



Department of Ecology

Washington State

0002 8 2003

**CITY OF SUMNER**

1104 Maple Street, Suite 250  
Sumner, Washington 98390-1423  
253.891.3303 • Fax: 253.891.3292

RECEIVED

Community Development and Parks Department  
John Doan, Assistant City Administrator

December 3, 2003

Randy Davis, AICP  
Department of Ecology  
Southwest Regional Office  
PO Box 47775  
Olympia, WA 98504-7775

**RE: Transmittal of Shoreline Master Program, November 17, 2003 And  
Response to the Public/Agency Comments on the Public Hearing on July 1, 2003**

Dear Mr. Davis:

The following is a summary of how the City has responded to comments received at the July 1<sup>st</sup> Public Hearing held by the Department of Ecology.

**Comment From:**

Office of Community Development

Puget Sound Energy

Morrison Investments, LLC

Manke Lumber, Co.

RCI, Construction Group

**Response:**

No change. Comments reflect that the SMP is consistent with the Growth Management Act.

All recommended changes were incorporated as presented by PSE.

The riparian management zone was reduced to 100 feet in this area of the White River.

The riparian management zone was reduced to 100 feet in this area of the White River.

The riparian management zone was reduced to 100 feet in this area of the White River

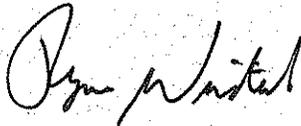
Dick Bates, Tom Tarrant, Monte Schlesman  
Don Moody

This is in response to comments made at the public hearing on July 1<sup>st</sup>. The City is working with the USFW and NMFS to determine if it is feasible to reduce this buffer width in light of an agreement with the federal agencies on approval of the North Sumner Interchange permits. Any changes may result in a request to amend the SMP.

On November 17<sup>th</sup> the City Council approved Resolution No. 1107 (see enclosed) amending the Draft Shoreline Master Program, November 2002 consistent with the above responses and your comments. I have also enclosed two hard copies of the latest version of the Shoreline Master Program and on put it on a CD.

Please keep me posted on the approval process at the Department of Ecology. Let me know if you need any additional information.

Sincerely,



Ryan Windish, AICP  
Senior Planner

Enclosed:

1. Two copies of the Sumner Shoreline Master Program, November 2003 (minus Appendix A which has already been sent)
2. CD containing electronic versions of the SMP
3. Copy of Resolution No. 1107

Cc: Andrew Neiditz, City Administrator  
John Doan, Assistant City Administrator/Director of Community Development and Parks

Washington State  
Department of Ecology  
DEC 08 2003  
RECEIVED

**RESOLUTION NO. 1107**

**CITY OF SUMNER, WASHINGTON**

**A RESOLUTION** of the City Council of the City of Sumner, Washington, approving amendments to the Draft Shoreline Master Program, November 2002 and declaring an intent to adopt as modified after approval by the Washington State Department of Ecology.

**WHEREAS**, the Ordinance No. 992, approved March 17, 1975, adopted the Shoreline Master Program and the Shoreline Management Use Regulations and;

**WHEREAS**, the Draft Shoreline Master Program, November 2002, as amended is consistent and conforms with the Sumner Comprehensive Plan;

**WHEREAS**, a Determination of Non-Significance was issued per WAC 197-11 on August 22, 2002; and

**WHEREAS**, the City of Sumner has conducted an extensive public process in developing the 2002 update to the Shoreline Master Program including public notice, numerous public meetings, and a duly advertised public hearing was held before the Planning Commission on September 5, 2002; and

**WHEREAS**, the Planning Commission recommended to the City Council for passage the Draft Shoreline Master Program, November 2002; and

**WHEREAS**, City Council held a duly advertised public hearing on January 21, 2003; and

**WHEREAS**, the City negotiated with the U.S. Fish and Wildlife Service (USFW) and the National Marine Fisheries Service (NMFS) on a permit for the North Sumner Interchange and these negotiations resulted in changes to the Draft Shoreline Master Program, November 2002 prior to City Council approval as it pertains to buffer widths and use, trail construction and design, location of stormwater facilities, and noticing requirements; and

**WHEREAS**, The City Council approved Resolution No. 1079 on March 17, 2003 intending to adopt the Draft Shoreline Master Program, November 2002; and

**WHEREAS**, The Department of Ecology conducted a public hearing on July 1, 2003 and concurred with reductions in buffer widths for certain properties outside of the Action Area of the agreement with the USFW and NMFS on the North Sumner Interchange; and

**WHEREAS**, The Department of Ecology has agreed that the City can make additional amendments to the Draft Shoreline Master Program, November 2002 with changes as presented in Exhibit 1; and

**WHEREAS**, the Draft Shoreline Master Program, November 2002, as amended herein, accurately reflects the needs and desires of the citizens to protect shorelines of Sumner; **NOW, THEREFORE**,

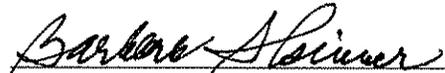
**THE CITY COUNCIL OF THE CITY OF SUMNER, WASHINGTON**

**DO RESOLVE AS FOLLOWS:**

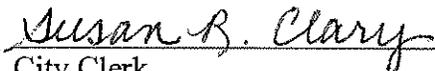
**Section 1.** To approve amendments to the Draft Shoreline Master Program, November 2002 as presented in "Exhibit 1" hereby attached and made a part hereof.

**Section 2.** To declare an intent to adopt the Draft Shoreline Master Program, November 2002, as amended herein, after approval by the Washington State Department of Ecology

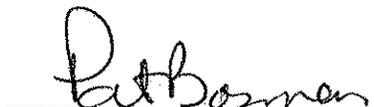
Passed by the City Council and approved by the Mayor of the City of Sumner, Washington, at a regular meeting thereof this 17<sup>th</sup> day of November, 2003.

  
\_\_\_\_\_  
Mayor

Attest:

  
\_\_\_\_\_  
City Clerk

Approved as to form:

  
\_\_\_\_\_  
City Attorney



## Exhibit 1

1. Chapter 4, Page 4-3, "Development Standards", Section 1: "Height Limitations", shall be amended to read as follows:

### **"Development Standards**

1. **Height Limitations.** No new or expanded building or structure shall exceed a building height of thirty-five (35) feet, except as follows:

- a) The height limits shall not apply to cupolas, water tanks, church spires, flagpoles, transmission lines, and radio and television towers and other similar structures.

A shoreline Variance from the height limitation imposed by this ordinance can be granted if the following conditions are met:

- b) The development will not obstruct the view of a substantial number of residences; and
- c) The overriding considerations of the public interest will be served.
- d) The requested Variance does not go beyond the minimum necessary to afford relief.
- e) The requested Variance may be granted only when all the following facts and conditions are found to exist:
  - The requested deviation from the code standards is necessary for the successful physical function of the proposed use;
  - Reasonable alternatives which result in reduced or no deviation from the height limitations have been considered;
  - The granting of such deviation will not be materially detrimental to the public welfare or injurious to the property or improvements in the adjacent shoreline areas and in the zone in which the subject property is situated; and
  - The proposed Variance from the height limitation is consistent with the city's comprehensive plan.

A shoreline variance from the height limitations imposed by this ordinance shall also comply with the variance criteria listed in *Chapter 8: Administration.*"

## Exhibit 1

2. Chapter 4, Page 4-7, "Development Standards", Section 1: "Height Limitations", shall be amended to read as follows:

### "Development Standards"

1. **Height Limitations.** No new or expanded building or structure shall exceed a building height of thirty-five (35) feet, except as follows:

- b) The height limits shall not apply to cupolas, water tanks, church spires, flagpoles, transmission lines, and radio and television towers and other similar structures.

