

# Attachment B:

## Ecology Required Changes

The following changes are required to comply with the SMA (RCW 90.58) and the SMP Guidelines (WAC 173-26, Part III):

ITEM	SMP Submittal PROVISION (Cite)	TOPIC	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)							RATIONALE
1	17.01.090	Definitions	<p><u>“Advanced Mitigation” is a form of permittee-responsible mitigation constructed in advance of a permitted impact. An advance mitigation site needs to be planned, designed, permitted, and constructed before a project can use any mitigation credit. Advance mitigation can be proposed by any applicant, but the advance compensatory mitigation credits generated by a mitigation effort in advance of impacts can only be used by that same applicant.</u></p>							The term ‘advanced mitigation’ is used as an example of innovative mitigation in Section 17.09.010(P)(4) but without a definition of this term there is too much room for interpretation on what advanced mitigation could entail. Without an adequate definition no net loss of ecological function cannot be ensure as required in WAC 173-26-186(8)(b) and 173-26-201(2)(C).
2	Table 03.070-1	Shoreline Use and Modification Matrix	<b>Shoreline Use or Modification</b>	<b>High Intensity</b>	<b>Essential Public Facilities</b>	<b>Shoreline Residential</b>	<b>Urban Conservancy</b>	<b>Floodway/Channel Migration Zone (CMZ)</b>	<b>Aquatic-Lakes</b>	All mining within the Channel Migration Zone, See WAC 173-26-241(3)(h)(ii)(E), shall
			<b>Mining</b>							

			Surface Mining	C	X	X	X	X	X	require a Shoreline Conditional Use Permit.
			Underground Mining	X	X	X	X	X	X	
			Mining for Habitat Restoration	S	S	S	S	<u>SC</u>	S	
3	17.05.030(C)	Shoreline Vegetation Conservation	C. Other vegetation within shoreline jurisdiction, but outside of buffers, other stream buffers, wetlands and wetland buffers, and other WDFW-mapped priority habitats and species areas, must be managed according to YMC 17.05.010020, Environmental Protection, and any other regulations specific to vegetation management contained in this SMP and City of Yakima Code.							YMC 17.05.010 is Archaeological and Historic Resources and therefore doesn't really apply to vegetation management. I believe you want to refer to YMC 15.05.020 Environmental Protection.!
4	17.05.060(B)	Flood Hazard Reduction	A. The channel migration zone (CMZ) is considered to be that area of a stream channel which may erode as a result of normal and naturally occurring processes and has been mapped consistent with WAC <del>173-26-221(3)(b)guidelines. A Regulatory Channel Migration Zone Map is adopted by reference and declared to be a part of this SMP. Applicants for shoreline development or modification may submit a site-specific channel migration zone study if they believe these conditions do not exist on the subject property and the map is in error. The CMZ study must be prepared consistent with WAC 173-26-221(3)(b), and may include, but is not limited to, historic aerial photographs, topographic mapping, flooding records, and field verification. The CMZ study must be prepared by a licensed geologist or engineer with at least five years of applied experience in assessing fluvial geomorphic processes and channel response.</del>							Since the Channel Migration Zone is also an Environment Designation and therefore regulatory, changes to the mapping of the CMZ will require an SMP amendment and cannot be modified as described in this provision. See RCW 90.58.030(3)(c). The language here seems to refer to CAOs and the mapping of CAOs used for reference and not regulatory purposes.
5	17.07.130(G)(2)	Shoreline Stabilization	2. <del>Where a geotechnical analysis or report is required</del> Required geotechnical reports, it shall meet the provisions of the definition provided in 17.01.090							Geotechnical report is always required. See WAC

