## Attachment C:

### Ecology Recommended Changes- City of Sumner Shoreline Master Program, Ordinance No. 2399 locally adopted August 9, 2012

The following changes are recommended to clarify elements of the Sumner’s updated SMP

<table>
<thead>
<tr>
<th>ITEM</th>
<th>SMP Submittal Provision (Cite)</th>
<th>TOPIC</th>
<th>BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)</th>
<th>RATIONALE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Page 4-25, Table 4-7</td>
<td>Prohibition of Mining</td>
<td>Mining: Natural: - Mining: Urban conservancy: - Mining: Tapps Reservoir: - Mining: Shoreline Residential: - Mining: Urban: CUP - Mining: Aquatic: CUP -</td>
<td>This change is in response to a request from city staff, identifying that the mineral resource lands do not exist in shoreline jurisdiction, the only areas where mining is allowed within the city of Sumner.</td>
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<td>2</td>
<td>Page 4-25, Table 4-7</td>
<td>Allowance of Scientific Research</td>
<td>Scientific Research: Natural: P Scientific Research: Urban Conservancy: P Scientific Research: Tapps Reservoir: P Scientific Research: Shoreline Residential: P Scientific Research: Urban: P Scientific Research: Aquatic: P</td>
<td>This change is a response to comments received during the state public comment period and agreed to by the city of Sumner.</td>
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<td>3</td>
<td>Page 4-26</td>
<td>Changes to prohibited uses and modifications</td>
<td>The following modifications and uses are prohibited in all environment designations. See chapter 9: Definitions and Acronyms for definitions of the following modifications and uses: 1) Aquaculture 2) Docks 3) Private Boat Ramps</td>
<td>This change alleviates several different internal inconsistencies caused by changes proposed by Ecology: it reflects the required change of allowing aquaculture for</td>
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<tr>
<td>Page 6-4, III Vegetation Conservation Regulations - Riparian Management Zone (5)</td>
<td>Vegetation conservation</td>
<td>In all cases where clearing is allowed pursuant to Section III, Vegetation Conservation Regulations – Riparian Management Zone, Regulation #3, it shall be followed by revegetation; native plants shall be required, and cut trees larger than 9 inch caliper, as measured one (1) foot above grade, shall be retained in the vegetation management zone for habitat value. This change is a response to comments received during the state public comment period and agreed to by the city of Sumner.</td>
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<td>Page 6-4, III Vegetation Conservation Regulations - Riparian Management Zone (6)(c)</td>
<td>Vegetation conservation</td>
<td>c) For every tree greater than four (4) inches caliper, as measured one (1) foot above grade removed for clearing, a minimum of two trees shall be planted for compensation. At the time of planting, deciduous trees must be at least two (2) inches in caliper as measured one (1) foot above grade, and coniferous trees must be at least five (5) feet in height. This change is a response to comments received during the state public comment period and agreed to by the city of Sumner.</td>
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<tr>
<td>Page 6-4, III Vegetation Conservation Regulations - Riparian Management Zone (6)(e)</td>
<td>Vegetation conservation</td>
<td>A mix of vegetation classes (i.e. ground cover, shrubs, and trees) shall be used. Minimally, trees shall be planted 20 feet on center. This change is a response to comments received during the state public comment period and agreed to by the city of Sumner.</td>
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<td>Page 6-9; V, Environment Impact</td>
<td>Consistency of terms</td>
<td>Mitigations activities shall be monitored to determine effectiveness of the habitat mitigation management plan. This section of the SMP discusses requirements for the habitat management plan, but</td>
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</table>
### Regulation 11