A shoreline variance from the height limitation imposed by this ordinance can be granted if the following conditions are met:

- f) The development will not obstruct the view of a substantial number of residences; and
- g) The overriding considerations of the public interest will be served.
- h) The requested Variance does not go beyond the minimum necessary to afford relief.
- i) The requested Variance may be granted only when all the following facts and conditions are found to exist:
- The requested deviation from the code standards is necessary for the successful physical function of the proposed use;
  - Reasonable alternatives which result in reduced or no deviation from the height limitations have been considered;
  - The granting of such deviation will not be materially detrimental to the public welfare or injurious to the property or improvements in the adjacent shoreline areas and in the zone in which the subject property is situated; and
  - The proposed Variance from the height limitation is consistent with the city's comprehensive plan.

A shoreline variance from the height limitations imposed by this ordinance shall also comply with the variance criteria listed in *Chapter 8: Administration.*"

**Exhibit 1**

3. **Chapter 4, Page 4-10, "Development Standards", Section 1: "Height Limitations", shall be amended to read as follows:**

**"Development Standards**

**1. Height Limitations.** No new or expanded building or structure shall exceed a building height of thirty-five (35) feet, except as follows:

- a) The height limits shall not apply to cupolas, water tanks, church spires, flagpoles, transmission lines, and radio and television towers and other similar structures.

A shoreline Variance from the height limitation imposed by this ordinance can be granted if the following conditions are met:

- b) The development will not obstruct the view of a substantial number of residences; and
- c) The overriding considerations of the public interest will be served.
- d) The requested Variance does not go beyond the minimum necessary to afford relief.
- e) The requested Variance may be granted only when all the following facts and conditions are found to exist:
- The requested deviation from the code standards is necessary for the successful physical function of the proposed use;
  - Reasonable alternatives which result in reduced or no deviation from the height limitations have been considered;
  - The granting of such deviation will not be materially detrimental to the public welfare or injurious to the property or improvements in the adjacent shoreline areas and in the zone in which the subject property is situated; and
  - The proposed Variance from the height limitation is consistent with the city's comprehensive plan.

A shoreline variance from the height limitations imposed by this ordinance shall also comply with the variance criteria listed in *Chapter 8: Administration.*"

**Exhibit 1**

4. **Chapter 4, Page 4-4, “Development Standards”, Section 2 “Setbacks”, Subparagraph (a), shall be amended to read as follows:**

**“2. Setbacks**

- a) **New development.** Permanent structures, storage, and hard surfaces shall be set back a minimum of one hundred (100) or two hundred (200) feet from the floodway edge or ordinary high water mark (whichever is further landward). Refer to *Figure 4-1, Sumner Shoreline Environment Designations*, for specific setback widths within the Urban Conservancy environmental designation. Setbacks are measured landward, on a horizontal plane, perpendicular to the shoreline.

Developments associated with a water-dependent uses and public access are not required to meet the setback. However, where such development can be approved within the setback area, the placement of structures, storage, and hard surfaces shall be limited to the minimum necessary for the successful operation of the use. In no case shall parking be allowed within the setback area.”

5. **Chapter 4, Page 4-5, Section 2: “Setbacks”, “Riparian Management Zone”, shall be amended to read as follows:**

**“Riparian Management Zone.** Land within the one hundred (100) or two hundred (200) foot setback is considered the Urban Conservancy "Riparian Management Zone." Within this zone, removal of vegetation and topsoil is strictly regulated under the Clearing and Grading Provisions of this Master Program (see *Chapter 7: Specific Shoreline Development Policies and Regulations*).”

6. **Chapter 4, Page 4-5, shall be amended to include a subparagraph Section 3: “Required Mitigation” to read as follows:**

**“3. Required Mitigation**

Shoreline areas with an Urban Conservancy designation with a one hundred (100) foot setback are required to provide mitigation for impacts to plant and animals as set forth in Regulation 7 of the Plant and Animals section in Chapter 6. Public access shall also be provided pursuant to Chapter 6 and Chapter 7.”

**Exhibit 1**

**7. Chapter 4, Page 4-5 to 4-6, Section: “Areas Designated”, shall be amended to read as follows:**

**“Areas Designated**

**Description**

The “Urban Conservancy” designation appears to be appropriate for much of the City’s shoreline along both the Puyallup and White (Stuck) Rivers. There are two sub-designations for Urban Conservancy one with a 100 foot setback and one with a 200 foot setback.

**Rationale**

The shorelines designated "Urban Conservancy" do not have biophysical limitations to development such as floodways. In fact, the floodway of the White (Stuck) River is very narrow along this segment of shoreline and on the east side, confined within the riverbank. In addition, the shorelines designated "Urban Conservancy" are currently used for a mixture of land uses that include residential, commercial, and industrial developments, and public services. Those areas with considerable existing development, small lots constrained between existing roads and the river, and contain substantial urban or industrial development have a setback of 100 feet rather than 200 feet.

Inventory Segment	Area Designated	Shoreline Designation	Rationale
<b>A</b> PUYALLUP RIVER (Linden Avenue Bridge to City Limits - primarily east bank, small area of land on west bank within river)	<ul style="list-style-type: none"> <li>North bank of Puyallup River from west ROW line of Linden Avenue Bridge upstream to southern property line of City-owned property.</li> </ul>	Urban Conservancy 200 ft.	Urban Conservancy designation is recommended for USFWS managed land. May provide additional restoration, protection, and public access opportunity.
<b>B</b> CONFLUENCE OF WHITE & PUYALLUP RIVERS (Includes most of east side of both rivers and west side of White River; includes US Fish and Wildlife Service land and Wastewater Treatment Facility)	<ul style="list-style-type: none"> <li>North bank of Puyallup River downstream from west ROW line of Linden Avenue Bridge to confluence and;</li> <li>East and west bank of White River upstream to south ROW line of SR410 Bridge.</li> </ul>	Urban Conservancy 200 ft.	Urban Conservancy designation is appropriate for USFWS managed land, shorelines with mix of uses, and shorelines without predominant water-dependent use. The wastewater treatment plant area may provide additional restoration, protection, and public access opportunities.

<b>C</b> WHITE RIVER (SR410 Bridge to Milwaukee Canal , both sides of river)	<ul style="list-style-type: none"> <li>West bank from north ROW line of Bridge Street to north ROW line of Union Pacific Railroad Spur Bridge.</li> </ul>	Urban Conservancy 200 ft.	Urban Conservancy designation is appropriate for shoreline with a mix of uses, and shorelines without predominant water-dependent use.
<b>D</b> WHITE RIVER (Union Pacific Railroad Spur Bridge to 145th Ave E, both sides of river)	<ul style="list-style-type: none"> <li>East and west banks from north ROW line of Union Pacific Railroad Spur Bridge to east ROW line of 145<sup>th</sup> Avenue East.</li> </ul>	Urban Conservancy 200 ft.	Urban Conservancy designation is appropriate for shoreline with a mix of uses, and shorelines without predominant water-dependent use.
<b>E</b> WHITE RIVER (145th Avenue East to Public	<ul style="list-style-type: none"> <li>East and west banks from east ROW line of 145<sup>th</sup> Avenue East to south property line of City-</li> </ul>	Urban Conservancy 200 ft.	Urban Conservancy designation is appropriate for shoreline with a mix of uses, and shorelines without predominant water-

