p><i>As outlined above, this change (deletion) is required because the same term has already been defined in subsection B of this chapter.</i></p> <p><i>This change/addition is required for consistency with WAC 173-26-241 (3)(g).</i></p> <p><i>As outlined above, these changes (deletions) are required because the same terms have already been defined in subsection B of this chapter.</i></p>

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I	Chapter 3.4 Page 35	General Permit and Authorization Provisions	<u>E. The City shall document all project review actions in shoreline jurisdiction. The City shall review this documentation and evaluate the cumulative effects of authorized development on shoreline conditions as part of the 8 year periodic review cycle identified in RCW 90.58.080 (4).</u>	<i>This change is required in accordance with WAC 173-26-191 (2)(a)(iii)(D).</i>
J	Chapter 3.8 (G) Page 37	Shoreline Variances	G. In the granting of any shoreline variance, consideration shall be given to the cumulative impact of additional requests for like actions in the area. In other words, if shoreline conditional use <u>variance</u> permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses <u>variances</u> shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.	<i>This change required per WAC 173-26-191 (2)(a)(ii)(A) - "Master Program regulations shall be sufficient in scope and detail to ensure the implementation of the Shoreline Management Act, statewide shoreline management policies in the SMP Guidelines, and local master program policies".</i>
K	Chapter 3.12 (C) Page 38	Shoreline Substantial Development, Conditional Use and Variance Permits	C. Applications for those shoreline development permits that are exempt from the State Environmental Policy Act and entirely upland of the Ordinary High Water Mark may be decided by the Site Plan Review Committee if a public hearing is not requested by an interested party. The Hearing Examiner shall hold a public hearing and render a decision regarding other applications identified in subsection A of this section. <u>Consistent with RCW 90.58.140 (10), the Department of Ecology must approve or disapprove shoreline conditional use permits and shoreline variances issued by the City.</u>	<i>This change is required for consistency with RCW 90.58.140 (10). See also recommended change Q.</i>
L	Chapter 3.12 (G) Page 38	Shoreline Substantial Development, Conditional Use and Variance Permits	<u>G. When developing and adopting procedures for administrative interpretation of this Master Program, the City shall consult with the Department of Ecology to insure that any formal written interpretations are consistent with the purpose and intent of the Act and the SMP Guidelines.</u>	<i>This change (addition of G) is required for consistency with WAC 173-26-140.</i>
M	Chapter 3.13 (C) Page 39	Amendments	C. The City Council shall hold the public hearing prescribed by WAC 173- 19-062 <u>26-100(1)</u> . At any time, the Council may refer a proposed amendment to the Planning Commission for a recommendation. If the Planning Commission elects to hold a public hearing, a notice of the hearing shall be given in the same manner as the hearing held by the Council.	<i>This change is required for consistency with WAC 173-26-100(1). The cited section (173-19-062) does not exist.</i>
N	Chapter 3.17 (C) Page 40	Official Shoreline Map	<p>C. <u>The shoreline designation boundaries in reaches where parallel designations have been applied are as follows:</u></p> <ol style="list-style-type: none"> 1. <u>Budd 3B – Urban Intensity applies to those lands west of the easterly right-of-way edge of West Bay Road within shoreline jurisdiction.</u> 2. <u>Budd 6A – Urban Conservancy applies to the first 100 feet landward of the Ordinary High Water Mark. Urban Intensity applies to the remainder of lands within shoreline jurisdiction (generally the second 100 feet within shoreline jurisdiction).</u> 3. <u>Budd 6B - Urban Conservancy applies to the first 100 feet landward of the Ordinary High Water Mark. Shoreline Residential applies to the remainder of lands within shoreline jurisdiction.</u> <p>D. Where uncertainty or conflict occurs in the exact location of a shoreline designation boundary, the Administrator shall interpret the boundaries based upon: <u>Renumber remaining provision.</u></p>	<i>This change is required for consistency with WAC 173-26-211(2)(b), which requires the SMP text identify features that define and distinguish environment designations on the ground if such cannot be accurately illustrated on the environment designation map. In this case, the boundaries between parallel designations in reaches Budd-6A, Budd-6B and parts of reach Budd-3B do not follow the interpretation conventions outlined in (renumbered) provision D. The breaks between parallel designations as established by the City Council during deliberations were inserted for clarification in these three reaches.</i>