**Removal of Mineral Resource Lands from the SMP**

<table>
<thead>
<tr>
<th><strong>6.4 Mineral Resource Lands</strong></th>
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</table>
| **6.4.1. Purpose.**  
The purpose of this chapter is to regulate the use of land in and around mineral resource lands; to protect mineral extraction activities from new nearby incompatible uses; and to protect existing mineral resource lands from encroachments. |
| **6.4.2. Relationship to framework ordinance.**  
The provisions of this chapter shall apply in conjunction with Section 6.1.2, Resource, Wildlife and Hazard area Regulation Framework Purpose, through Section 6.1.13, Notice of Amendments. |
| **6.4.3. Applicability.**  
Mineral resource lands are lands primarily devoted to the extraction of minerals or that have known or potential long-term significance for the extraction of minerals. |
| **6.4.4. Mapping.**  
Mineral resource lands subject to this title include the following:  
1) Any area presently operating under a valid Washington State Department of Natural Resources (DNR) surface mining permit.  
2) Any other area shall be classified a mineral resource land when:  
a) A surface mining permit is granted by the DNR; and  
b) The mining operation is approved by the city for compliance with zoning regulations and the State Environmental Policy Act, chapter 16.04 SMC, SEPA Procedures and Policies. |

The document changes the term in this regulation and refers to it as the habitat mitigation plan. This change is needed for consistency with the rest of the regulations.

The removal of Mineral Resource Lands from chapter 6 of the SMP is in response to a request from the city. Mining is only permitted in the city of Sumner within designated mineral resource lands. Within Sumner, no such areas exist within shoreline jurisdiction making this section from the critical areas ordinance unnecessary within the SMP.
6.4.5. Title notification.
The owner of any site within this designation or within 600 feet of a designated mineral resource land, for which an application for an activity is submitted, shall record a title notice with the Pierce County auditor. The notice shall be notarized and shall be recorded prior to approval of any development proposal for the site. Such notification shall be in the form as set forth below:

MINERAL RESOURCE LANDS NOTICE
Parcel Number:__________________
Address:_______________________
Legal Description:________________
Notice: This parcel lies within an area of land designated Mineral Resource Lands by the City of Sumner.
A variety of commercial mineral extraction activities occur in the area that may be inconvenient or cause discomfort to area residents. This may arise from the use of heavy equipment, chemicals, and spraying which may generate dust, smoke, and noise associated with the extraction of mineral resources. The City of Sumner has established mineral resource extraction as a priority use on existing productive mineral resource lands, and residents of adjacent property should be prepared to accept such inconvenience or discomfort from normal, necessary mineral resource extraction operations.
Signature of owner(s)

(NOTARY ACKNOWLEDGEMENT)

6.4.6. Plat notification.
The owner of any site within this designation, on which a short subdivision or subdivision is submitted, shall record a notice on the face of the plat. Such notification shall be in the form as set forth below.

Notice: This property lies within an area of land designated Mineral Resource Lands by the City of Sumner. A variety of commercial mineral extraction activities occur in the area that may be inconvenient or cause discomfort to area residents. This may arise from the use of heavy equipment, chemicals, and spraying which may generate dust, smoke, and noise associated with the extraction of mineral resources. The City of Sumner has established mineral resource extraction as a priority use on existing productive mineral resource lands, and residents of adjacent property should be prepared to accept such inconvenience or discomfort from normal, necessary mineral resource extraction operations.
6.4.7. Regulations.
1) In addition to a Shoreline Exemption Letter, Shoreline Substantial Development Permit, Conditional Use Permit, and/or Variance as required by this Master Program, a surface mining permit approval shall be required for all surface mining operations except the following:
   a) Excavation for the construction of public facilities and appurtenances for water, sewer, streets, or other underground utilities;
   b) Any grading less than 1,000 cubic yards;
   c) Any grading directly associated with a valid building permit for construction of a structure on the same lot;
   d) Excavation of materials in order to maintain a drainage or floodway facility;
   e) Grading or excavation associated with an active agricultural activity;
   f) Surface mining operations in existence prior to the adoption of the ordinance codified in this chapter, except that actions by an existing surface mining operation which require other permits, shall trigger the provisions of this section.
2) Surface mining permit applications shall be submitted and reviewed as conditional uses pursuant to Chapter 8: Administrative Procedures.
3) The following standards shall apply to the approval of a surface mining permit:
   a) A site plan showing the vicinity, appropriate information about the property owner and operator, fencing plan, location of utilities and site access points, contours of the existing site conditions at five-foot intervals, cross-sections of the site as determined necessary by the Shoreline Administrator, and location of any structures or equipment on the site shall be provided.
   b) A phasing and operation plan is provided showing the type of operation existing or proposed on site, phasing of the expansion, length of operation, hours of operation, methods for stabilizing cut slopes, and measures to reduce erosion, water quality, transportation and other impacts resulting from the operation.
   c) The operation and site layout shall be such that noise, traffic, erosion, water quality, habitat, and other impacts of the operation are adequately
mitigated.