**Exhibit 1**

Land, both sides of river)	owned land.		dependent use.
<p style="text-align: center;"><b>F</b></p> <p style="text-align: center;">WHITE RIVER (Both sides of river; west bank is public land)</p>	<ul style="list-style-type: none"> <li>• West bank from south property line of City-owned land to north ROW line of 16<sup>th</sup> Street and;</li> <li>• East bank from south property line of City-owned land to north ROW line of 16<sup>th</sup> Street.</li> <li>• East and West bank from north ROW line of 16<sup>th</sup> Street to west property line of the Summer Links Golf Course.</li> </ul>	<p style="text-align: center;">Urban Conservancy 200 ft.</p> <p style="text-align: center;">Urban Conservancy 200 ft.</p> <p style="text-align: center;">Urban Conservancy 100 ft.</p>	<p>Urban Conservancy is recommended for areas in public ownership along the east bank. May provide additional restoration, protection, and public access opportunity. Urban Conservancy designation is appropriate for shoreline with a mix of uses, and shorelines without predominant water-dependent use.</p>
<p style="text-align: center;"><b>G</b></p> <p style="text-align: center;">WHITE RIVER (Both sides of river; both sides are predominantly industrial)</p>	<ul style="list-style-type: none"> <li>• East and west banks from west property line of Summer Links Golf Course to south ROW line of 8<sup>th</sup> Street.</li> <li>• West bank from south ROW line of 8<sup>th</sup> Street to City Limits.</li> </ul>	<p style="text-align: center;">Urban Conservancy 100 ft.</p> <p style="text-align: center;">Urban Conservancy 200 ft.</p>	<p>Urban Conservancy designation is appropriate for shoreline with a mix of uses, and shorelines without predominant water-dependent use.</p>

Note: ROW – Right-of-way.

**Exhibit 1**

8. Chapter 4, Page 4-13 to 4-15, Table 4-1: “Shoreline Environment Designation”, shall be amended to read as follows:

“Table 4-1. Shoreline Environment Requirements: Development Standards and Specific Shoreline Development Regulation.

	<b>SHORELINE ENVIRONMENT DESIGNATION</b>		
	<b>Urban Conservancy</b>	<b>Shoreline Residential</b>	<b>Urban</b>
<b>Development Standard</b>			
Setbacks	100/200 ft	100 ft	50 ft
Height Limitations	35 ft	35 ft	35 ft
<b>Specific Shoreline</b>			
Agriculture <sup>1</sup>	P	P	P
Boating Facility <sup>2</sup>			
• Boat Launch Ramps	CU	CU	CU
• Docks <sup>3</sup>	CU	CU	CU
• Dry Boat Storage <sup>4</sup>	CU	CU	CU
• Marinas	Prohibited	Prohibited	Prohibited
Clearing and Grading	P	P	P
Commercial Development <sup>4</sup>			
• Water-dependent	CU	Prohibited	P
• Water-related	CU	Prohibited	P
• Water-enjoyment	CU	Prohibited	P
• Nonwater-oriented	P	Prohibited	P
Dredging <sup>5</sup>	CU	P	P
Dredge Spoil Disposal <sup>6</sup>	P/CU	P/CU	P/CU
Industrial Development <sup>7</sup>			
• Water-dependent	CU	Prohibited	P
• Water-related	CU	Prohibited	P
• Nonwater-oriented	P	Prohibited	P
Instream Structures	CU	CU	CU
Landfill <sup>8</sup>	CU	CU	CU
Mining <sup>9</sup>	Prohibited /CU	Prohibited /CU	Prohibited/CU
Parking <sup>10</sup>	P	P	P
Recreation Facilities <sup>11</sup>	CU	P/CU	P/CU
Residential Development <sup>12</sup>	CU	P	P

**Exhibit 1**

**SHORELINE ENVIRONMENT DESIGNATION**

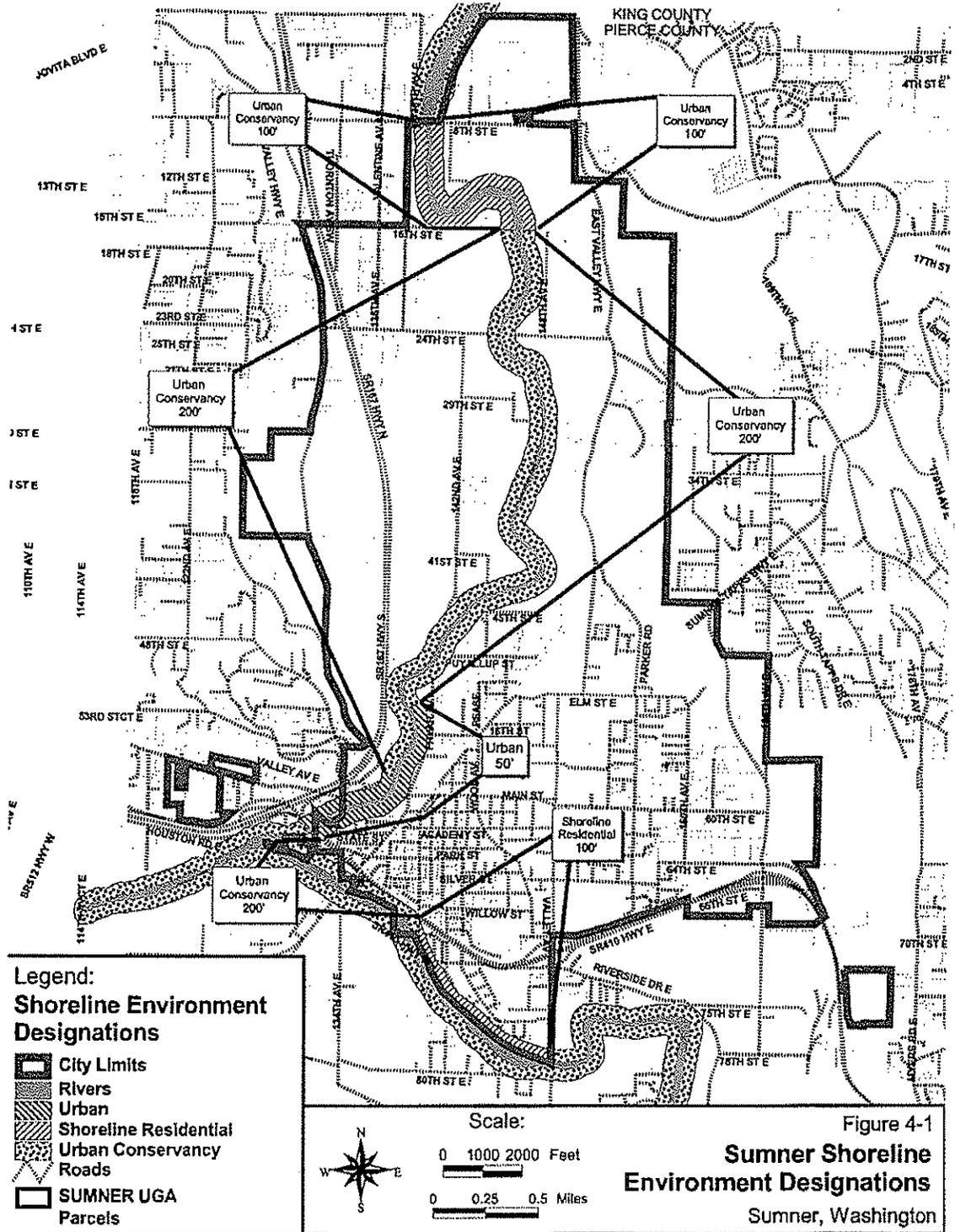
	<b>Urban Conservancy</b>	<b>Shoreline Residential</b>	<b>Urban</b>
Shoreline Modification <sup>13</sup> <ul style="list-style-type: none"> <li>• Bulkheads</li> <li>• Dikes and Levees</li> <li>• Revetments</li> </ul>	Prohibited CU/ Prohibited CU/Prohibited	Prohibited P/ Prohibited CU/ Prohibited	Prohibited P/ Prohibited CU/Prohibited
Signs <sup>14</sup>			
Transportation <sup>15</sup>	CU	P/CU	P/CU
Stormwater Facilities <sup>16</sup>	CU	CU	CU
Utilities <sup>17</sup>	CU	P/CU	P/CU
P = May be permitted (i.e., allowed) subject to Substantial Development Permit conditions and provisions contained in this Master Program. CU = May be permitted (i.e., allowed) as a conditional use. Prohibited = Not an allowed use in this environment.			