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O	Chapter 3.22 (A) and (B) Page 46	Critical Areas	<p>A. All uses and development occurring within the shoreline jurisdiction shall comply with Chapter 18.32 (critical area regulations) <u>and Chapter 16.70 (flood damage prevention), except as modified in (C) below.</u></p> <p>B. If there are any conflicts or unclear distinctions between this Chapter and Olympia’s critical area <u>or flood damage prevention</u> regulations, the requirements that are the most consistent with the Shoreline Management Act or Washington Administrative Code pertaining to shoreline management shall apply.</p>	<p><i>These changes are required for consistency with WAC 173-26-221 (2)(a)(ii). See also Ecology’s correspondence to the City on this topic dated November 29, 2011 and December 28, 2012.</i></p>
P	Chapter 3.22 (C) Page 46	Critical Areas	<p>C. <u>Regardless of other provisions in Chapter 18.32, to ensure consistency with the Shoreline Management Act critical areas within shoreline jurisdiction shall be subject to the following:</u></p> <ol style="list-style-type: none"> <u>1. In shoreline jurisdiction, critical area review and permit procedures will be incorporated into and conducted consistent with the associated shoreline permit or exemption review and approval.</u> <u>2. Stream and Important Riparian Area buffer reductions beyond twenty five percent (25%) (OMC 18.32.435 (H)) within shoreline jurisdiction shall require a shoreline variance.</u> <u>3. In shoreline jurisdiction, OMC 18.32.515 (B) does not apply. Furthermore, OMC 18.32.515 (A) only applies to isolated Category III and IV wetlands, and impacts must be compensated for (the replacement ratios in OMC 18.32.550 apply in shoreline jurisdiction).</u> <u>4. Stormwater facilities may be allowed in the outer twenty five percent (25%) of Category III and IV wetland buffers in shoreline jurisdiction (OMC 18.32.525 (K)) and only when no other location is feasible.</u> <u>5. Utility lines may be allowed in the outer twenty five percent (25%) of Category III and IV wetland buffers in shoreline jurisdiction (OMC 18.32.525 (M)).</u> <u>6. Locating stormwater facilities or utilities within wetlands or within any wetland buffer other than those specified in numbers 4 and 5 above shall require a shoreline variance (OMC 18.32.530 (E) and (G)).</u> <u>7. In shoreline jurisdiction, provisions allowing wetland buffer averaging (OMC 18.32.535 (F)) and administrative wetland buffer reductions (OMC 18.32.535 (G)) shall not be used together.</u> <u>8. Wetland buffer reductions beyond twenty five percent (25%) (OMC 18.32.535 (H)) within shoreline jurisdiction shall require a shoreline variance.</u> <u>9. Identification of wetlands and delineation of their boundaries in shoreline jurisdiction shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements (OMC 18.32.580).</u> <u>10. Reasonable use exceptions (OMC 18.66.040) are not available for relief from critical area standards within the shoreline jurisdiction. Instead, applicants seeking relief from the critical area standards shall apply for a shoreline variance.</u> 	<p><i>These changes are required for consistency with WAC 173-26-221 (2)(a), WAC 173-26-221 (2)(b), WAC 173-26-221(2)(c)(i), and WAC 173-26-221(2)(c)(iv).</i></p> <p><i>With regard to wetlands, the Guidelines direct local governments to consult Ecology’s technical guidance documents. The wetland delineation manual referenced in the City’s critical areas ordinance and specified provisions relating to wetland buffer management are not consistent with Ecology’s published technical guidance.</i></p> <p><i>WAC 173-26-191 (2)(iii)(B) calls for Master Programs to include standards for review of variances that conform to WAC 173-27. WAC 173-27-170 outlines that variance permits are to be used to grant relief from specific bulk, dimensional or performance standards in the Master Program. A number of the changes required here are to provisions that have been identified as open-ended (buffer reductions for example) in the city’s critical areas ordinance, leaving it unclear as to when a variance would be triggered. Furthermore, open-ended buffer reductions and use allowances may result in a net loss of shoreline ecological functions. Absent documentation to the contrary, Ecology must assume that all administrative reduction and averaging requests will be granted. The potential for these types of reductions and the potential for associated cumulative effects were not addressed in the Cumulative Impacts Assessment for the City’s adopted Master Program. Absent any discussion of this topic in the record, changes are required to comply with the no net loss standard in the SMP Guidelines.</i></p> <p><i>The addition of number 11 is required in accordance with WAC 173-26-221 (2)(ii)(B).</i></p> <p><i>The addition of number 12 is required in accordance with WAC 173-26-221 (3)(c)(i).</i></p> <p><i>See also Ecology’s correspondence to the City on this topic dated November 29, 2011 and December 28, 2012.</i></p> <p><i>See also recommended change Z.</i></p>

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			<p><u>11. New development or the creation of new lots that would cause foreseeable risk from geological conditions during the life of the development is prohibited.</u></p> <p><u>12. Uses and activities that may be authorized within floodways are limited to those listed in WAC 173-26-221 (3)(c)(i).</u></p>	
