Attachment B:

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

The following changes are required to comply with the SMA (RCW 90.58) and the SMP Guidelines:

ITEM	SMP Submittal PROVISION (Cite)	TOPIC	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)	RATIONALE
1	Page 4-14, Table 4-3, second Column	Description of Shoreline Jurisdiction	~~Left~~ Right bank of Puyallup River from southern line of city-owned property upstream to City limits at Orting at Orting Highway (SR 162).	As defined in the footnote below the table, the right bank- is in shoreline jurisdiction. Descriptions of shoreline jurisdiction regulated by the local SMP are required in WAC 173-26-211(2)(b).
2	Page 4-23, Table 4-7	Aquaculture	Aquaculture~~*~~ Natural: P Aquaculture~~*~~ Urban Conservancy: P Aquaculture~~*~~ Tapps Reservoir: - Aquaculture~~*~~ Shoreline Residential: P Aquaculture~~*~~ Urban: P Aquaculture~~*~~ Aquatic: P	See rationale in item 3 below.
3	Page 4-25, Table 4-7, Footnote 1	Aquaculture	*Uses such as marinas, docks, and breakwaters~~, and aquaculture~~ would not be feasible in an active river system that frequently floods. These types of water-dependent uses in a flood event would be destroyed or damaged heavily and are inappropriate in Sumner's shoreline jurisdiction. Similarly, such uses would not be feasible in Lake Tapps due to the existing utility use.	See rationale in Item 3 below.

4	Page 4-26, Prohibited Uses	Aquaculture	The following modifications and uses are prohibited in all shoreline environment designations. See *Chapter 9: Definitions and Acronyms* for definitions of the following modifications and uses: ~~1) Aquaculture~~ 1) ~~2)~~Docks 2) ~~3)~~Private boat launch ramps 3) ~~4)~~Breakwaters, jetties, groins, and weirs 4) ~~5)~~Forest Practices 5) ~~6)~~Marinas 6) ~~7)~~Parking as a ~~Principal~~ Primary Use 7) ~~8)~~Permanent Solid Waste Storage or Transfer Facilities	Aquaculture is a water-dependent use and a preferred use of the state's shorelines. However, Sumner has limited opportunities to establish commercial aquaculture on the Puyallup River and White River where there is frequent flooding, or Lake Tapps where there is no fish passage and conflicting established water-dependent uses. It is appropriate to limit the scope and location for this use to ensure future use conflicts are minimized. The allowance is required to ensure consistency with the priorities of shorelines of the state in RCW 90.58.020 and WAC 173-26-201(2)(d), for consistency with WAC 173-26-241(3)(b), and for consistency with RCW 90.58.020 and WAC 173-27-251 for shorelines of statewide significance. This change is also in response to comments received during the city and state public comment periods.
5	Page 4-23, Table 4-7	Dredge Material Disposal landward of the ordinary high watermark	Dredge Material Disposal: Shoreline Residential: ~~P~~ CUP; Dredge Material Disposal: Urban: ~~P~~ CUP	All dredge disposal in shoreland areas require a conditional use permit for consistency with WAC 173-26-231(3)(f).
6	Page 4-25, Table 4-7	Utilities within the Natural	Utilities, Water-dependent: Natural: ~~CUP~~ – Utilities, Non-water-dependent: Natural: ~~CUP~~ -	Utilities as a primary use are prohibited within the Natural