Notes

- 1 See Chapter 7, for agriculture-related development specific developments and activities that are prohibited within shoreline jurisdiction. A buffer of permanent native vegetation is required between areas used for cultivation or intensive grazing and adjacent water bodies and wetlands. The buffer is measured from the ordinary high water mark or wetland boundary and extends a minimum twenty-five (25) feet and includes the riverbank as described in Chapter 7.
- 2 See Chapter 7, for specific developments and activities that are prohibited within shoreline jurisdiction.
- 3 Bulk storage of petroleum products on docks is prohibited.
- 4 Over-water development is prohibited, except as provided for in Chapter 7.
- 5 See Chapter 7, for requirements associated with dredging in specific locations.
- 6 See Chapter 7, for specific developments and activities that are prohibited within shoreline jurisdiction.
- 7 Over-water development is prohibited, except as provided for in Chapter 7.
- 8 This activity can only be permitted in association with an approved shoreline development.
- 9 Waterward of the ordinary high water mark, scalping of river bars may be permitted as a conditional use as provided for in Chapter 7.
- 10 This activity can only be permitted in association with an approved shoreline development; parking as a primary use is prohibited.
- 11 Waterward of the ordinary high water mark, no recreational buildings or structures shall be built, except water-dependent and/or water-enjoyment structures as follows: docks, bridges, and viewing platforms. Such uses may be permitted as a conditional use.
- 12 Over-water development is prohibited. In the Urban Conservancy environment, residential development may be permitted by conditional use, provided a variance is obtained from the shoreline setback requirements identified in Chapter 4.
- 13 See Chapter 7, for specific conditions.
- 14 Signs shall comply with the specific shoreline environment requirements set forth in Chapter 4 and shall be permitted only in association with an approved shoreline development
- 15 See Chapter 7 for specific conditional use requirements and prohibitions.
- 16 See Chapter 7 for specific conditional use requirements and prohibitions.
- 17 See Chapter 7 for specific conditional use requirements and prohibitions.”

**Exhibit 1**

9. Chapter 4, Page 4-16, Figure 4-1: "Sumner Shoreline Environment Designations", shall be amended to read as follows:



## Exhibit 1

### 10. Chapter 6, Page 6-16, Section: "Wetland Regulations", shall be amended to read as follows:

#### General.

1. No development or activity shall be undertaken in a wetland or wetland buffer unless authorized by a conditional use permit and consistent with the goals and policies of this Master Program.
2. The approximate location and extent of wetlands in the city is displayed on the map titled *City of Sumner Wetland Inventory Map, 2001*. This inventory is general and not designed to support permit applications, and does not establish jurisdictional boundaries. Furthermore, as site conditions change (due to natural and human processes), wetland areas and characteristics may change as well.
3. The "*Washington State Wetlands Identification and Delineation Manual*," 1997, Publication No. 96-94, or its successor, shall be used for identifying and delineating wetlands.
4. The *Washington State Wetland Rating System - Western Washington*, Second Edition, 1993, Publication No. 93-74, or its successor, shall be used for rating wetlands.

#### Standard of Review.

5. A permit shall only be granted if the permit, on its face or as conditioned, is consistent with the provisions of this chapter and the following criteria:
  - A proposed action avoids adverse impacts to wetlands or their buffers or takes affirmative and appropriate measures to minimize and compensate for unavoidable impacts;
  - The proposed activity results in no net loss of wetland; or
  - Denial of a permit would cause an extraordinary hardship on the applicant.
6. The proposal has been shown to satisfy the mitigation preferences provided below in the following order of preference:
  - Avoiding the impact altogether by not taking a certain action or parts of an action;
  - Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

**Exhibit 1**

- Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
  - Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
  - Compensating for the impact by replacing, enhancing, or providing substitute resources or environments;
  - Monitoring the impact and the compensation project and taking appropriate corrective measures. Mitigation for individual actions may include a combination of the above measures.
7. In approving a permit subject to this chapter, the Administrator may impose any conditions necessary to ensure compliance with the Master Program.

**Wetland Buffers.**

8. Wetland buffer zones shall be required for development and activities adjacent to a wetland. Any wetland created, restored or enhanced as compensation for approved wetland alterations shall also include a wetland buffer equivalent to that required for the category of wetland to be replaced. The width of the wetland buffer shall be based on the wetland category according to the following table:

Category I	150 feet
Category II	100 feet
Category III	50 feet
Category IV	25 feet

9. Additional buffer width may be required around a wetland on a case-by-case basis when it can be demonstrated that the increase is necessary to:
- Protect the function and value of the wetland; or
  - To provide viable species of animal, fish or plant life covered by the Washington State Department of Wildlife Priority Habitat and Species Program; or
  - To protect lands adjacent to wetlands from erosion; or
  - If the adjacent land has minimal vegetative cover or slopes greater than 15 percent.

## Exhibit 1

10. Wetland buffer width may be reduced on a case-by-case basis where it can be demonstrated by the applicant that:
  - The adjacent land is extensively vegetated and has less than 15 percent slopes and that no direct or indirect, short-term or long-term, adverse impacts to wetlands, as determined by the Administrator, will result from a development; or
  - The project includes a wetland buffer enhancement plan using native vegetation which substantiates that an enhanced wetland buffer will improve the functional attributes of the wetland buffer to provide a net increase in protection for wetlands functions and values. An enhanced wetland buffer shall not result in greater than a 25 percent reduction in the wetland buffer width, and the reduced wetland buffer shall not be less than 25 feet.
11. Except as otherwise specified, wetland buffer zones shall be retained in their natural condition. Where wetland buffer disturbance has occurred during construction, revegetation with native vegetation may be required.

### Avoidance.

12. Development and activities shall not be allowed in a wetland buffer zone except for the following:
  - Activities directly related to the cultural, recreational, scientific and education aspects of the wetland and which have a minimal adverse impact on the wetland buffer and wetland area. These may include passive recreational facilities, trails, view points, short-term scientific or educational activities, and sports fishing or hunting;
  - In all but Category I wetlands, public utility corridors may be allowed in wetland buffer areas provided the proposal is subject to review under the State Environmental Policy Act and measures are provided to restore, replace and enhance the wetland buffers and protect the wetland;
  - In Category III and IV wetland buffers, stormwater management facilities having no reasonable alternative on-site location; or
  - In Category III and IV wetland buffers, development having no feasible alternative location.
13. A building setback line of 15 feet is required from the edge of any wetland buffer. Structural intrusions into the area of the building setback may be allowed if it can be demonstrated by the applicant and the Administrator determines that such intrusions will not negatively impact the wetlands functions and values.