Q	Chapter 3.31 (A) and (B) Page 51	Permitted Uses and Activities within Vegetation Conservation Areas	<p>A. Subject to other limitations of this Chapter and if also allowed within the applicable shoreline environment designation, the following uses and activities are permitted within vegetation conservation areas without a variance:</p> <p><u>11. Water dependent uses as authorized in OMC 18.34.620 Table 6.3.</u></p> <p>B. Appurtenant <u>and accessory</u> structures other than those described above <u>or in OMC 18.34.690 (C)</u> are prohibited within the vegetation conservation area.</p>	<p><i>These changes are required in accordance with WAC 173-26-191 (2)(a)(ii)(A) - "Master Program regulations shall be sufficient in scope and detail to ensure the implementation of the Shoreline Management Act, statewide shoreline management policies in the SMP Guidelines, and local master program policies". References to allowed uses and activities within VCAs need to be consistent throughout the document to avoid the potential for conflicts upon implementation.</i></p>
R	Chapter 3.33 (A) and (B) Page 51	Vegetation Conservation Area Standards	<p>A. Speculative clearing, grading, or vegetation removal is prohibited. Clearing, grading and vegetation removal within shoreline setbacks and vegetation conservation areas shall be the minimum necessary for the intended <u>authorized</u> use or development.</p> <p>B. The minimum width of vegetation conservation areas is set forth in Table 6.3<u>2</u> and measured perpendicular to the Ordinary High Water Mark along the entire shoreline of the property...</p>	<p><i>These changes are required per WAC 173-26-191 (2)(a)(ii)(A) - "Master Program regulations shall be sufficient in scope and detail to ensure the implementation of the Shoreline Management Act, statewide shoreline management policies in the SMP Guidelines, and local master program policies". With regard to the first change, "intended" uses and development could still be considered speculative until they are authorized or approved.</i></p>
S	Chapter 3.34 (A) Page 52	Vegetation Management Plan	<p>A. Clearing and grading within the shoreline jurisdiction is only permitted upon approval by the Administrator of a vegetation management plan prepared by the applicant. <u>If mitigation measures are required as outlined in OMC 18.34.410 F, the vegetation management plan may be combined with the mitigation plan, and must be prepared by a qualified professional.</u> The vegetation management plan shall include:</p>	<p><i>This change is required in accordance with WAC 173-26-191 (2)(a)(ii)(A). Section 3.34 (E) outlines that required vegetation installation under vegetation management plans shall conform to the standards in 18.34.140 F and G (mitigation measures and performance guarantees). Section 3.3 (C) outlines that mitigation plans are to be prepared by "a qualified person". The applicant may not be qualified to adequately or accurately evaluate ecological functions and no net loss, etc. These considerations will be especially important when considering compensatory mitigation proposals and evaluating them for compliance with the no net loss standard.</i></p>
T	Chapter 3.34 (C) Page 53	Vegetation Management Plan	<p>C. The Administrator may waive some but not all of the associated <u>management installation</u> requirements <u>in this section</u> when the applicant demonstrates that the proposal will result in no net loss of shoreline functions by improving shoreline ecological functions of the shoreline, such as the removal of invasive species, shoreline restoration/enhancement, or removal of hard armoring.</p>	<p><i>These changes are required per WAC 173-26-191 (2)(a)(ii)(A). As written, this is an open ended provision and no limits are provided regarding how encompassing such waivers could be. For example, can the requirement to provide or establish a VCA be entirely waived? Can any percent of an established VCA be used for any activity an applicant might propose if they remove hard armoring? Because this provision was included in a section of the SMP specifically addressing requirements for revegetation, it must be clear those are the types of requirements the Administrator can waive.</i></p>
U	Chapter 3.37 Page 54	Visual Impact Assessment	<p>The applicant of a building or structure that exceeds 35 feet to the highest point above average grade level shall prepare and submit a visual analysis in conjunction with any development permit. At a minimum, the analysis shall address how the proposed project impacts views protected under RCW 90.58.320 and OMC 18.110.060. The Administrator may require additional information such as photo-simulations showing proposed buildings</p>	<p><i>This change is required in accordance with WAC 173-26-191(2)(a)(ii)(A) - "Master Program regulations shall be sufficient in scope and detail to ensure the implementation of the Shoreline Management Act, statewide shoreline management policies in the SMP Guidelines, and local master program policies". This provision and other City codes it references never outline how the assessment will be used, in other words what happens if</i></p>

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			<p>in relation to impacted views. <u>If the analysis shows the proposed building or structure would block or significantly compromise the view of a substantial number of residences in adjoining areas or views protected under OMC 18.110.060, the City may place conditions on the development to prevent the loss of views.</u></p>	<p><i>it is found that the view blockage is significant or exceeds the criteria in the Master Program.</i></p>