				173-26-231(3)(iii).
6	17.07.160(A)	Utilities	A. Utilities activities consistent with exemptions in YMC 17.13.050 are exempt from the requirement to obtain a Shoreline Substantial Development Permit, but shall meet applicable provisions of this Master Program. Applicants may apply for a multiyear utilities maintenance plan for exempt and non-exempt repair and maintenance activities consistent with YMC 17.07.190.	This internal SMP reference should be YMC 17.07.170; there is no YMC 17.07.190 in this SMP. <sup>1</sup>
7	17.07.170(I)	Redevelopment, Repair, and Maintenance	<p>I. <u>Transportation facilities. Applications for transportation maintenance plans shall demonstrate compliance with regulations in YMC 17.07.150.</u></p> <p><del>1. Appendix A contains programmatic exemption for Transportation facilities under the responsibility of the Washington State Department of Transportation to allow for routine maintenance and repair of existing highways and associated facilities.</del></p> <p><del>2. This Appendix is considered an interpretation by the Shoreline Administrator pursuant to YMC 17.13.020 and may be addended or clarified pursuant to the process of YMC 17.13.020. It is not subject to SMP Amendment procedures for YMC 17.13.140.</del></p> <p><del>3. The duration of the programmatic exemption shall be eight years from the effective date of this SMP.</del></p> <p><del>4.1. _____ The programmatic exemption may be renewed as part of the regular SMP update process consistent with the Shoreline Management Act at RCW 90.58.080.</del></p> <p><del>Applications for transportation maintenance plans shall demonstrate compliance with regulations in YMC 17.07.150.</del></p> <p><del>5. Applications for transportation maintenance plans shall demonstrate compliance with regulations in YMC 17.07.150.</del></p>	<p>Exemptions, including programmatic exemptions are a part of the implementation of this SMP. See WAC 173-27-040. Ecology supports the content of Appendix A but is not authorized to issue a programmatic exemption through approval of this SMP. Rather than including the programmatic exemption as a component of the SMP the City should issue the permit directly to WSDOT.</p> <p>Once the references to the programmatic exemption in Appendix are deleted there is only one provision left for this section and it should be reformatted.</p> <p>Section 17.13.050(A) includes normal maintenance and repair of existing structures or</p>

				developments, therefore issuing a programmatic exemption for transportation facilities under the responsibility of the Washington State Department of Transportation should be feasible once this SMP becomes effective.
8	17.09.010(D)	General Provisions	D. Applicability. The provisions of this Chapter shall apply to any new development, construction, or use within the incorporated portion of the City of Yakima's <u>shoreline jurisdiction that is</u> designated as a critical area and upon any land <u>within shoreline jurisdiction that is</u> mapped and designated as a special flood hazard area under the National Flood Insurance Program. However, this Chapter does not apply to the situations below, except that the Flood Hazard protection provisions of YMC 17.09.020 will continue to apply as determined by YMC 17.09.020.A-G:	This Chapter is part of the SMP and applies only to critical areas that are within shoreline jurisdiction. Reword to clarify this statement and the applicability of the provisions that follow. <sup>i</sup>
9	17.09.010(D)(2)	General Provisions	2. It is the intent of this Chapter to permit these pre-existing legally non-conforming uses and structures to continue until such time as conformity is possible; <del>a. Critical areas on federally owned lands are not subject to this provision of this Chapter</del> <del>b.a.</del> Minor, temporary, or transient activities (including those of a recreational nature) that do not alter the environment or require a dedicated staging area, use area, or route (including temporary signs) are not subject to this Chapter; <del>c.b.</del> Mining, as defined in YMC 17.01.090, is carried out under a Washington Department of Natural Resources reclamation permit is not subject to the geologically hazardous areas provisions of this Chapter for erosion hazard areas, over steepened slope hazard areas, landslide hazard areas and suspected geologic hazard areas. Other critical areas provisions continue to apply.	Provision (a) is not correct. This SMP applies to federally owned lands. Federal uses and activities taking place on federally owned land do not have to be permitted however, nonfederal developments and uses undertaken on federal lands and on lands subject to nonfederal ownership, lease or easements will need to be permitted. See WAC 173-27-060(3). This is also addressed in Section 17.01.020(B)(1) and (2) of