		Shoreline Environment Designation		Shoreline Environment Designation, in accordance with WAC 173-26-211(5)(a)(ii)(B)
7	Page 6-14, 6.1.6	Allowed Activities within Critical Areas and the associated buffers	6.1.6. Allowed activities The following activities shall be ~~exempt~~ allowed in critical areas and buffers, subject to the standards found in this SMP, and subject to the permit procedures and requirements found in Section 8 of the SMP. ~~u~~Unless specifically modified in other subsections of this ~~sub~~section, shall ensure no net loss of ecological functions and processes, and comply with the mitigation sequencing of *Section V, Environmental Impact Mitigation*. All activities in critical areas must comply with *Section 6.1.7, Resource, Wildlife and Hazard Area Regulation Framework Best Management Practices*. This Section applies specifically to activities regulated by the city of Sumner. Other state and federal permits and approvals may still apply. 1)Existing or ongoing agricultural activities on agricultural lands; ~~2)Forest practices regulated and conducted in accordance with the provisions of chapter 76.09 RCW and forest practices regulations, WAC Title 222, and which are exempt from Sumner's jurisdiction;~~ 3)Conservation or preservation of soil, water, vegetation, fish, shellfish, and other wildlife; 4)Outdoor recreational activities, including, but not limited to, fishing, birdwatching, hiking, boating, horseback riding, swimming, canoeing, and bicycling; 5)Education, scientific research, and use of nature trails; 6)Maintenance or reconstruction of existing roads, bridges, and associated storm drainage 7)facilities; provided, that reconstruction does not involve expansion of facilities; 8) Normal and routine maintenance or repair of existing utility structures or right-of-way; 9)Minor site investigative work necessary for land use and building application submittals such as surveys, soil logs, percolation tests and other related activities where such activities do not require construction of new roads or significant amounts of excavation in a critical	Exemptions in shoreline jurisdiction are those limited to the lists found in WAC 173-27-This language is carried over from the Critical Area Regulations where these activities were exempt from those permit requirements. Some of these activities listed fall under development exempt from the substantial development permit listed in WAC 173-27-040. However, the procedures for identifying if such activities are exempt from the substantial development permit should be subject to the permit procedures found in Section 8 of the SMP, as consistent with WAC 173-27-140 which requires review of all development with the Act and the local SMP.

			area or its buffer. In every case, impacts to the critical area shall be minimized and disturbed areas shall be immediately restored; 10)Emergency action necessary to prevent imminent threat or danger to public health or safety, or to public or private property, or serious environmental degradation. The Shoreline Administrator shall review all proposed emergency actions to determine the existence of the emergency and reasonableness of the proposed actions taken; ~~11)Any change of use entirely within an existing structure, provided no grading or paving will occur which increases the amount of impervious surface on the site; and~~ 12)Projects with the primary purpose of restoring or enhancing wetlands, streams, or fish and wildlife habitat areas; provided~~,~~ that: a)Such projects are part of an approved local, state, or federal restoration or enhancement plan; and b)The project would not result in adverse impacts to any critical area.	
8	Page 6-25, 6.5.6	Allowed Activities	6.5.6. Allowed activities. In addition to those activities listed in Section ~~6.1.4~~ 6.1.6, ~~Resource, Wildlife and Hazard Area Regulation Framework Mapping~~, the following activities shall be allowed, subject to the policies and regulations of this SMP, and the shoreline permit procedures and requirements, within a wetland or wetland buffers provided they are conducted using best management practices, except where such activities result in the conversion of a wetland or wetland buffer to a use to which it was not previously subjected: 1) The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, or alteration of the wetland by changing existing topography, water conditions or water sources; 2) Existing and ongoing agricultural activities occurring on agricultural lands; 3) The maintenance of drainage facilities ~~and new drainage facilities~~ provided they are an	This language is carried over from the Critical Area Regulations where these activities were exempt from those permit requirements. Some of these activities listed fall under development exempt from the substantial development permit listed in WAC 173-27-040, however, the procedures for identify if such activities are exempt from the substantial development permit would be subject to the permit procedures found in Section 8 of the SMP, as

			integral part of an ongoing agricultural activity and approved by the Shoreline Administrator; 4) In the outer 25% of Category III and IV wetland buffers, a flow control or water quality treatment facility, such as an energy dissipater and associated pipes, associated with stormwater management facilities having no reasonable alternative on-site location; 5) The following uses are allowed within wetlands and/or wetland buffers:~~; provided, that written notice at least 10 days prior to the commencement of such work has been given to the community development Shoreline Administrator; and provided, that wetland impacts are minimized and that disturbed areas are immediately restored:~~ a) Normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved areas. Maintenance and repair does not include any modification that changes the character, scope, or size of the original structure, facility, or improved area and does not include the construction of a maintenance road; b) Minor modification of existing serviceable structures within a buffer zone where modification does not adversely impact wetland functions or increase the size of the structure's footprint; and c) Maintenance of utility line activities listed under Section 6.1.6(7); 6) Emergency actions which must be undertaken immediately or for which there is insufficient time for full compliance with this chapter when it is necessary to: a) Prevent an imminent threat to public health or safety; or b) Prevent imminent danger to public or private property; or c) Prevent an imminent threat of serious environmental degradation. Prior to engaging in the action, the Shoreline Administrator shall provide a written determination on a case-by-case basis that the emergency action satisfies the general requirements of this subsection. In the event a person or emergency agency determines that the need to take emergency action is so urgent that there is insufficient time for review by the Shoreline Administrator,	consistent with WAC 173-27-140 which requires review of all development with the Act and the local SMP.