V	Chapter 3.41 (C) Page 56	Use and Development Standards Tables	<p>C. Upon finding that such structures will not result in a net loss of shoreline functions and is <u>are</u> otherwise consistent with Olympia’s Shoreline Program, the Administrator may authorize small buildings and other structures within the “building setback” area <u>but outside of the VCA, if locating such structures outside of shoreline jurisdiction is not feasible</u>. Any such structures shall not exceed a total 800 square feet within each development, shall not be located <u>within critical areas or their buffers unless authorized in OMC 18.34.420, shall not be</u> closer than 30 feet to the Ordinary High Water Mark or the width of the VCA whichever is greater, and shall not exceed a height of 20 feet. To ensure protection of shoreline functions <u>and views</u>, the Administrator may <u>attach conditions to approval of the permits as necessary to assure consistency of the project with the Act and this Shoreline Program</u> require appropriate measures including enhancement of any associated vegetation conservation area.</p>	<p><i>These changes are required in accordance with WAC 173-26-191 (2)(a)(ii)(A), WAC 173-26-201 (2)(d) and WAC 173-26-221 (4)(d)(iv). Ecology repeatedly relayed its concerns with this provision to the City during development of this document. Absent documentation to the contrary, Ecology must assume that all requests of this nature will be granted. The likelihood or possible extent of these types of requests and the potential for associated cumulative effects were not addressed in the Cumulative Impacts Assessment for the City’s adopted Master Program.</i></p> <p><i>Ecology does not consider an 800 square foot building to be “small”; 800 square feet is twice the size of a modern two-car garage. We acknowledge that 800 square feet is the limit on accessory structures in residential zoning districts in OMC 18.04.060, however not all accessory structures are water-oriented, preferred shoreline uses or are particularly dependent on a shoreline location.</i></p> <p><i>Clarification that ‘small’ buildings cannot be located within VCAs is also necessary for internal consistency (internal consistency with this provision as well as with OMC 18.34.493 (B)).</i></p>
W	Chapter 3.41 (D)(1) Page 56	Use and Development Standards Tables	<p>1. Incentives for setback reductions noted herein are cumulative up to the maximum reduction allowed. Incentive eligible restoration projects may be completed in association with, or in addition to, required mitigation projects, however, no setback reductions shall be allowed for required mitigation projects. Prior to the Administrator approving setback reduction incentives proposed to be achieved offsite, the applicant shall demonstrate compliance with the mitigation sequence at a site level as provided in Section 18.34.410 of the SMP. Only after the Administrator concludes that impacts have been avoided and minimized to the extent feasible and that Restoration incentives must be achieved onsite restoration unless the Administrator finds this is not feasible or would have significantly less ecological benefit <u>will than</u> offsite restoration be approved. Offsite restoration areas shall be within the city limits and shall be projects included in the Restoration Plan and located within the shoreline jurisdiction. All requirements of <u>be consistent with the objectives for mitigation outlined in OMC Section 18.34.410 (H) and (I) shall apply to offsite restoration</u>. Should no offsite restoration project option be available, onsite <u>restoration mitigation</u> shall be required <u>to obtain the associated setback reduction incentive</u>.</p>	<p><i>These changes are required per WAC 173-26-191 (2)(a)(ii)(A).</i></p> <p><i>As written this provision has the potential to confuse the concepts of mitigation and restoration. The second sentence of this paragraph accurately captures that the incentives apply to voluntary proposals or projects and <u>not</u> to improvements necessary to compensate for the impacts of a proposal.</i></p> <p><i>The required changes clarify the intent of the setback reduction incentives and how they will be implemented, how they differ from compensatory mitigation projects, and how proposals for offsite mitigation will be evaluated and the criteria that apply.</i></p>
X	Chapter 3.41 (D)(3) Page 56	Use and Development Standards Tables	<p>3. Water Related Recreation shall be an open space accessible to the public providing direct access to the shoreline. The water related recreation area shall be no less than the area of the shoreline setback reduction and in no case shall the area be less than 1,000 square feet. Such areas shall include active playgrounds, significant art installations, performance space or interpretive features. Existing park space meeting the requirements</p>	<p><i>This change is required in accordance with WAC 173-26-191 (2)(a)(ii)(A); water-related recreation space appears to have been deleted from Table 6.3 as an incentive option prior to local adoption of the SMP.</i></p>