## Exhibit 1

14. If a Category I wetland is adjacent to a public access trail required under the provisions of this Master Program, then interpretive signage is required. The interpretive signage shall explain why the wetland is considered valuable. The Administrator shall determine the type and extent of interpretive signage required.
15. Development or activities shall not be authorized in a wetland except where either of the following conditions exist:
  - The impact is both unavoidable and necessary due to site-specific constraints.
  - All reasonable economic use of the property would be denied.
16. With respect to Category I wetlands, an applicant must demonstrate that denial of the permit would impose an extraordinary hardship on the part of the applicant brought about by circumstances peculiar to the subject property.
17. With respect to Category II and III wetlands, the following provisions shall apply:
  - For water-dependent activities, unavoidable and necessary impacts can be demonstrated where there are no practicable alternatives which would not involve a wetland or which would not have less adverse impact on a wetland, and would not have other significant adverse environmental consequences.
  - Where nonwater-dependent activities are proposed, it shall be presumed that adverse impacts are avoidable. This presumption may be rebutted upon a demonstration that:
    - i. The basic project purpose cannot reasonably be accomplished utilizing one or more other sites in the general region that would avoid, or result in less, adverse impact on a regulated wetland; and
    - ii. A reduction in the size, scope, configuration, or density of the project as proposed and all alternative designs of the project as proposed that would avoid, or result in less, adverse impact on a wetland or its buffer will not accomplish the basic purpose of the project; and
    - iii. In cases where the applicant has rejected alternatives to the project as proposed due to constraints such as zoning, deficiencies of infrastructure, or parcel size, the applicant has made reasonable attempt to remove or accommodate such constraints.
18. With respect to Category IV wetlands, unavoidable and necessary impacts can be demonstrated where the proposed activity is the only reasonable alternative which will accomplish the applicant's objectives.

**Exhibit 1**

Minimizing Impacts.

19. After it has been determined that losses of wetland are unavoidable and necessary, or that all reasonable economic use would be denied, the applicant shall take deliberate measures to minimize wetland impacts.
20. Steps to minimize impacts to wetlands shall include, but are not limited to reduced project scope, sensitive site design, best management practices, off-site construction staging, limiting the season of construction, and consultation with resource agencies in site design.
21. As a condition of any permit allowing alteration of wetlands and/or wetland buffers, or as an enforcement action an applicant shall be required to provide restoration, creation or enhancement of wetlands and their buffers in order to offset the impacts resulting from the applicant's or violator's actions and recreate as nearly as possible the original wetlands in terms of function, geographic location and setting, and that are larger than the original wetlands.
22. Any person who alters wetlands shall restore or create equivalent areas or greater areas of wetlands than those altered in order to compensate for wetland losses, provided that no restoration/creation is required for alterations of less than 2,500 square feet to Category III and IV wetlands.
23. Where feasible, restored or created wetlands shall be a higher category than the altered wetland.
24. Compensation areas shall be determined according to function, acreage, type, location, time factors, ability to be self sustaining and projected success. Wetland functions and values shall be calculated using the best professional judgement of a qualified wetland ecologist using the best available techniques. Multiple compensation projects may be proposed for one project in order to best achieve the goal of no net loss.
25. The following ratios apply to creation or restoration which is in-kind, on-site, timed prior to or concurrent with alteration, and has a high probability of success. These ratios do not apply to remedial actions resulting from illegal alterations. The first number specifies the acreage of wetlands requiring replacement and the second specifies the acreage of wetlands altered.

Category I	4:1
Category II or III	
Forested	2:1
Scrub-shrub	1.5:1
Emergent	1.5:1
Category IV	1.25:1

## Exhibit 1

26. The Administrator may increase the replacement ratios to account for uncertainties as to the success of the restoration or creation, the time required for replacement wetlands to be effective, projected losses in functional value, or in the case of off-site compensation:
- The Administrator may decrease the compensation ratios upon findings reviewed by agencies with expertise that no net loss of wetland function or value is attained under a reduced compensation ratio. In no case shall the ratio be less than 1:1.
  - Any applicant proposing to alter wetlands may propose to enhance existing wetlands, other than Class I wetlands, in order to compensate for wetland losses. Applicants proposing to enhance wetlands shall identify how enhancement conforms to the goals of the Shoreline Master Program and requirements of this chapter. The replacement ratio shall be determined by the Administrator to ensure no loss in functional wetland value.
27. In-kind compensation shall be provided where feasible. The applicant can provide out-of-kind compensation when:
- Out-of-kind replacement will result in a wetland with greater functional value; or
  - Scientific problems such as exotic vegetation and changes in watershed hydrology make implementation of in-kind compensation impracticable; or
  - Out-of-kind replacement will best meet identified regional goals (e.g., replacement of historically diminished wetland types).
28. On-site compensation shall be provided where feasible. The applicant shall provide off-site compensation when:
- On-site compensation is not feasible due to problems with hydrology, soils, waves, or other factors; or
  - Compensation is not practical due to potentially adverse impact from surrounding land uses or proposed on-site land uses; or
  - Functional values at the site of the proposed restoration will be greater than lost wetland functional values; or
  - Established regional goals for flood storage, flood conveyance, habitat or other wetland functions, or other land use goals and policies have been established and strongly justify location of compensatory measures at another site.

## Exhibit 1

29. Off-site compensation for impacts to prior converted wetlands shall be allowed when it is determined that the off-site alternative results in a net increase in overall wetland functional value.
30. Off-site compensation shall occur within the same watershed as the wetland loss occurred, provided that Category IV wetlands may be replaced outside of the watershed when there is no reasonable alternative. Off-site mitigation may occur at a City-identified and approved regional mitigation site, or at a site selected by the applicant and approved by the Administrator.
31. In selecting compensation sites, applicants must consider siting in the following order of preference:
  - Upland sites which were formerly wetlands;
  - Idled upland sites generally having bare ground or vegetative cover consisting primarily of exotic introduced species, weeds, or emergent vegetation;
  - Other disturbed upland sites.
32. Compensatory projects shall be completed prior to activities that will disturb wetlands, and immediately after activities that will temporarily disturb wetlands unless otherwise agreed to via permit application. Compensatory projects shall be completed prior to use or occupancy of the activity or development which was conditioned upon such compensation. Construction of compensation projects shall be timed to reduce impacts to existing wildlife and flora.

### Mitigation Plans.

33. All wetland restoration, compensation, creation, and/or enhancement projects required pursuant to this chapter either as a permit condition or as the result of an enforcement action shall follow a mitigation plan prepared by qualified wetland professionals approved by the Administrator. Unless waived by the Administrator, in consultation with resource agencies, mitigation plans shall be prepared by qualified wetlands professionals and shall contain the following:
  - Baseline information for the impacted and any compensation site including written assessment and accompanying maps of the existing acreage; vegetative, faunal and hydrologic conditions; relationship within watershed and to existing water bodies; soil and substrate conditions, topographic elevations; existing and proposed adjacent site conditions; wetland buffers; and ownership;
  - Establish specific criteria (including water quality standards, survival rates of planted vegetation, species abundance and diversity targets, or other ecological, geological or hydrological criteria) for evaluating the mitigation

## Exhibit 1

proposal relative to the objectives of this chapter and the goals and objectives of this Shoreline Master Program;

- Specify and describe how lost functional values will be replaced;
  - Specify when mitigation will occur relative to project construction and to the requirements of permits required by other jurisdictions;
  - Detailed construction plans which establish the appropriate methods of construction, sequencing, and times of construction;
  - Include provisions for monitoring the mitigation area to determine whether the mitigation plan is successful. Monitoring of the area shall include:
    - i. Appointment by the Administrator of a qualified wetlands professional at the expense of the applicant independent of the development for purposes of monitoring the progress of the mitigated wetland;
    - ii. Monitoring shall begin by the designated consultant with a wetland analysis of the wetland being altered. Consultants will use the same data sheets within this analysis as will be used in the monitoring procedure;
    - iii. Determination by the Administrator from the wetland analysis of a period to monitor the mitigated wetland progress. This period shall not be less than three years or over five years over which time an annual report of the wetland progress will be made by the professional to the Administrator;
    - iv. Provisions for monetary security in an amount equal to 120 percent of the estimated funds necessary to complete work and monitoring in accordance with the mitigation plan, including restoration or rehabilitation to be performed if planned mitigation fails within the designated period of implementation.
34. An applicant or other holder of a permit shall be required to create a separate sensitive area tract or tracts containing the wetland and wetland buffer(s) or provide a permanent conservation easement, covenant or other instrument acceptable to the Administrator to ensure the long-term protection of the wetland and buffers.
35. The location of the outer extent of the wetland buffer and the areas to be disturbed pursuant to an approved permit shall be marked in the field, and such field marking shall be approved prior to the commencement of permitted activities. Such field markings shall be maintained by the applicant throughout the duration of the permit.