d) Fencing, landscaping and/or berms may be required in order to secure
the site, provide buffers between the site and nearby residential uses or
zones, and reduce noise and erosion impacts.

e) No blasting shall be allowed.

f) The applicant may be required to provide status reports on a regular
basis in order to verify compliance to the city standards.

g) Operations which could generate dust shall be reviewed by the regional
air quality agency.

h) No excavation shall occur within 30 feet of a property line on the
perimeter of the site.

i) Measures shall be provided to keep adjacent streets clear of dust, dirt and
rocks.

j) A rehabilitation plan shall be provided for all new facilities in order to
document how the site will be restored or rehabilitated following
abandonment.

6.4.8. Fees.
The fee for a surface mining permit shall be the same as for an
administrative conditional use approval, as provided for in chapter 18.56
SMC, Procedures for Land Use Permits.

| 9 | Page 7-27; XII Mining | Prohibition of Mining in Shoreline Jurisdiction | XII. Mining Definition

The removal and primary processing of sand, gravel, soil, minerals, and
other earth materials for commercial, industrial or construction use.
Historically, the most common form of mining in shoreline areas is for sand
and gravel because of the geomorphic association of rivers and sand and
gravel deposits.

For purposes of this Master Program, "processing" includes screening,
crushing, and stockpiling of materials removed from the site. Mining

This change is in response to a request from the city to prohibit mining. Mining is only
permitted within mineral resource lands, which are not located within the shoreline
jurisdiction of the city.
activities also include in-water dredging activities related to mineral extraction. Processing does not include general manufacturing, such as the manufacture of concrete.

Mining Policies
1) Only the mining of sand and gravel from river bars should be permitted, providing that appropriate permits are secured for the proposed activity and the activity is consistent with all the City’s critical area regulations (Sumner Municipal Code, Title 16) and protective of endangered, threatened, or sensitive species. All other mining activities should be encouraged to locate outside shoreline jurisdiction.

2) Mining should not be allowed in unique and fragile areas, and all areas where significant adverse impacts to endangered, threatened, or sensitive species may occur.

3) Mining activities should allow the natural shoreline systems to function with a minimum of disruption during their operation and should return the site to as near natural a state as possible upon completion.

4) All impacts shall be mitigated, and where possible, shoreline enhancement should also be encouraged.

Mining Regulations
1) Mining waterward of the floodway is prohibited, except for scalping of river bars, which may be permitted as a conditional use, under the following conditions:

a. Removal of specified quantities of sand and gravel or other materials at specific locations will not adversely affect the natural processes of gravel transportation for the river system as a whole. Specific studies accompanying the application shall demonstrate that no adverse flood, erosion, or other environmental impacts occur either upstream or downstream of extraction sites.
b. Aggregate washing and ponding of waste water are prohibited in floodways.

c. Storage within the floodway is prohibited in the shoreline during the flood season (November 1 through March 1); provided that, temporary stockpiling is permitted during working hours if all such materials are removed from the floodway at the end of each day’s operation.

d. All applicable permits and approvals, including but not limited to, Hydraulic Project Approval (HPA) from the Department of Fish and Wildlife, approval from Department of Natural Resources (WAC 332-18), and a City Flood Development Permit, shall be obtained and all applicable provisions attached thereto shall be adhered to.

