

Attachment 1: Whatcom County – Initial Ecology Required and Recommended Changes

The changes in **red** are **required** for consistency with the SMA (RCW 90.58) and the SMP Guidelines (WAC 173-26, Part III). Changes in **blue** are **recommended** and consistent with SMA (RCW 90.58) policy and the SMP Guidelines (WAC 173-26, Part III). Note that all references to SMP Provisions are based on the proposed SMP numbering and naming conventions.

ITEM	PROVISION	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)	RATIONALE	W/C Response
Rec-1	23.05.040.E.2.b	Conditions of approval for compliance with <u>this</u> Title shall be added to such permit. The conditions of approval shall be enforced with the provisions of this Title <u>Title</u> .23.10.160 Violations <u>Violations</u> , Enforcement and Penalties <u>Penalties</u> .	Recommended Change – Scrivener’s errors.	Done.
Req-1	23.05.065.A – Critical Areas	The Whatcom County critical areas regulations (CAO), WCC Chapter 16.16 (ordinance No. 2019-013 dated February 12, 2019), are hereby adopted in whole as a part of this program, except that the provisions of WCC 16.16.270 (Reasonable Use Exceptions), 16.16.275 (Nonconforming Uses, Structures, and Lots), and 16.16.285 (Penalties and Enforcement) <u>and as specifically excluded elsewhere within this Title</u> , shall not apply within shoreline jurisdiction. All references to the critical areas ordinance (CAO), WCC Chapter 16.16, are for this specific version.	Required Change – Whatcom County is concurrently updating its CAO regulations along with this Shoreline Master Program (SMP) amendment. The final adopting ordinance is required in the provision once known. The added language clarifies that this provision does not represent an exhaustive list of CAO provisions that do not apply within the context of the SMP. There are numerous other sections of the CAO that conflict with statutory and rule requirements related to shoreline permit processing such as 16.16.230 (Activities Allowed without Notification), 16.16.235 (Activities Allowed with Notification) and 16.16.275 (Variances). These sections contain language either requiring SMP review or excluding their applicability within shoreline jurisdiction.	Done.
Req-2	23.10.190.B – Amendments	All regulatory elements of this Program shall be considered a part of the County’s development regulations. Certain non-regulatory elements of this master program, including but not limited to the Shoreline Restoration Plan or administrative procedures (WCC Title 22), may be updated and amended at any time without requiring a formal master program amendment. <u>Future changes to WCC Title 22 shall remain consistent with the Shoreline Management Act and associated rules, specifically RCW 90.58.140, 90.58.143, 90.58.210, 90.58.220 and Chapter 173-27 WAC.</u>	Required Change – This change clarifies that while administrative provisions can be codified within a local ordinance separate from the SMP, such changes shall remain consistent with the Shoreline Management Act (SMA) and applicable rules (See SMP Guidelines at WAC 173-26-191(2)(a)(iii)(C).	Done.
Req-3	23.20.010.B – Shoreline Jurisdiction	The shoreline master program jurisdiction applies to all shorelines of the state and their associated shorelands. This includes: 4. Floodways and <u>the entire 100-year contiguous floodplain areas landward two hundred feet from such floodways</u> ; and 9. Associated palustrine wetlands that extend greater than two hundred feet landward of the OHWM of the shoreline: the jurisdictional boundary shall extend to the OHWM <u>delineated edge</u> of the wetland.	Required Change – Whatcom County has removed the previously adopted “geomorphic floodplain” on the Official Shoreline Map to determine jurisdiction for the Nooksack and Sumas Rivers and has elected to set its jurisdiction as the extent of the 100-year floodplain recently remapped by FEMA. This change is necessary for consistency with the map change. Required Change – Shoreline associated wetlands are not limited to palustrine wetlands for the purposes of determining shoreline jurisdiction. Also, the latera extent of wetlands is not always consistent with the OHWM of the primary waterbody. As such, these changes are necessary for consistency with the definition of “Shorelands” found in RCW 90.58.030(2)(f).	Done.