				this SMP.  Reformatted for consistency. <sup>i</sup>
10	17.09.010(E)(5)(1)	General Provisions	<p>5. Coordination with Other Jurisdictions.</p> <p>1. Where all or a portion of a standard development project site is within a designated critical area and the project is subject to another local, state, or federal development permit or authorization, the Shoreline Administrator shall determine whether the provisions of this Chapter can be processed in conjunction with a local, state, or federal development permit or authorization, <del>or whether a separate critical area development authorization application and review process is necessary.</del> The decision of the Shoreline Administrator shall be based upon the following criteria:</p> <ol style="list-style-type: none"> <li>a. The nature and scope of the project and the critical area features involved or potentially impacted;</li> <li>b. The purpose or objective of the permit or authorization and its relationship to protection of the critical area;</li> <li>c. The feasibility of coordinating the critical area development authorization with other permitting agency;</li> <li>d. The timing of the permit or authorization.</li> </ol> <p>2. <del>If When</del> a determination has been made that provisions of this Chapter can be handled <del>through in conjunction with</del> another applicable development permit or authorization process, <u>the Shoreline Administrator will not accept the development authorization and/or permits in place of a Shoreline permit or critical area development authorization.</u> <del>P</del>project proponents may be required to provide additional site plans, data and other information necessary as part of that process to ensure compliance with this Chapter. The Shoreline Administrator's decision on the critical area development authorization shall be coordinated to coincide with other permits and authorizations. <del>The Shoreline Administrator may determine to accept the development authorization and/or permits from the other reviewing agencies as complete compliance with the City's critical area regulations found in this title.</del></p>	<p>The Shoreline Administrator cannot abrogate responsibility. All development within shoreline jurisdiction requires authorization. See WAC 173-27-140(1); No authorization to undertake use or development on shorelines of the state shall be granted by the local government unless upon review the use or development is determined to be consistent with the policy and provisions of the Shoreline Management Act and the master program.</p> <p>Reword this provision to ensure proper review by local government.</p>
11	17.13.120(E)	Appeals	<p>E. Appeals to the Shoreline Hearings Board of a final decision on a Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, Shoreline Variance, or a decision on an appeal of an administrative action, may be filed by the applicant or any aggrieved party pursuant to RCW 90.58.180 within <del>twenty-one (21) thirty (30)</del> days of receipt of the final decision by the City or by Ecology as provided for in RCW 90.58.140(6).</p>	<p>To be consistent with RCW 90.58.180 and RCW 90.58.140(6) this should be twenty-one days rather than thirty days.</p>

12	17.13.140(B)	SMP Amendments	This SMP and all amendments thereto shall become effective <del>immediately</del> <u>fourteen (14) days from the date of Ecology's written notice of final action.</u> <del>upon final approval and adoption by Ecology.</del>	As per RCW 90.58.090(7) the effective date of this SMP will be 14 days from the date of the department's written notice of final action to the local government stating the department has approved the proposed SMP.
13	Appendix A	2014 City of Yakima Programmatic Exemption	<del>Appendix A: 2014 City of Yakima Programmatic Exemption, Issued to the Washington State Department of Transportation, South Central Region</del>	Delete Appendix A. Ecology supports the uses of the programmatic exemption for state DOT projects, but the SMP is not the appropriate location for a programmatic exemption. Local government has the primary responsibility for administering the regulatory provisions of the SMP (90.58.050). Exemptions, including programmatic exemptions are part of the implementation of this SMP; see WAC 173-27-040.  An exemption is authorization from local government, not Ecology, which establishes a proposed activity as exempt from the SDP processing requirements

				<p>(WAC 173-27-250).</p> <p>Inclusion of this Appendix would not constitute authorization from the City or Ecology for the programmatic permit. If the City would like to authorize DOT's maintenances activities the City will need to authorize this programmatic exemption following their established administrative provisions. The City's SMP includes authorization for programmatic exemptions in YCC 17.07.170(K).</p> <p>Also, note that many activities intended to be covered under this programmatic exemption will require the City to prepare individual letters of exemption for activities that are subject to U.S. Army Corps of Engineers Section 10 permits or 404 permits. Ecology is designated as the coordinating agency for the state with regard to permits issued by the U.S. Army Corps of Engineers. The City will need to issue</p>
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				letters of exemption for each instance where the DOTs activities trigger this federal nexus. See WAC 173-27-050 and 173-27-040(1)(b).
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