2) Excavation of sand, gravel, and other river materials by the open pit method is prohibited.

3) All mining impacts shall be mitigated to ensure no net loss of ecological functions. Application of this standard shall include avoidance and mitigation of adverse impacts during the course of mining and reclamation. The determination of whether there will be no net loss of ecological function shall be based on an evaluation of the reclamation plan required for the site and shall consider impacts on ecological functions during operation. Preference shall be given to mining proposals that result in shoreline restoration of ecological functions.

4) Application for permits for mining operations shall be accompanied by operation plans and reclamation plans. Such information shall provide sufficient documentation to make a determination as to whether the project will result in net loss of shoreline ecological functions and processes during the course of mining and after reclamation. Creation, restoration, or enhancement of ecological functions and the future productivity of the site may be considered in determining no net loss of ecological functions.
5) The applicant/proponent must show that mining is dependent on a shoreline location, and that demand cannot reasonably be accommodated in operations outside shoreline jurisdiction. Information required to meet this criteria shall evaluate geologic factors such as the distribution and availability of mineral resources as well as evaluation of need for such mineral resources, economic, transportation, and land use factors.

**Mining Environment Specific Regulations**

**Urban and Aquatic:** Mining operations may be permitted as a conditional use. **Shoreline Residential, Urban Conservancy, Tapps Reservoir and Natural:** Mining operations are prohibited.

| Page 7-34 | Allowance of Scientific Research | XVI. **Scientific Research**
| --- | --- | ---
|  |  | Definition: The collecting of information for scientific purposes.

**Scientific Research Policies**

1) Scientific research that would cause a net-loss of ecological function to the shoreline should not be allowed. The placement of structures either permanent or temporary should be sited and designed to not cause negative impacts to hydrology, navigation, or other existing uses.

2) Scientific Research designed to collect information related to restoration projects should be encouraged in the shoreline.

**Scientific Research Regulations**

1) Scientific Research is permittable in all shoreline environments for the purposes of collecting information related to shoreline restoration.

2) Scientific research not directly related to the collection of information related to shoreline ecology, biology, or other natural processes must demonstrate the need for a shoreline location, and is prohibited in the aquatic environment.

This change is a response to comments received during the state public comment period and agreed to by the city of Sumner.

| Page 7-42, XVIII, Stormwater Management | Fish habitat in stormwater facilities | 1) Stormwater conveyance facilities should utilize existing transportation and utility sites, rights-of-way and corridors, whenever possible. Joint use of rights-of-way and corridors should be encouraged.
| --- | --- | ---
|  |  | 2) Stormwater facilities should be prohibited within the riparian

This change is a response to comments received during the state public comment period and agreed to by the city of Sumner.
| Facilities Policies(6) | management areas, wetlands, and other critical areas.  
3) New stormwater facilities should be located so as not to require any shoreline protection works.  
4) New stormwater facilities should ensure no net loss of ecological functions and processes.  
5) Stormwater facilities located in the shoreland area should be maintained only to the degree necessary to ensure the capacity and function of the facility including the removal of non-native invasive plant species.  
6) The stormwater facility should be planted with native vegetation and where feasible provide for off-channel habitat for fish.  
7) Low impact development techniques that allow for a greater amount of stormwater to infiltrate into the soil should be encouraged to reduce stormwater run-off | Sumner. |
| --- | --- | --- |
| Page 8-8, II, Shoreline Permit Procedures, F(14-17) | Permit procedures- filing with the department | 14) Hearing Examiner Decision. Within five (5) days of the decision, the Shoreline Administrator shall send the Hearing Examiner's final order, including findings and conclusions to the applicant. The following information shall be provided to the Department of Ecology and the Attorney General:  
   a. A copy of the complete application per WAC 173-27-180;  
   b. Findings and conclusions that establish the basis for the decision including but not limited to identification of shoreline environment designation, applicable Master Program policies and regulations and the consistency of the project with appropriate review criteria for the type of permit(s);  
   c. The final decision of the City;  
   d. The permit data sheet per WAC 173-27-990;  
   e. Affidavit of public notice; and  
   f. Where applicable, the Shoreline Administrator shall also file the applicable documents required by the State Environmental Policy Act (RCW 90.58.140) | The content of the permit process is contained completely within the SMP as written. However, the order of the procedures related to appeals and filing with the department is not written in a linear order. This change rearranges the procedures into a linear order, and adds minimal clarifying language for consistency with 90.58.140 RCW. |
43.21C). The Shoreline Administrator shall provide Notice of Final Decision per SMC 18.56.