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			<p>described herein may be used to meet setback incentive provisions.</p> <p><u>Renumber following provisions. Revise references in Table 6.3, Marine Recreation-Budd 5C rows (required standards column).</u></p>																						
Y	Chapter 3.41 (D)(8) Page 57	Use and Development Standards Tables	<p>87. In addition to items 1-7 above, Water Dependent uses may encroach <u>into</u> the required setback and vegetation conservation area as described in Table 6.3 <u>in accordance with the mitigation sequence in OMC 18.34.410 so long as they provide restoration in exchange for the encroachment at a ratio determined to offset the impacts of the encroachment and in no case less than a 2 square feet of mitigation for every 1 square foot of encroachment within the required vegetation conservation area and demonstrate no net loss of environmental function. Required restoration shall meet the standards noted in 5 above. Reductions to less than a 20 foot setback shall only be allowed where <u>the following two requirements have been met:</u></u></p> <p>a. a Alternative public access has been provided sufficient to mitigate the loss of direct public access to the shoreline and in no case shall public access be less than 12 feet as described in paragraph 4 <u>3</u> above.</p> <p>b. Projects proposing setbacks less than 20 feet shall also meet t The shoreline bulkhead removal or hardening replacement requirements of <u>5 or 6</u> or 7 above <u>are met</u> for each linear foot of shoreline impacted and the applicant shall demonstrates that a reduced setback would not result in the need for future shoreline stabilization.</p>	<p>The text changes are required in accordance with WAC 173-26-201 (2)(e) and WAC 173-26-191 (2)(a)(ii)(A).</p> <p>First, table 6.3 already allows water dependent uses to reduce to a 0 foot setback (bottom cell of the Marine Recreation row). It was not clear if the intent was to require incentive eligible measures to get from 75' to 50' for water dependent uses in this reach, explaining why the reduction in that cell started at 50' not at 75'. Regardless, it is inconsistent with policy goals of the SMA (give priority to uses that require a waterfront location) to require water dependent uses to comply with prescribed "incentives" to get a 25' reduction then allow the second 50' reduction automatically. This is essentially requiring restoration in excess of mitigation, in conflict with WAC 173-26-201 (2)(e). Furthermore, it would mean water dependent development would have to achieve <u>every</u> incentive eligible provision to be located along the shoreline, which may not be possible in this reach. Therefore, describing this as an incentive is unnecessary and inaccurate. Second, all uses and developments in shoreline jurisdiction are required to follow the mitigation sequence, even water dependent uses and developments. If there are unavoidable impacts to vegetation in VCAs as a result of such proposals, those impacts would require compensatory mitigation. The only unique portions of this provision that remain are essentially limitations on the setback reduction, so language pertaining to those limitations has been retained but clarified. See also required change Z.</p>																					
Z	Chapter 3.41 Table 6.3 Page 61	Setbacks and Incentives	<table border="1" data-bbox="585 984 1577 1377"> <thead> <tr> <th>Shoreline Environment</th> <th>Shoreline Setback</th> <th>VCA</th> <th>Setback with maximum reduction- Non-water dependent</th> <th>Incentive eligible provisions-See 18.34.620.D.1</th> <th>Shoreline Setback Reduction</th> <th>Required Standards</th> </tr> </thead> <tbody> <tr> <td>Marine Recreation - Budd 5C</td> <td>75'</td> <td>30'</td> <td>50'</td> <td></td> <td></td> <td></td> </tr> <tr> <td colspan="4">*Water Dependent Uses Reduce from 50 <u>75'</u>-0'</td> <td>Water Dependent Use</td> <td><u>55' or 100% (50 75') *</u></td> <td>See 18.34.620.D.7 1-8</td> </tr> </tbody> </table>	Shoreline Environment	Shoreline Setback	VCA	Setback with maximum reduction- Non-water dependent	Incentive eligible provisions-See 18.34.620.D.1	Shoreline Setback Reduction	Required Standards	Marine Recreation - Budd 5C	75'	30'	50'				*Water Dependent Uses Reduce from 50 <u>75'</u> -0'				Water Dependent Use	<u>55' or 100% (50 75') *</u>	See 18.34.620.D.7 1-8	<p>This change is required as outlined in required change Y above. See also recommended change RR regarding suggested changes to table layout.</p>
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AA	Chapter 3.41 Table 6.3 Page 61-62	Setbacks and Incentives	<table border="1" data-bbox="585 1414 1577 1508"> <thead> <tr> <th>Shoreline Environment</th> <th>Shoreline Setback</th> <th>VCA</th> <th>Setback with maximum</th> <th>Incentive eligible provisions-See</th> <th>Shoreline Setback Reduction</th> <th>Required Standards</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	Shoreline Environment	Shoreline Setback	VCA	Setback with maximum	Incentive eligible provisions-See	Shoreline Setback Reduction	Required Standards								<p>See also recommended change RR regarding suggested changes to table layout.</p> <p>This change (addition of two new rows) is required in accordance with WAC 173-26-191 (2)(a)(ii)(A); the portion of reach CAP-7 (as identified in the inventory) known commonly as Marathon Park was not addressed in the development standards table. The record</p>							