**Exhibit 1**

36. The Administrator shall require the applicant to post a cash performance bond or other security acceptable to the Administrator in an amount and with surety and conditions sufficient to fulfill the requirements of these regulations and any applicable conditions of approval. The amount and the conditions of the bond shall be consistent with the purposes of this Master Program. The Administrator shall release the bond when all activities have been completed consistent with the Master Program and when a maintenance bond has been posted.
37. The Administrator shall require the holder of an approval issued pursuant to this section to post a cash performance bond or other security acceptable to the Administrator in an amount and with surety and conditions sufficient to guarantee that structures, improvements, and mitigation required by the permit or by this section perform satisfactorily for a minimum of three years after they have been completed. The Administrator shall release the maintenance bond upon determining that performance standards established for evaluating the effectiveness and success of the structures, improvements, and/or compensatory mitigation have been satisfactorily met for the required period. The maintenance bond applicable to a compensation project shall not be released until the Administrator determines that performance standards established for evaluating the effect and success of the project have been met.”

**11. Chapter 6, Page 6-18 to 6-20, Section: “Public Access Regulations”, paragraph number 2, shall be amended to read as follows:**

**“Public Access Regulations**

1. Public access shall be required for all shoreline development and uses, except for a single family residence or residential projects containing less than three (3) dwelling units.
2. 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.
  - a. Unavoidable health or safety hazards to the public exist which cannot be prevented by any practical means;
  - b. Inherent security requirements of the proposed development or use cannot be satisfied through the application of alternative design features or other solutions;
  - c. The cost of providing the access, easement, or an alternative amenity is unreasonably disproportionate to the total long-term cost of the proposed development;

**Exhibit 1**

- d. Unacceptable environmental harm such as damage to fish spawning areas will result from the public access which cannot be mitigated; or
- e. Significant undue and unavoidable conflict between the proposed access and adjacent uses would occur and cannot be mitigated.

Provided further, that the applicant has first demonstrated and the City has determined that all reasonable alternatives have been exhausted, including but not limited to:

- i. Regulating access by such means as limiting hours of use to daylight hours.
- ii. Providing access that is physically separated from the proposal, such as a nearby street end, an offsite viewpoint, or a trail system

Designing separation of uses and activities, with such means as fences, terracing, hedges, and landscaping.

Where the above conditions 2(a)-(e) cannot be met, a payment in lieu of providing public access shall be required in accordance with RCW 82.02.020. Payment in-lieu may include in-kind work or services.”

**12. Chapter 7, Page 7-8, Section: “Boating Facilities Environment Specific Regulations”, shall be amended to read as follows:**

**“Boating Facilities Environment Specific Regulation**

**Urban Conservancy, Shoreline Residential, and Urban:** Except for marinas, which are prohibited, boating facilities may be permitted as a conditional use.

**Exhibit 1**

13. **Chapter 7, Page 7-9, Section: “Riparian Management Zone Regulations”, shall be amended to read as follows:**

**“Riparian Management Zone Regulations**

A riparian management zone is the area within the shoreline environment setback. These setbacks are measured landward from the floodway and are as follows (see also *Chapter 4: Shoreline Environments*):

<u>Shoreline Environment</u>	<u>Width</u>
Urban	Fifty (50) feet
Shoreline Residential	One hundred (100) feet
Urban Conservancy	One hundred (100) feet or Two hundred (200) feet

The purposes for maintaining a riparian management zone are to preserve the natural character of the shoreline, to protect the functions and values of critical areas, to conserve properly functioning conditions, and to enhance the recreational experience for the public using the river and adjacent lands. *Chapter 3: Shorelines of Statewide Significance*, describes these purposes in more detail and establishes the riparian management zone as a primary means of complying with the priorities for shorelines of statewide significance.

The riparian management zone shall be established by a permanent protective easement, public or private land trust dedication, or similar protective mechanism as approved by the Administrator. An easement shall also be provided by the underlying property owner that grants the City access to the buffer for the placement of further conservation/restoration measures.”

14. **Chapter 7, Page 7-12, Section: “Clearing and Grading Environment Specific Regulation”, shall be amended to read as follows:**

**“Clearing and Grading Environment Specific Regulation**

**Shoreline Residential and Urban:** Clearing and grading shall be a permitted activity when associated with a development that is consistent with the provisions of this Master Program.

**Urban Conservancy:** Clearing and grading shall be a permitted activity when associated with a development that is consistent with the provisions of this Master Program.”

15. **Chapter 7, Page 7-13, Section: “Commercial Environment Specific Regulations”, shall be amended to read as follows:**

**“Commercial Environment Specific Regulations**

**Urban:** Commercial developments are permitted uses, unless otherwise stated in this Master Program. Over-the-water commercial development is prohibited.

**Exhibit 1**

**Shoreline Residential:** Commercial developments are prohibited uses.

**Urban Conservancy:** Water-oriented commercial development may be permitted as a conditional use. Nonwater-oriented, commercial development is permitted. Over-the-water commercial development is prohibited.”

16. **Chapter 7, Page 7-19, Section: “Industrial Environment Specific Regulations”, shall be amended to read as follows:**

**“Industrial Environment Specific Regulations**

**Urban:** Industrial uses are permitted uses, except for over-the-water industrial uses, which are prohibited, unless as specified herein.

**Shoreline Residential and Urban Conservancy:** Industrial uses are permitted uses, except for over-the-water industrial uses, which are prohibited.”

17. **Chapter 7, Page 7-16, Regulation 9, shall be amended to read as follows:**

“9. Depositing dredge spoils waterward of the ordinary high water mark shall be allowed only by Conditional Use Permit for one of the following reasons:

- For wildlife habitat improvements;
- To correct problems of material distribution that are adversely affecting fish resources; or
- When land disposal alternatives are more detrimental to shoreline resources than depositing it in water areas.”

18. **Chapter 7, Page 7-16, Section: “Dredging Environment Specific Regulations”, shall be amended to read as follows:**

**“Dredging Environment Specific Regulations**

**Shoreline Residential and Urban:** By definition, dredging is the removal of earth from lands covered by water, therefore dredging cannot occur on lands *not* covered by water. Dredging within the floodway shall be permitted if consistent with the provisions of this Master Program. Depositing dredge spoils landward of the ordinary high water mark is permitted. Depositing dredge spoils waterward of the ordinary high water mark requires a Conditional Use Permit and shall be consistent with the requirements of this section.

**Urban Conservancy:** Dredging within the floodway shall be permitted only as a conditional use. Depositing dredge spoils landward of the ordinary high water mark is permitted. Depositing dredge spoils waterward of the ordinary high water mark requires a Conditional Use Permit and shall be consistent with the requirements of this section.”

**Exhibit 1**

19. **Chapter 7, Page 7-35, Section: “Bulkheads”, Regulation 6, shall be amended to read as follows:**

“6. Bulkheads shall be located landward of the ordinary highwater mark and generally parallel to the natural shoreline. In addition:

- Where no other bulkheads are adjacent, the construction of a bulkhead shall be as close to the eroding bank as possible and in no case shall it be more than three (3) feet from the toe of the bank.
- A bulkhead for a permitted landfill shall be located at the toe of the fill.
- Where feasible a bulkhead must tie in flush with existing bulkheads on adjoining properties, except where the adjoining bulkheads extend waterward of the ordinary high water mark, the requirements set forth in this section shall apply.”