15) **Department of Ecology Review of Variance and Conditional Use Permits.** After the Hearing Examiner has approved a Variance or Conditional Use Permit, the Shoreline Administrator shall submit the Permit to the Department of Ecology for its approval, approval with conditions, or denial. When a Substantial Development Permit and a Conditional Use or Variance Permit are required for a development, the submittal on the Permits shall be made simultaneously. The Department of Ecology shall render and transmit its final decision approving, approving with conditions, or disapproving the Variance or Conditional Use Permit within thirty (30) days of submittal by the City of Sumner. Filing is not complete until all the required documents have been received by the Department of Ecology and the Attorney General. Upon receipt of the Department of Ecology's final decision, the Shoreline Administrator shall notify those interested persons having requested notification of such decision.

16) Development authorized by a Variance or Conditional Use Permit shall not begin until twenty-one (21) days from the date the City receives the decision of the Department of Ecology, provided no appeal proceedings have been initiated.

17) Appeals
   a. **Local Appeals.** Any decision made by the Hearing Examiner may be appealed to the City Council subject to the following provisions:
      i. Appeals shall be submitted in writing to the city clerk by 5:00 p.m. of the twenty-first calendar day following the date of the Hearing Examiner’s decision. When the last day of the comment period so computed is a Saturday, Sunday, or federal or city holiday, the period shall run until 5:00 p.m. on the next business day. The appeal shall be in writing and shall state specific objections to the decision and the relief sought. The appeal shall be accompanied with any applicable filing fees.
      
      ii. The record established by the hearing examiner (including testimony, exhibits, comment letters, plans, staff reports, etc.) shall be the record used...
by council unless it is supplemented by the city council pursuant to this section. A request to supplement the record shall be made in a separate document that is attached to the appeal. The appeal shall not mention or refer to the material that is proposed to be added to the record. A request to supplement the record shall include a brief description of the nature of the material to be added and a separate, attached copy of the material to be added. The request to supplement the record must clearly establish that the new evidence or information to be added to the record was not available or could not have been reasonably produced at the time of the open record hearing before the hearing examiner.

iii. The council may affirm, modify, reverse the hearing examiner's decision, remand to the hearing examiner with directions for further proceedings, or grant other appropriate relief. If the council reverses or modifies the hearing examiner's decision, the council shall enter findings and/or conclusions to support the decision.

iv. The hearing examiner's decision on appeal shall be given substantial weight.

v. The city council shall establish rules for council appeals.

14) Appeals

a. Local Appeals. Any decision made by the Hearing Examiner may be appealed to the City Council subject to the following provisions:

i. Appeals shall be submitted in writing to the city clerk by 5:00 p.m. of the twenty-first calendar day following the date of the Hearing Examiner's decision. When the last day of the comment period so computed is a Saturday, Sunday, or federal or city holiday, the period shall run until 5:00 p.m. on the next business day. The appeal shall be in writing and shall state specific objections to the decision and the relief sought. The appeal shall be accompanied with any applicable filing fees.