Shoreline Environment	Shoreline Setback	VCA	Setback with maximum	Incentive eligible provisions-See	Shoreline Setback Reduction	Required Standards																			

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BB	Chapter 3.42 Page 62	Agriculture	D. Development on agricultural land that does not meet the definition of agricultural activities and the conversion of agricultural land to nonagricultural uses shall be consistent with the environment designation, and general and specific use regulations applicable to the proposed use and not result in a net loss of shoreline ecological functions.	<i>This change is required in accordance with WAC 173-26-241 (3)(a)(vi).</i>																					
CC	Chapter 3.43 Page 63	Aquaculture	<p>A. Aquaculture is dependent on the use of the water area and, when consistent with control of pollution and prevention of damage to the environment, is a preferred use of the water area.</p> <p>A-B. Commercial aquaculture shall conform to all applicable State and Federal regulations. The City may accept application documentation required by other permitting agencies for new and expanded aquaculture uses and development to minimize redundancy in permit application requirements.</p> <p>E. In addition to other requirements in this chapter, applications for commercial geoduck aquaculture shall contain all of the items identified in WAC 173-26-241 (3)(b)(iv)(F).</p>	<i>These changes are required in accordance with WAC 173-26-241 (3)(b). See also recommended change TT.</i>																					
DD	Chapter 3.46 (A)(4) Page 64	Marinas	<p>4. The project includes ecological restoration measures to improve baseline conditions over time;</p> <p>Renumber following provisions</p>	<i>This change is required in accordance with WAC 173-26-201 (2)(e)(ii)(A) - Application of the mitigation sequence shall achieve no net loss of ecological functions for each new development and not result in required mitigation in excess of that necessary to assure that development will result in not net loss of shoreline ecological functions.</i>																					
EE	Chapter 3.46 (B)(6) Page 64	Marinas	6. New floating homes and on water residences are prohibited. A floating home permitted or legally established prior to January 1, 2011 and floating on water residences legally established prior to July 1, 2014 will be considered conforming uses. Live -aboard vessels are permitted only if adequate solid waste and sanitary sewer disposal facilities are provided and maintained;	<i>These changes are required in accordance with RCW 90.58.270 (5) and (6).</i>																					
FF	Chapter 3.49 (A) Page 66	Commercial Use and Development - General	A. The construction of new and the expansion of existing overwater commercial buildings is prohibited, except construction or expansion for an authorized water dependent commercial use.	<i>This change is required in accordance with WAC 173-26-191(2)(a)(ii)(A). Table 6.1 allows water dependent commercial uses overwater (in the Aquatic designation) with a conditional use permit.</i>																					
GG	Chapter 3.52	Industrial	B. The construction of new non-water oriented industrial uses is prohibited. or The	<i>This change is required in accordance with WAC 173-26-191(2)(a)(ii)(A). Table 6.1</i>																					

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	(B) Page 66	Development	expansion of existing non-water-related or non-water dependent industrial uses shall obtain <u>require</u> a shoreline conditional use permit <u>in accordance with OMC 18.34.250 (A)</u> . Any setback area may be used for additional public access or shoreline restoration.	<i>prohibits new non-water oriented industrial/light industrial uses. Existing non-water oriented uses would then be considered non-conforming uses, and the expansion of such would require a Conditional Use Permit per other sections of the SMP.</i>
HH	Chapter 3.52 (K) Page 68	Industrial Development	K. The construction of new, or the expansion of existing, overwater industrial buildings is prohibited, <u>except construction or expansion for an authorized water dependent industrial use</u> .	<i>This change is required in accordance with WAC 173-26-191(2)(a)(ii)(A). Table 6.1 allows water dependent industrial/light industrial uses overwater (in the Aquatic designation).</i>
II	Chapter 3.53 (F) Page 68	Recreation	<u>F. Recreational facilities shall be located, designed and operated in a manner consistent with the purpose of the environment designation in which they are located.</u>	<i>This change is required in accordance with WAC 173-26-241 (3)(i).</i>
JJ	Chapter 3.54 (C)(1) and (2) Page 69	Residential Use and Development	1. The waterfront deck or patio and associated access path, covers less than 25 percent of the shoreline frontage (width of lot measured along the shoreline) <u>VCA</u> and native vegetation covers a minimum of 75 percent of the <u>VCA shoreline frontage</u> ; 2. Within 25 feet of the shoreline <u>ordinary high water mark</u> , for every one square foot of waterfront deck or patio <u>in the VCA</u> , three square feet of vegetation area shall be provided <u>in the VCA along the shoreline</u> ;	<i>This change is required in accordance with WAC 173-26-191(2)(a)(ii)(A); the terms VCA and ordinary high water mark are used throughout the document to describe these areas and using the same terms here clarify exactly where and how this provision applies.</i>