20. **Chapter 7, Page 7-36, Section: “Bulkhead Environment Specific Regulations”, shall be amended to read as follows:**

**“Bulkhead Environment Specific Regulations**

**Shoreline Residential and Urban:** Bulkheads are a permitted use landward of the ordinary highwater mark. Bulkheads located waterward of the ordinary high water mark are prohibited. Any filling within the floodway must comply with the Floodplain Management regulations in Chapter 6.

**Urban Conservancy:** Bulkheads are permitted as a conditional use landward of the ordinary highwater mark. Bulkheads located waterward of the ordinary high water mark are prohibited. Any filling within the floodway must comply with the Floodplain Management regulations in Chapter 6.”

**Exhibit 1**

21. **Chapter 7, Page 7-38, Section: “Dike and Levees Environment Specific Regulations”, shall be amended to read as follows:**

**“Dikes and Levees Environment Specific Regulation**

**Shoreline Residential, Urban, and Urban Conservancy:** Dikes and levees landward of the ordinary highwater mark may be permitted as a conditional use. Dikes and levees waterward of the ordinary high water mark are prohibited. Any filling within the floodway must comply with the Floodplain Management regulations in Chapter 6.”

22. **Chapter 7, Page 7-39, Section: “Revetment Environment Specific Regulations”, shall be amended to read as follows:**

**“Revetment Environment Specific Regulation**

**Shoreline Residential and Urban:** Revetments landward of the ordinary high water mark are a permitted use. Revetments waterward of the ordinary high water mark are prohibited.

**Urban Conservancy:** Revetments landward of the ordinary high water mark may be permitted as a conditional use. Revetments located waterward of the ordinary high water mark are prohibited.”

23. **Chapter 7, Page 7-24, Regulation 2, shall be amended to read as follows:**

“2. Mining waterward of the floodway is prohibited, except for scalping of river bars, which may be permitted as a conditional use, provided the proposed activity: secures all necessary permits; is consistent with the City’s Critical Area regulations (Sumner Municipal Code, Title 16) and protective of endangered, threatened, or sensitive species; and that in any one year, the mining activity removes no more than one half of the material that is predictably replaced by deposition each year.”

**Exhibit 1**

24. **Chapter 7, Page 7-24, Section: “Mining Environment Specific Regulations”, shall be amended to read as follows:**

**“Mining Environment Specific Regulations**

**Urban Conservancy, Urban, and Shoreline Residential:** Mining operations landward of the floodway are prohibited. Waterward of the floodway, scalping of river bars may be permitted as a conditional use; all other forms of mining are prohibited.”

25. **Chapter 7, Page 7-26, Section: “Parking Environment Specific Regulations”, shall be amended to read as follows:**

**“Parking - Environment Specific Regulations**

**Urban:** Parking shall not be allowed within the 50-foot setback (as defined in *Chapter 4: Shoreline Environments*), and shall be a permitted use only when associated with a development that is consistent with the provisions of this Master Program.

**Shoreline Residential:** Parking shall not be allowed within the 100-foot setback (as defined in *Chapter 4: Shoreline Environments*), and shall be a permitted use only when associated with a development that is consistent with the provisions of this Master Program.

**Urban Conservancy:** Parking shall not be allowed within the 100- or 200-foot setback (as defined in *Chapter 4: Shoreline Environments*.)”

26. **Chapter 7, Page 7-43, Section 16: “Utilities”, shall be amended to read as follows:**

**“Definition**

Utilities are services and facilities that produce, transmit, carry, store, process, or dispose of electric power, oil, natural gas, water, sewage, communications, and the like.

**Utility Policies**

1. Utilities 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. Unless no other feasible alternative exists, utilities should be prohibited in wetlands and other critical areas.
3. New utility facilities should be located so as not to require extensive shoreline protection works.
4. Whenever feasible, utilities should be placed underground or affixed to bridges.
5. Solid waste disposal activities and facilities should be prohibited in shoreline areas.
6. Utility facilities should be encouraged to be located within existing public, private, and utility right-of-ways.

## Exhibit 1

### **Utility Regulations**

1. Applications for the installation of utility facilities shall include the following:
  - Description of the proposed facilities;
  - Reasons why the utility facility requires a shoreline location.
  - Alternative locations considered and reasons for their elimination.
  - Location of other utility facilities in the vicinity of the proposed project and any plans to include the other types of utilities in the project.
  - Plans for reclamation of areas disturbed both during construction and following decommissioning and/or completion of the useful life of the utility.
  - Plans for control of erosion and turbidity during construction and operation; and
  - Identification of any possibility for locating the proposed facility at another existing utility facility site or within an existing utility right-of-way.
2. Utility development shall, through coordination with local government agencies, provide for compatible, multiple use of sites and rights-of-way.
3. Utility development shall include public access to the shoreline, trail systems, and other forms of recreation, providing such uses will not unduly interfere with utility operations, endanger the public health, safety, and welfare, or create a significant and disproportionate liability for the owner.
4. Proposals for new utility corridors or river crossings shall fully substantiate the infeasibility of existing routes.
5. Existing solid waste disposal and transfer facilities within shoreline jurisdiction shall be expeditiously phased out and rehabilitated.
6. The following utility facilities, which are not essentially water-dependent, may be permitted as a conditional use if it can be shown that no reasonable alternative exists.
  - Water system treatment plants;
  - Sewage system line, interceptors, pump stations, and treatment plants;
  - Electrical energy generating plants (except for instream structures), substations, lines, and cables.
  - Petroleum and natural gas transmission pipelines.
7. New solid waste disposal sites and facilities are prohibited.

## **Exhibit 1**

8. New utility lines including electrical distribution, communications, and fuel lines shall be located underground whenever feasible.
9. Transmission and distribution facilities shall cross areas of shoreline jurisdiction by the shortest most direct route feasible, unless such route would cause significant environmental damage.
10. Utility facilities requiring withdrawal of water from streams or rivers shall be located only where minimum flows as established by the Washington State Department of Fish and Wildlife can be maintained.
11. Utility developments shall be located and designated so as to avoid the use of any structural or artificial shore modification works whenever feasible.
12. Water lines shall be completely buried under the riverbed in all river crossings except where such lines may be affixed to a bridge structure and except for appropriate water or sewage treatment plant intake pipes or outfalls.
13. All underwater pipelines transporting liquids intrinsically harmful to aquatic life or potentially injurious to water quality are prohibited, unless no other alternative exists. In those instances where no other alternative exists, the use may be permitted as a conditional use. However, automatic shut-off valves shall be provided on both sides of the water body.
14. Construction of utilities underwater or in adjacent wetlands shall be timed to avoid fish and wildlife migratory and spawning periods.

### **Utility Environment Specific Regulations**

**Shoreline Residential and Urban:** Landward of the ordinary high water mark, utilities may be permitted. Waterward of the ordinary high water mark, utilities may be permitted as a conditional use, provided it can be demonstrated that no other reasonable alternative location exists.

**Urban Conservancy:** Utilities may be permitted as a conditional use, provided it can be demonstrated that no other reasonable alternative location exists.”

27. **Chapter 7, Page 7-47, Section: “Stormwater Management Facilities Environment Specific Regulations”, shall be amended to read as follows:**

### **“Stormwater Management Facilities Environment Specific Regulations**

**Urban Conservancy, Shoreline Residential, and Urban:** Stormwater management facilities may be permitted as a conditional use provided it can be demonstrated that no other reasonable alternative location exists. In any case, stormwater management facilities shall not be located within the riparian management zone.”