ii. The record established by the hearing examiner (including testimony,
exhibits, comment letters, plans, staff reports, etc.) shall be the record used by council unless it is supplemented by the city council pursuant to this section. A request to supplement the record shall be made in a separate document that is attached to the appeal. The appeal shall not mention or refer to the material that is proposed to be added to the record. A request to supplement the record shall include a brief description of the nature of the material to be added and a separate, attached copy of the material to be added. The request to supplement the record must clearly establish that the new evidence or information to be added to the record was not available or could not have been reasonably produced at the time of the open record hearing before the hearing examiner.

iii. The council may affirm, modify, reverse the hearing examiner’s decision, remand to the hearing examiner with directions for further proceedings, or grant other appropriate relief. If the council reverses or modifies the hearing examiner’s decision, the council shall enter findings and/or conclusions to support the decision.

iv. The hearing examiner’s decision on appeal shall be given substantial weight.

v. The city council shall establish rules for council appeals.

15) Filing with the Department

The following information shall be provided concurrently to the applicant, the Department of Ecology, and the Attorney General upon the close of the local appeal process, or where appealed upon the rendering of the final decision.

a. A copy of the complete application per WAC 173-27-180;

b. Findings and conclusions that establish the basis for the decision including but not limited to identification of shoreline environment designation, applicable Master Program policies and regulations and the
consistency of the project with appropriate review criteria for the type of permit(s);  
c. The final decision of the City;  
d. The permit data sheet per WAC 173-27-990;  
e. Affidavit of public notice; and  
f. Where applicable, the Shoreline Administrator shall also file the applicable documents required by the State Environmental Policy Act (RCW 43.21C). The Shoreline Administrator shall provide Notice of Final Decision per SMC 18.56.

15) 16 Department of Ecology Review of Variance and Conditional Use Permits. After the Hearing Examiner has approved a Variance or Conditional Use Permit, the Shoreline Administrator shall submit the Permit to the Department of Ecology for its approval, approval with conditions, or denial. When a Substantial Development Permit and a Conditional Use or Variance Permit are required for a development, the submittal on the Permits shall be made simultaneously. The Department of Ecology shall render and transmit its final decision approving, approving with conditions, or disapproving the Variance or Conditional Use Permit within thirty (30) days of submittal by the City of Sumner. Filing is not complete until all the required documents have been received by the Department of Ecology and the Attorney General. Upon receipt of the Department of Ecology's final decision, the Shoreline Administrator shall notify those interested persons having requested notification of such decision.

17) Development authorized by a Variance or Conditional Use Permit shall not begin until twenty-one (21) days from the date the City receives the decision of the Department of Ecology, provided no appeal proceedings have been initiated.

18) Washington State Department of Ecology Review. Development
authorized by a Shoreline Substantial Development Permit shall not begin until twenty-one (21) days from the date the Department of Ecology acknowledges in writing receipt of the Shoreline Substantial Development Permit: provided no appeals have been initiated during this twenty-one (21) day period.

| 13 | Page 8-12, IV, B(6) | Revisions to Permits | 6) No adverse environmental impact will be caused by the project revision. If the sum of the proposed revision and any previously approved revisions do not meet the criteria above, an application for a new Shoreline Permit must be submitted. If the revision involves a Conditional Use or Variance, the Shoreline Administrator must submit the revision to the Department of Ecology for the Ecology's approval, approval with conditions, or denial, and shall indicate that the revision is being submitted under the requirements of WAC 173-27-100. Ecology shall render and transmit to the City of Sumner and the applicant its final decision within fifteen (15) days of the date of Ecology's receipt of the submittal from the City. The Shoreline Administrator shall notify parties of record of Ecology's final decision. (see WAC 173-27). The City of Sumner's decision is subject to the appeal procedures found in Chapter 8, Section II(8)(F)(14) of this Master Program; and the Department of Ecology's decision on a permit revision to the Permit may be appealed within twenty-one (21) days of such decision, in accordance with WAC 173-27-100. Chapter 8, Section II(8)(F)(19) of this Master Program. | This section does not include language describing the correct appeal process. The change cites the correct language, and identifies the local appeal process as distinct from the state appeal process. |