			such emergency action may be taken immediately. The person or agency undertaking such action shall notify the Shoreline Administrator within two working days following the commencement of the emergency action. Following such notification the Shoreline Administrator shall determine if the action taken was within the scope of the emergency actions allowed by this subsection. If the Shoreline Administrator determines that the action taken or part of the action taken is beyond the scope of allowed emergency actions, enforcement action is warranted. The Shoreline Administrator may require payment of fees to recover the costs associated with reviewing the emergency action.	
9	Page 6-31, 6.5.11(12)	Wetland mitigation ratios	~~The Shoreline Administrator may decrease the compensatory mitigation ratios upon findings reviewed by agencies with expertise that no net loss of wetland function or value is attained under a reduced compensatory mitigation ratio. In no case shall the ratio be less than 1:1.~~	This reduction of mitigation ratios is inconsistent with requirement found in RCW 09.58.100(1) to use the current, accurate, and complete scientific information. The wetland mitigation ratios incorporated into the updated SMP are based on the best available science are found to be the minimum to meet- no-net-loss of ecological function.
10	Page 6-34, 6.6.3	Cross Reference to General Regulations	~~6.6.3. 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 6.1.13, Notice of Amendments.*~~	Regulations in this Section of the SMP apply in all areas of the city of Sumner's shoreline jurisdiction. This is unedited language from the Critical Areas Ordinance that needs to be removed for consistency with the Shoreline Management Act regulatory scheme described in WAC 173-26-221.
11	Page 6-39, 6.7.4.	Shoreline regulatory schematic	~~6.7.4. 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 *6.1.13, Notice of Amendments.*~~	This is unedited language from the Critical Areas Ordinance that needs to be removed for consistency with the Shoreline Management Act regulatory scheme described in WAC 173-

				26-221.
12	Page 6-44, 6.8.3	Shoreline regulatory schematic	~~6.8.3. 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 *6.1.13, Notice of Amendments.*~~	This is unedited language from the Critical Areas Ordinance that needs to be removed for consistency with the Shoreline Management Act regulatory scheme described in WAC 173-26-221.
13	Page 6-45, 6.8.8	Exemptions	For all nonexempt activities~~, except the construction of wood frame structures less than 5,000 square feet and all prefabricated structures less than 2,000 square feet,~~ proposed within seismic hazard areas, a geotechnical report prepared by a professional engineer, geologist, or engineering geologist licensed by the state of Washington with expertise in geotechnical engineering shall be submitted.	The removed language specifies development that is not exempt under the shoreline management act as defined in WAC 173-27-040.
14	Page 6-46, 6.9.2	Shoreline regulatory schematic	~~6.9.2. 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 *6.1.13, Notice of Amendments.*~~	This is unedited language from the Critical Areas Ordinance that needs to be removed for consistency with the Shoreline Management Act regulatory scheme described in WAC 173-26-221.
15	6-48, 6.10.2	Shoreline regulatory schematic	~~6.10.2. 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 *6.1.13, Notice of Amendments.*~~	This is unedited language from the Critical Areas Ordinance that needs to be removed for consistency with the Shoreline Management Act regulatory scheme described in WAC 173-26-221.
16	Page 6-52, 6.11.2	Shoreline regulatory schematic	~~6.11.2. 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 *6.1.13, Notice of Amendments.*~~	This is unedited language from the Critical Areas Ordinance that needs to be removed for consistency with the Shoreline Management Act regulatory scheme described in WAC 173-26-221.