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Req-4	23.20.020.H – Official Shoreline Map	All shorelines east of the Mount Baker National Forest western boundary are designated natural or conservancy unless there are federal projects on federal lands.	Required Change – This change restores existing language and The Official Shoreline Map does not include the eastern portions of the county, and thus a Conservancy designation would be assigned as a default pursuant to the SMP Guidelines at WAC 173-26-211(2)(e).	Done.
Req-5	23.20.020.I – Official Shoreline Map	All areas within shorelines that are not mapped and/or designated and are not directly adjacent to other shoreline designated areas are automatically assigned a conservancy designation. Within urban growth areas, such shorelines shall be automatically assigned an urban conservancy designation until such time that the shoreline environment can be re-designated through a formal amendment.	Required Change – This change restores existing language by removing a proviso that is not applicable to unmapped and/or designated shorelines per WAC 173-26-211(2)(e).	Done.
Req-6	Official Shoreline Map	Note on jurisdiction no longer accurate		Done. Changed to language of 23.20.020(B) and added “floodplain” to both.
Req-7	23.20.040.2 – Mapping Errors	In the event that a jurisdictional area, including associated wetlands, is not mapped, it will automatically be assigned a “resource,” “conservancy,” or “urban conservancy” designation depending on its location. If outside a UGA and adjacent to an existing “resource” designation, it shall be “resource,” if adjacent to “conservancy,” it shall be “conservancy. If inside of a UGA or LAMIRD is shall be “urban conservancy.” Such designation will apply until a master program amendment is approved that assigns the appropriate designation to the subject area.	Required Change – The SMP Guidelines require that unmapped and/or undesignated shorelines automatically be assigned a Conservancy or Urban Conservancy environment designation until a subsequent SMP amendment can be approved (WAC 173-26-211(2)(e). This is already covered by the SMP at WCC 23.20.020.I. In situations where the lateral extent of shoreline jurisdiction is not depicted on The Official Shoreline Map, the environment designation of the adjacent mapped portions of the shoreline would extend to the outward edge of shoreline jurisdiction as determined on a case-by-case basis per WCC 23.20.020.B. For example, the map assigns a Conservancy designation to a particular reach of river but does not illustrate associated wetlands on the property. The Conservancy designation would apply to the delineated wetland edge beyond the area illustrated on the map.	Done.
Rec-2	23.30.010 – Ecological Protection	Ecological protection of shoreline environments shall be achieved through compliance <u>with the applicable provisions of</u> WCC Chapter 16.16 (Critical Areas) and (B) and (C) of this subsection	Recommended Change – This change clarifies that that not all of WCC 16.16 is applicable within the SMP.	Done.
Req-8	23.30.010.C – Ecological Protection	To provide for flexibility in the administration of the ecological protection provisions of this program, buffer modification and alternative mitigation approaches as provided for in WCC 16.16 may be approved within shorelines where such approaches provide increased protection of shoreline ecological functions and processes over the standard provisions of this program and are scientifically supported. <u>Use of 16.16.261 (Alternative Mitigation Plans) and 16.16.262 (Watershed-Based Management Plans) within shoreline jurisdiction shall require review of a Conditional Use Permit.</u>	Required Change – This change maintains the existing requirement for a CUP for use of select alternative mitigation approaches outlined within the CAO. This change is necessary due to the fact that the impacts from such future proposals using these provisions cannot be reasonably identified at the time of the amendment consistent with the SMP Guidelines at 173-26-201(3)(d)(i)(E)(iii). The CUP requirement maintains the flexibility sought by the proposed language without prohibiting the use of these CAO provisions.	Done.
Rec-3	23.30.030.B – Views and Aesthetics	To protect views of the shoreline from existing structures, setbacks may be modified pursuant to WCC 23.409.020(D) (Shoreline Bulk Provisions, Setbacks).	Recommended Change – Scrivener’s error at code citation.	Done.