KK	Chapter 3.54 (I) Page 69	Residential Use and Development	<u>I. Plats and subdivisions shall be designed, configured and developed in a manner that assures no net loss of shoreline ecological functions will occur as a result of full build out of all lots and in a manner that prevents the need for new shoreline stabilization or flood hazard reduction measures.</u>	<i>These changes are required in accordance with WAC 173-26-241(3) (j)(i) and (ii).</i>
LL	Chapter 3.57 Page 71	Shoreline Modifications - General Provisions	<u>G. New structural flood hazard reduction measures shall only be allowed when a geotechnical analysis demonstrates that they are necessary to protect existing development, that nonstructural measures or other protection alternatives are not feasible, and that impacts to ecological functions and priority habitats and species can be successfully mitigated so as to assure no net loss.</u> <u>H. New structural flood hazard reduction measures shall be placed landward of associated wetlands and designated vegetation conservation areas, except for actions that increase ecological functions.</u> <u>I. New public structural flood hazard reduction measures shall dedicate and improve public access pathways except when public access would cause unavoidable safety or health hazards to the public, unavoidable security or use conflicts, ecological impacts that cannot be avoided or mitigated, or disproportionate and unreasonable cost.</u>	<i>These changes are required in accordance with WAC 173-26-221 (3)(c)(ii), (iii) and (iv).</i>
MM	Chapter 3.61 (L) Page 76	Shoreland Fill	L. Fill within the shoreline jurisdiction shall be allowed in response to increases in sea level subject to all other provisions of this section <u>Master Program</u> and the mitigation sequencing process.	<i>This change is required in accordance with WAC 173-26-221 (3)(c)(ii), which outlines the criteria for new structural flood hazard reduction measures in shoreline jurisdiction. Fill for a flood berm would be considered a structural flood hazard reduction measure; reference to these criteria in this section makes clear the additional conditions that would apply to any such proposal. See also WAC 173-26-191 (2)(a)(ii)(A), WAC 173-26-221 (3)(b)(i), and required change E above.</i>

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NN	Chapter 3.62 (A) Page 76	Fill Waterward of Ordinary High Water Mark	<p>3. Ecological restoration or enhancement such as beach nourishment, habitat creation, or mitigation shoreline restoration when consistent with <u>an</u> approved restoration or mitigation plan;</p> <p>4. <u>Disposal of dredge material in accordance with the dredge material management program (DMMP) of the Department of Natural Resources;</u></p> <p>5. Construction of protective berms or other structures to prevent the inundation of water resulting from sea level rise shall be allowed in response to increases in sea level subject to all other provisions of this section <u>Master Program</u> and the mitigation sequencing process <u>when there are no other feasible options to protect existing development;</u> <u>Renumber following provisions.</u></p>	<p><i>These changes are required in accordance with WAC 173-26-231 (3)(c), which specifies under what conditions or for which purposes fill waterward of the ordinary high water mark can be allowed, and WAC 173-26-221 (3)(c)(ii) outlining when new structural flood hazard reduction measures may be allowed.</i></p>
OO	Chapter 3.66 new (D) Page 79	Marine Docks and Piers	<p><u>D. Docks, piers, floats and mooring buoys shall not intrude into or over critical saltwater habitats except when the following conditions are met and documented:</u></p> <ol style="list-style-type: none"> <u>1. Avoidance by an alternative alignment or location is not feasible.</u> <u>2. Including any required mitigation, the project shall not result in a net loss of ecological functions associated with critical saltwater habitat.</u> <u>3. For public or commercial docks, the public's need for such a structure must be clearly demonstrated.</u> <u>4. All over-water and near shore developments in marine waters shall conduct an inventory of the site and adjacent beach sections to assess the presence of critical saltwater habitats and functions. Project-specific inventory and survey work shall follow scientifically accepted survey protocols and take place during the appropriate time of the year depending on species present, based on input from resource agencies.</u> 	<p><i>This change is required in accordance with WAC 173-26-221 (2)(iii)(C). See also recommended change EEE.</i></p>
PP	Chapter 3.70 (H) Page 82	Shoreline Restoration and Enhancement	<p>H. Restoration and enhancement projects shall be designed, constructed, and maintained to avoid the use of shoreline stabilization measures. Where such measures cannot be avoided, bioengineering shall be used rather than bulkheads or other stabilization measures, unless it can be demonstrated that there are no feasible options to achieve the intended result. <u>Restoration and enhancement projects that include shoreline modification actions shall be authorized provided the primary purpose of such actions is clearly restoration of the natural character and ecological functions of the shoreline.</u></p>	<p><i>This change is required in accordance with WAC 173-26-231 (3)(g). See also required change F.</i></p>