17	Page 6-53, 6.11.7	Exemptions	~~The exemptions of *Section 6.1.6, Resource, Wildlife and Hazard Area Regulation Framework Allowed Activities,* do not apply to *Section 6.11, Flood Hazard Area.* See *Section 6.11.8, Flood Hazard Area Regulations,* for exceptions.~~	Exemptions are specified in RCW 90.58.020 and WAC 173-27-040, and incorporated into this SMP in Section 8. This is unedited language from the Critical Areas Ordinance that needs to be removed for consistency with the Shoreline Management Act regulatory scheme described in WAC 173-26-221.
18	Page 7-4,	Aquaculture	**III. Aquaculture** Definition: Aquaculture is the culture or farming of fish, shellfish, or other aquatic plants and animals. Aquaculture Policies 1) Aquaculture should be located in areas that will not result in a net loss of ecological function to the shoreline and not negatively impact navigation and other water dependent uses. 2) Aquaculture should be allowed for the restoration of native fish runs of the Puyallup and White Rivers. Aquaculture Regulations 1) Aquaculture is only permitted in association with the restoration of native fish species on the Puyallup and White Rivers.	Aquaculture is a water-dependent use and a preferred use of the state's shorelines. However, Sumner has limited opportunities to establish aquaculture commercially on the Puyallup River and White River where there is frequent flooding, or Lake Tapps where there is no fish passage and conflicting established water-dependent uses. It is appropriate to limit the scope and location for this use to ensure future use conflicts are minimized. The allowance is required to ensure consistency with the priorities of shorelines of the state in RCW 90.58.020 and WAC 173-26-201(2)(d), for consistency with WAC 173-26-241(3)(b), and for consistency with RCW 90.58.020 for shorelines of statewide significance in RCW 90.58.020 and WAC 173-26-251. This

				change is also in response to comments received during the city and state public comment periods.
19	Page 7-15, VI Dredge Material Disposal Environment Specific Regulations	Dredge material disposal on shorelines	**Natural**: Dredge material disposal may be permitted as a conditional use only if part of a restoration project. Dredge material disposal not associated with a restoration project is prohibited. **Urban Conservancy, Tapps Reservoir,** and **Aquatic**: Dredge material disposal may be permitted as a conditional use. **Shoreline Residential** and **Urban**: Dredge material disposal on shorelands or wetlands outside a river's channel migration zone is permitted as a conditional use. Dredge material disposal on shorelands or wetlands within a river's channel migration zone may be permitted as a conditional use.	Dredge material disposal within shoreline jurisdiction requires a conditional use permit as specified in WAC 173-26-231(3)(f).
20	Page 7-29, XIII Regulation (2)	Parking in critical areas	The location of parking areas in or over ~~near critical areas~~ critical fresh water habitat, wetlands, and the associated buffers shall be ~~avoided~~ prohibited.	WAC 173-26-241(3)(k) requires that parking facilities are not a preferred primary use, and only allowed when they are associated to a permitted use and have minimal environmental and visual impacts.
21	Page 7-31, XIV Regulation (4)	Internal inconsistency	Waterward of the OHWM, 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.	Docks are prohibited outright in the SMP on page 4-26 this is inconsistent with that prohibition. This change alleviates the internal inconsistency.
22	Page 7-37, XVI Regulation 5(b)	Geotechnical analysis required demonstration of damage within three years	b. New development in danger of shoreline erosion caused by currents or waves and not caused by normal sloughing, vegetation removal, or poor drainage, and a geotechnical analysis documents that alternative solutions including location outside of the shoreline, are not feasible or do not provide sufficient protection to protect the primary structure from damage within three (3) years, and where ongoing monitoring, maintenance and mitigation for impacts to shoreline ecological functions and processes are provided; or	WAC 173-26-231(3)(a)(iii)(B)(II) and (III) requires that the structural shoreline stabilization only be permitted where the primary structure is at risk; while, WAC 173-26-231(3)(iii)(D) requires that a geotechnical analysis demonstrate that the damage to the primary structure

				be within three years.
23	Page 7-46, XX	Allowance of Utilities in the Natural Designation	**Natural**: ~~Water-dependent and non-water-dependent u~~ Utilities as a primary use are prohibited. ~~may be permitted as a conditional use~~.	Utilities as a primary use are prohibited n the Natural Designation in accordance with WAC 173-26-211(5)
24	Page 8-2, I(1)	Exemptions from Substantial Development Permits	1) Any development of which the total cost or fair market value, whichever is higher, does not exceed ~~five thousand seven hundred and eighteen ($5,718)~~ six thousand four hundred sixteen dollars (or the value as amended or adjusted for inflation per RCW 90.58.030 [3] [e]), if such development does not materially interfere with the normal public use of the water or shorelines of the state. For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state. The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials.	The shoreline substantial development exemption dollar threshold was changed by the Washington Office of Financial Management to $6,416 in September 2012 and is subject to change again five years from that date.
25	Page 8-2, I(4)	Exemptions from Substantial development	4) Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this chapter. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the Shoreline Administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit which would have been required, absent an emergency, pursuant to chapter 90.58 RCW, these regulations, or the local master program, obtained. All emergency construction shall be consistent with the policies of chapter 90.58 RCW and the local master program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency.	The additional language makes this exemption consistent with WAC 173-27-040(2)(d).
26	Page 8-2, I(7)	Exemptions from Substantial development	7) Construction on shorelands by an owner, lessee, or contract purchaser of a single family residence for their own use or for the use of their family, which residence does not exceed a building height of thirty-five (35) feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to chapter 90.58 RCW. "Single-family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance. An	The additional language makes this exemption consistent with WAC 173-27-040(2)(g).