ITEM	PROVISION	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)	RATIONALE	W/C Response
Rec-4	23.30.030.I – Views and Aesthetics	Fences, walls other than retaining walls , hedges, and other similar accessory structures, excluding those associated with agricultural uses, <u>and retaining walls necessary to protect existing primary structures from erosion, landslides or other geologic hazards</u> , shall be limited to four feet in height between the ordinary high water mark and structures, and within shoreline view areas as defined in WCC Chapter 23.60 (Definitions); provided, that, within shoreline view areas, the Director may approve a greater height where a fence or other features is parallel to the right-of-way and does not extend above a line of sight between the ordinary high water mark and a point three and one half feet above the centerline of the road.	Recommended Change – This change clarifies the intent of Whatcom County Planning & Development Services Staff in Scoping Document Item 17e to allow for increased walls in situations where structural mitigation in the form of a retaining wall is the appropriate solution to stabilize an existing primary structure subject to unforeseen hazards. The language as amended provides no context and is vague as to what the difference is between a retaining wall and a wall.	Done.
Rec-5	23.30.40.2 – Vegetation Management	Vegetation management within the shoreline buffer shall adhere to the <u>applicable</u> regulations of WCC Chapter 16.16.(Critical Areas)...	Recommended Change – This change clarifies that that not all of WCC 16.16 is applicable within the SMP.	Done
Rec-6	23.30.040.2 – Vegetation Management	Shoreline development shall conform to natural contours and minimize disturbance to soils and native vegetation as feasible. Feasible shall include incorporation of trails or stairs from parking areas on steep slopes, and other design elements to lessen the need to alter natural contours and minimize soils and native vegetation disturbance. Tiered Foundations shall <u>be tiered</u> incorporate with earth retention <u>incorporated</u> into the structural design.	Recommended Change – This change maintains the existing requirement that tiered foundations be utilized to meet the objectives of this provision.	Done.
Req-9	23.30.060.A.2 – Public Access	The parcel is separated from the water by an existing developed road or an additional parcel that serves to create a distinct break in connectivity to the shoreline.	Required Change – This change deletes this new exception to consideration of public access as it is overly prescriptive and inconsistent with the SMP Guidelines at WAC 173-26-221(4). Direct connectivity is not a requirement to accomplish proportionate public access. Public access includes the ability of the general public to reach, touch and enjoy the water's edge, travel on the waters of the state, <u>and to view the water from adjacent locations [WAC 173-26-211(4)(a)]</u> . Visual access to the shoreline is not necessarily precluded due to the presence of a developed road or additional parcel between the subject development and the shoreline.	Done.
Req-10	23.30.060.A.3 – Public Access	Other reasonable and safe opportunities for public access to the shoreline are located within one quarter mile of the proposed development site.	Required Change – This change deletes this new exception to consideration of public access as it is inconsistent with the SMP Guidelines at WAC 173-26-211(4). Increased development within shoreline areas can provide a nexus for the need for increased locations and forms of public access proportionate to such impacts.	Done.
Req-11	23.60.060.A.4 – Public Access	<u>The proposed development has already been considered as</u> site is part of a larger development project that has previously provided public access as part of the development permitting process.	Required Change – This change is necessary to ensure consistency with the SMP Guidelines at WAC 173-26-221(4) and clarifies the applicability of this exemption only if it had previously been analyzed through a broader development review such as a Planned Unit Development or other similar process.	Done.
Req-12	23.30.060.A.9 – Public Access	The proposal consists solely of a new or expanded utility crossing through shoreline jurisdiction serving development located outside shoreline jurisdiction, <u>provided that no adverse impacts to existing public access result.</u>	Required Change – Utility development is not specifically exempted from the requirement to consider public access in the SMP Guidelines. The proposed change modifies this new exemption to require public access considerations if impacts to existing forms of public access provide such a nexus.	Done.

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Req-13	23.30.060.A – Public Access	<p><u>Prior to deciding public access is not required pursuant to 23.60.060.A.above, the county must determine that all reasonable alternatives have been exhausted; including but not limited to:</u></p> <ol style="list-style-type: none"> 1. <u>Regulating access by such means as maintaining a gate and/or limiting hours of use;</u> 2. <u>Designing separation of uses and activities (e.g., fences, terracing, use of one way glazing, hedges, landscaping, etc.); and</u> 3. <u>Providing for access at a site geographically separated from the proposal such as a street end, vista, tideland or trail system.</u> 	Required Change – This additional language added to the end of 23.60.060.A restores existing language proposed for deletion. The change is necessary for consistency with the SMP Guidelines at 173-26-221(4)(d)(B) which requires consideration of alternative methods of providing access when potential conflicts are identified with traditional forms of access.	Done.
Req-14	23.30.060 – Public Access	<p><u>I. Public access shall incorporate the following location and design criteria:</u></p> <ol style="list-style-type: none"> 1. <u>Where open space is provided along the shoreline, and public access can be provided in a manner that will not adversely impact shoreline ecological functions and/or processes, a public pedestrian access walkway parallel to the ordinary high water mark of the property is preferred. The walkway shall be buffered from sensitive ecological features and provide limited and controlled access to sensitive features and the water’s edge where appropriate. Fencing may be provided to control damage to plants and other sensitive ecological features and where appropriate. Trails shall be constructed of permeable materials and limited to five feet in width to reduce impacts to ecologically sensitive resources.</u> 2. <u>Public access shall be located adjacent to other public areas, accesses and connecting trails, connected to the nearest public street; and include provisions for differently-abled persons where feasible.</u> 3. <u>Where views of the water or shoreline are available and physical access to the water’s edge is not present or appropriate, a public viewing area shall be provided.</u> 4. <u>Design shall minimize intrusions on privacy by avoiding locations adjacent to windows and/or outdoor private open spaces or by screening or other separation techniques.</u> 5. <u>Design shall provide for the safety of users, including the control of offensive conduct through public visibility of the public access area, or through provisions for oversight. The administrator may authorize a public access to be temporarily closed in order to develop a program to address offensive conduct. If offensive conduct cannot be reasonably controlled, alternative facilities may be approved through a permit revision.</u> 6. <u>Public amenities appropriate to the use of a public access area such as benches, picnic tables and sufficient public parking to serve the users shall be provided.</u> 	Required Change – This change restores existing standards necessary for meaningful implementation of the public access requirements as required by the SMP Guidelines at WAC 173-26-222(4)(d)(iii).	Done.