QQ	Chapter 3.73 Page 83	Shoreline Stabilization - New Development	<p>C. New non-water dependent development, including single-family residences, that includes <u>new</u> structural shoreline stabilization will not be allowed unless all of the conditions below can be met:</p> <ol style="list-style-type: none"> 1. The need to protect the primary structure from damage due to erosion caused by natural or man-made processes is demonstrated through a geotechnical report. <u>The damage must be caused by natural processes, such as tidal actions, currents, and waves</u> Normal sloughing, erosion of steep bluffs, or shoreline erosion itself without such analysis is not a demonstration of need; 2. The erosion is not being caused by upland conditions such as loss of vegetation and drainage; 3. Nonstructural measures such as placing the development further from the shoreline, planting vegetation, or installing onsite drainage improvements are not feasible or 	<p><i>These changes are required in accordance with WAC 173-26-231 (3)(a)(iii)(A) and (B). As written, this section is mixing standards from the Guidelines that relate to new development with standards that relate to new structural shoreline stabilization measures for existing development. The changes also address provisions in WAC 173-26-231 (3)(a)(iii)(B) that had not been addressed in the SMP.</i></p> <p><i>See also recommended change JJJ.</i></p>

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			<p>sufficient;</p> <p>4. The erosion control structure will not result in a net loss of shoreline ecological functions or processes;</p> <p>5. Impacts to sediment transport shall be avoided or minimized; and</p> <p>6. The structure will not cause adverse impacts to adjacent or down-current properties and shoreline areas.</p> <p><u>D. New water dependent development or new structural shoreline stabilization for existing water dependent development will not be allowed unless all of the conditions in C above are met. However, the considerations of placing the development further from the shoreline and erosion being caused by natural processes do not apply to water dependent development that can demonstrate its need for a waterfront location due to the nature of its operations.</u></p>	
RR	Chapter 3.74 (A) and (C) Page 83	New or Expanded Shoreline Stabilization Measures	<p>A. New or enlarged structural stabilization measures are prohibited except where necessary to protect or support legally existing primary structures or shoreline uses, <u>in support of water dependent uses</u>, for human safety, for restoration or enhancement activities, or remediation of contaminated sites.</p> <p>C. New or enlarged structural shoreline stabilization measures to protect legally existing primary structures or shoreline uses are prohibited unless there is conclusive evidence, documented by a geotechnical analysis that the structure is in danger from shoreline erosion caused by tidal action, currents, <u>or waves</u>, or boat wakes. Further:</p> <p><u>6. In geologically hazardous areas, stabilization structures or measures may only be allowed when no alternative, including relocation or reconstruction of existing structures, is found to be feasible and less expensive than the proposed stabilization measure.</u></p>	<p><i>The first change is required in accordance with WAC 173-26-231 (3)(a)(iii)(B)(III).</i></p> <p><i>The second change is required in accordance with WAC 173-26-231 (3)(a)(iii)(B)(I).</i></p> <p><i>The third change is required in accordance with WAC 173-26-221 (2)(c)(ii)(D).</i></p>
SS	Chapter 3.78 Page 87	Breakwaters, Jetties, Groins, and Weirs - General Provisions	<p><u>J. Breakwaters, jetties, groins and weirs shall be designed to protect critical areas and shall provide for mitigation according to the mitigation sequence in OMC 18.34.410 (B).</u></p>	<p><i>This change is required in accordance with WAC 173-26-231 (3)(d).</i></p>
TT	Chapter 3.80 (A) Page 87	Existing Buildings and Uses within Shorelines	<p>A. Subject to the provisions of this Chapter, a use, lot, or structure lawfully existing prior to the effective date of this <u>Shoreline Program</u> that chapter or any amendment thereto, which is rendered nonconforming may continue and may also be repaired, remodeled, and/or restored in the manner and to the extent that it existed upon the effective date of <u>this Shoreline Program</u> the relevant ordinance.</p>	<p><i>This change is required in accordance with WAC 173-26-191(2)(a)(ii)(A); this provision must clearly outline it is referring to the effective date of <u>this</u> SMP. "This chapter" and "the relevant ordinance" are vague and indistinct.</i></p>
UU	Chapter 3.81 (A) Page 88	Alteration of Structures in the Shoreline	<p><u>4. Alteration of structures located landward of the ordinary high water mark within a required vegetation conservation area (VCA) that include expansion of the building footprint shall not be permitted. Interior and exterior remodels and the addition of upper stories are permitted.</u></p>	<p><i>This change is required in accordance with WAC 173-26-191(2)(a)(ii)(A), for consistency with OMC 18.34.493.</i></p>