			"appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. On a statewide basis, normal appurtenances include a garage; deck; driveway; utilities; fences; installation of a septic tank and drainfield and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark. Local circumstances may dictate additional interpretations of normal appurtenances which shall be set forth and regulated within the applicable master program. Construction authorized under this exemption shall be located landward of the ordinary high water mark.	
27	Page 8-4, I(17)	Exemptions from Substantial Development	17) **Hazardous substance remedial actions.** ~~The procedural r~~ Requirements to obtain a substantial development permit, conditional use permit, or a variance permit ~~of this Master Program~~ shall not apply to any person conducting a remedial action at a facility pursuant to 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. Instead of the City issuing a shoreline permit, ~~T~~the Department of Ecology shall, in consultation with the City of Sumner, ensure compliance with the substantive requirements of chapter 90.58 RCW, ~~chapter 173-26 WAC~~ and the local master program, through the consent decree, order, or agreed order issued pursuant to chapter 70.105D, or during the department-conducted remedial action, pursuant to RCW 70.150D.090.	As described in 90.58.355 RCW hazardous substance remediation is not subject to the shoreline substantial development, conditional use, or variance permit and places the burden of compliance with the Department of Ecology. The additional language clarifies these procedures.
28	Page 8-9, II, Shoreline Permit Procedures F(17)(b)	Date of Filing	~~b.~~19) **Appeals to State Shorelines Hearings Board.** Any person aggrieved by the granting, denying, or rescinding of a Shoreline Permit on shorelines of the state pursuant to RCW 90.58.140 may seek review from the State Shorelines Hearings Board by filing a petition for review within twenty-one (21) days of the date of filing. ~~receipt of the City's or Ecology's final decision concerning the shoreline permit.~~ Appeals of any final permit decision may be made pursuant to the procedures established in RCW 90.58.180 (Appeals from Granting, Denying, or Rescinding Permits) and WAC 461-08 (Practice and Procedure, Review of the Granting, Denying or Rescinding of Substantial Development Permits, Hearings). ~~An appeal of a Variance or Conditional Use Permit shall be filed with the Hearings Board within twenty-one (21) days of the date the Department of Ecology's final decision is transmitted to the City of Sumner and the applicant.~~ 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.	The change to this language alleviates inconsistencies with the date of filing as defined in 90.58.140 RCW.

			i. For substantial development permits the date of filing is the day the Department receives the city of Sumner's final decision. ii. For shoreline Variance and Conditional Use Permits the date of filing is the day the city of Sumner receives the Department of Ecology's final decision.	
29	Page 8-13; IV(B)(1)	Revisions to Permits	~~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%) from the provisions of the original permit, whichever is less;~~	Docks are prohibited outright in the SMP- this allowance is inconsistent with that prohibition and alleviates the internal inconsistency.
30	Page 8-16, VII(D)	Effective Date	This ordinance shall be effective ~~five~~ fourteen days from the Department of Ecology's final written approval. ~~and after its passage, approval, and publication as provided by law. See Appendix C for adopting ordinance.~~	The effective date of a SMP is governed by statute in RCW 90.58.090(7)
31	Page 9-4	Definition of Aquaculture	The ~~commercial cultivation~~ culture or farming of ~~food~~ fish, shellfish, or other aquatic animals and plants (WAC 173-26-~~241)~~020(6))	Corrections to the definition and the citation are needed for consistency with WAC 173-26-020(6).
32	Page 9-14	Definition of Floodway	The area, as identified in a master program, that either: i) Has been established in FEMA flood insurance rate maps or floodway maps; ~~or ii) consists of 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, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually. Regardless of the method used to identify the floodway,~~ 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 (RCW 90.58.030).	This correction is needed for consistency with the City's application of the FEMA Maps, and 90.58.030(2)(b) RCW.