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		<p>7. <u>Commercial developments that attract a substantial number of persons and developments by government/public entities may be required to provide public restrooms, facilities for disposal of animal waste and other appropriate public facilities.</u></p> <p>8. <u>The minimum width of public access easements shall be 10 feet, unless the administrator determines that undue hardship would result. In such cases, easement widths may be reduced only to the extent necessary to relieve the hardship.</u></p> <p>9. <u>The requirement for public access on a specific site may be fulfilled by:</u> a. <u>Participation in a public access plan incorporated in the program; or</u> b. <u>Provision of facilities specified in a permit approval.</u></p> <p>10. <u>Required public access sites shall be fully developed and available for public use at the time of occupancy of the use or activity or in accordance with other provisions for guaranteeing installation through a monetary performance assurance.</u></p> <p>11. <u>Public access facilities shall be maintained over the life of the use or development. Future actions by successors in interest or other parties shall not diminish the usefulness or value of required public access areas and associated improvements.</u></p> <p>12. <u>Public access provisions shall run with the land and be recorded via a legal instrument such as an easement, or as a dedication on the face of a plat or short plat. Such legal instruments shall be recorded with the county auditor's office prior to the time of building permit approval, occupancy or plat recordation, whichever comes first.</u></p> <p>13. <u>Maintenance of the public access facility shall be the responsibility of the owner unless otherwise accepted by a public or nonprofit agency through a formal agreement recorded with the county auditor's office.</u></p> <p>14. <u>Public access facilities shall be available to the public 24 hours per day unless specific exceptions are granted though the shoreline permit process subject to the provisions of subsection (B)(1) of this section.</u></p> <p>15. <u>The standard state-approved logo or other approved signs that indicate the public's right of access and hours of access shall be installed and maintained by the owner. Such signs shall be posted in conspicuous locations at public access sites.</u></p> <p>16. <u>Incentives for public access improvements such as density or bulk and dimensional bonuses shall be considered through applicable provisions of zoning and subdivision regulations.</u></p>		
Rec-7	Table 1 – Shoreline Use by Environment	Add the following general footnote: <u>In the event that there is a conflict between the use(s) identified in Table 1 above and the applicable written policies or</u>	Recommended Change – This change restores an existing footnote that prescribes a solution when the table conflicts with the written text. Due to the	Not done. This language is already