**Exhibit 1**

**28. Chapter 8, Page 8-3, Section I.A.: “Exemptions from Substantial Development Permit Requirements”, shall be amended with the addition of the following sections:**

- “14. The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the Department of Agriculture or the Department of Ecology jointly with other state agencies under chapter 43.21C RCW;
15. A public or private project, the primary purpose of which is to improve fish or wildlife habitat or fish passage, when all of the following apply:
- The project has been approved in writing by the department of fish and wildlife as necessary for the improvement of the habitat or passage and appropriately designed and sited to accomplish the intended purpose;
  - The project has received hydraulic project approval by the department of fish and wildlife pursuant to chapter 75.20 RCW; and
  - The local government has determined that the project is consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.
16. Hazardous substance remedial actions. The procedural requirements of this Master Program shall not apply to a project for which a consent decree, order or agreed order has been issued pursuant to chapter 70.105D RCW or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The Department of Ecology shall, in consultation with the appropriate City, assure that such projects comply with the substantive requirements of chapter 90.58 RCW, chapter 173-26 WAC and the local master program.”

**29. Chapter 8, Page 8-9, Section II.F.10.: “Appeals”, shall be amended to read as follows:**

**“10. 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 fifteenth calendar day following the date of the 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

## Exhibit 1

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.

- b. **Appeals to State Shoreline Hearings Board.** Any person aggrieved by the granting, denying, rescission, or modification of a Shoreline Permit may seek review from the State Shorelines Hearings Board. An appeal of a Shoreline Substantial Development Permit shall be initiated by filing an original and one copy of request for review with the Hearings Board within twenty-one (21) days of the Department of Ecology's receipt of the final decision by the City Council. An appeal of a Variance or Conditional Use Permit shall be filed with the Hearings Board within twenty-one (21) days of the Department of Ecology's decision. The request for review shall be in the form required by the rules for practice and procedure before the Shorelines Hearings Board. The person seeking review shall also file a copy of the request for review with the State Department of Ecology and the Attorney General.”

30. **Chapter 8, Page 8-11, Section III.A.3.: “Criteria for Granting Variances”, shall be amended to read as follows:**

**“3. Criteria for Granting Variances.** Variance Permits for development that will be located landward of the ordinary high water mark, except those areas designated by the Department of Ecology as marshes, bogs, or swamps pursuant to WAC 173-22, may be authorized provided the applicant can demonstrate all of the following:

- a. That the strict requirements of the bulk, dimensional, or performance standards set forth in the Master Program preclude or significantly interfere with a reasonable use of the property not otherwise prohibited by the Master Program.
- b. That the hardship described above 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.
- c. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment.
- d. That the Variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the area, and will be the minimum necessary to afford relief.
- e. That the public interest will suffer no substantial detrimental effect. Variance permits for development that will be located either waterward of the ordinary high water mark or within wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all the criteria stated above as well as the following:
  - That the public rights of navigation and use of the shorelines will not be adversely affected by granting the Variance.
  - That the strict application of the bulk, dimensional or performance standards set forth in the Shoreline Master Program precludes all reasonable use of the property
  - That the proposal is consistent with the criteria established under subsection 3.a. through 3.d. of this section.

In the granting of all Variances, 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 in the area where similar circumstances exist, the total of the Variances should also remain consistent with the policies of RCW 90.58 and should not produce substantial adverse effects to the shoreline environment.

**Exhibit 1**

Requests for varying the use to which a shoreline area is to be put are not requests for Variances, but rather requests for Conditional Uses. Such requests shall be evaluated using the Conditional Use criteria set forth below.”

**31. Chapter 8, Page 8-14, Section IV.B.: “Revision of Permits”, shall be amended to read as follows:**

**“B. Revision of Permits.**

When an applicant desires to revise a Permit, the applicant must submit detailed plans and text describing the proposed changes. If the Administrator determines that the revisions proposed are within the scope and intent of the original Permit, consistent with WAC 173-27, the Administrator may approve the revision. "Within the scope and intent of the original Permit" means all of the following:

1. No additional over-water construction is involved, except that pier, dock, or float construction may be increased by five hundred (500) square feet or ten percent (10%), whichever is less;
2. Ground area coverage and height is not increased more than ten percent (10%);
3. Additional structures do not exceed a total of two hundred fifty (250) square feet;
4. The revision does not authorize development to exceed height, setback, lot coverage, or any other requirement of the City of Summer Shoreline Master Program except as authorized under a variance granted as the original permit or a part thereof;
5. Additional landscaping is consistent with conditions (if any) attached to the original Permit;
6. The use authorized pursuant to the original Permit is not changed; and
7. No substantial 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 which was conditioned by the Department of Ecology, the revision also must be reviewed and approved by the Department of Ecology (see WAC 173-27).

**Exhibit 1**

The City of Sumner or the Department of Ecology decision on revision to the Permit may be appealed within twenty-one (21) days of such decision, in accordance with WAC 173-27-190.

Construction allowed by the revised Permit that is not authorized under the original Permit is undertaken at the applicant's own risk until the expiration of the appeals deadline.”

**32. Chapter 8, Page 8-15, Section V.A.: “Nonconforming Development”, Subparagraph 1, shall be amended to read as follows:**

1. Nonconforming development may be continued provided that any enlargement or expansion does not increase the extent of nonconformity and by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses;

**33. Chapter 8, Page 8-16, Section V.A.: “Nonconforming Development”, Subparagraph 7, shall be amended to read as follows:**

- “7. A use which is listed as a conditional use but which existed prior to adoption of the Master Program for which a Conditional Use Permit has not been obtained shall be considered a nonconforming use.

**34. Definitions, Page Definitions-3, the definition for, “Average Grade Level”, shall be amended to read as follows:**

**“Average Grade Level**

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; provided, that in the case of structures to be built over water, average grade level shall be the elevation of ordinary high water. 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.”

**Exhibit 1**

35. **Definitions, Page Definitions-10, the definition for, “Floodway”, shall be amended to read as follows:**

**“Floodway**

Floodway” means those portions of the area of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition. The floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.”

36. **Definitions, Page Definitions-12, the definition for, “Marshes, Bogs, and Swamps”, shall be deleted:**

37. **Definitions, Page Definitions-20, the definition for, “Shorelines”, shall be amended to read as follows:**

**“Shorelines**

All water areas of Sumner and their associated shorelands, together with the lands underlying them, except: (i) shorelines of statewide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments, and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such lakes.”

38. **Definitions, Page Definitions-22, the definition for, “Substantial Development”, shall be amended to read as follows:**

**“Substantial Development**

Any development of which the total cost or fair market value, whichever is higher, exceeds five thousand dollars (\$5,000), or any development which materially interferes with the normal public use of the water or shorelines of the state; except for those uses excepted from the definition of substantial development by RCW 90.58.030(3)(e)(i)-(xi) and WAC 173-27-040. These exemptions are listed in Section 1 of *Chapter 8: Administration*. See also **Development and Exemption.**”

39. **Definitions, Page Definitions-22, the definition for, “Substantial Development”, shall be amended to read as follows:**

## Exhibit 1

### **“Urban Conservancy (Shoreline) Environment**

A shoreline designation under the Shoreline Management Act for areas of mixed land uses that include residential, commercial, and industrial development, generally located in a floodplain with potential for ecological restoration. In the City of Sumner, these areas include portions of the Puyallup and White (Stuck) Rivers as shown on Figures 4-1a through 4-1g.”

40. **Appendix B: “Wetlands Regulations per Sumner Municipal Code (SMC) 16.46 – Draft” shall be deleted.**