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	Designation	<u>regulations of this Program, the text within the policies and regulations shall prevail.</u>	difficulty in capturing all of the detail of regulatory text within a matrix such as Table 1, the footnote provides clarity in the event a conflict is identified during implementation.	included in 2.40.010(B).
Rec-8	23.40.020.D.2 – Common Line Setback for Single-Family Residences	Common-Line Setback for Single-Family Residences. For the purpose of accommodating views <u>to be adequate and similar, but not necessarily equivalent,</u> for new residences while protecting predominant shoreline views of the water from legally existing primary residences in developed residential areas, the shoreline buffer (setback) may be modified for primary residential structures in the Urban, Shoreline Residential, and Rural environments (only), consistent with the following. The presence of nearby shacks, sheds, or dilapidated structures does not constitute the existence of a residence, nor can such structures be used to determine a common-line setback.	Recommended Change – This change restores existing language that clarifies that the common-line setback provisions do not guarantee the exact same view as existing residences adjacent to a development site. This is reflected in the standards that follow at 23.40.020.2.a through 23.40.020.2.d that limit reductions in this scenario to 25% of the standard buffers per WCC 16.16 or 50-feet from the OHWM, whichever is greater.	Done.
Req-15	23.40.020.D.2.a – Common Line Setback for Single-Family Residences	<p>a. Where there are legally established single-family residential primary structures within ±50 feet on both sides of the proposed residence, the setback shall be determined as the greater of either:</p> <ul style="list-style-type: none"> i. A common line drawn between the nearest corners of the foundation closest to the sideyard property line of the proposed residence to each adjacent residence, or ii. A common line calculated by the average of both adjacent residences’ existing setbacks. <p>b. Where there is a legally established single family residential primary structure within ±50 feet only one of the proposed residence, the common line setback shall be determined as the greater of either:</p> <ul style="list-style-type: none"> i. A common line drawn between the nearest corner of the foundation closest to the sideyard property line of the proposed residence to the adjacent residence and the nearest point of the standard buffer on the adjacent vacant lot, or ii. A common line calculated by the average of the adjacent residence’s setback and the standard buffer for the adjacent vacant lot. 	Required Change – This change restores the existing language to apply the common-line setback provisions only to existing structures within 50-feet of a proposed residence. The amendment record contains no justification to extend this distance to 150-feet, which is most cases is two to three times the width of most existing lots where view these provisions would apply. The No Net Loss analysis related to this change does not take into consideration the increase in applicability if these setback reductions county-wide by increasing the distance from 50-feet to 100-feet.	Done.
Req-16	23.40.020.D.2.d – Common Line Setback for Single-Family Residences	In no case shall development be located waterward of the common line setback or a minimum of 50 feet from the ordinary high water mark, unless approved to be closer as part of a constrained lot review WCC 23.40.170(c) (Residential)	<p>Required Change – This change clarifies the appropriate point of measurement of buffers/setbacks under the SMA which is ordinary high water mark.</p> <p>Required Change – This change is necessary for consistency with the referenced constrained lot provisions found at WCC 23.40.170.c.4. This section states that consideration shall be given to view impacts in accordance with the common-line setback standards of 23.40.020.d.2. The change eliminates an endless loop to where the two provisions continue to refer to one another without resolve, and clarifies that new residential development should not be allowed waterward of existing development through either process.</p>	Done.

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Req-	23.40.020.D.2 – Common Line Setback for Single-Family Residences	<u>e. The lot is not subject to landslide hazard areas, or riverine or coastal erosion hazard areas or associated buffers (see WCC 16.16.310).</u>	Required Change – This change adds the same standard found in the constrained lot provisions at 23.40.170.B.5. In no case should the common line setback be used that would place a single-family residence within a hazardous area.	Done.
Rec-9	23.40.020.G – Uses Allowed in Buffers and Setbacks	9. Where permitted, fences, walls other than retaining walls <u>those allowed by 23.70.020.G.8 above</u> , hedges and other similar structures shall be limited to four feet in height within shoreline setbacks and six feet in height outside of shoreline setbacks; provided, that the Director may exempt security fencing from this requirement as required by federal or state regulations.	Recommended Change – This change clarifies the difference between a wall and a retaining wall that may exceed this height limitation. See also Rec 4	Done.
Rec-10	23.40-020.G – Uses Allowed in Buffers and Setbacks	12. Accessory structures as allowed by 16.16.720(G)(4) Habitat Conservation Areas – Use and Modification	Recommended Change – Consider copying or moving 16.16.720.G.4, as amended in Req 27, to this location for clarity as the provision only applies within shoreline jurisdiction.	Done.
Rec-11	23.40.030 – General Shoreline Use and Modification Regulations	G. Accessory uses/ <u>structures</u> that do not require a shoreline location shall be sited away from the land/water interface and not placed waterward of the principal use <u>unless otherwise allowed by this Program.</u>	Recommended Change – See Rec X. Recommended Change – The added language clarifies that there are exceptions to this general regulation (See 16.16.720.G.4 as modified in Req-27.	Done.
Req-17	23.40.100.A.5 Flood Hazard Reduction and Instream Structures	Structural flood hazard reduction works shall be permitted only when it is demonstrated by engineering and scientific evaluations that: a. They are necessary to protect health/safety and/or existing development; b. Nonstructural flood hazard reduction measures are infeasible; and c. Measures are consistent with an adopted comprehensive flood hazard management plan that evaluates cumulative impacts to the watershed system or otherwise approved by Whatcom County Public Works' River and Flood Division.	Required Change – There is nothing within the SMP Flood Hazard Reduction Guidelines (WAC 173-26 221(3)) that allow a local government entity to override when new structural flood hazard reduction measures should be allowed within shoreline jurisdiction.	Done.
Req-18	23.40.100.A.12 – Flood Hazard Reduction and Instream Structures	Flood hazard reduction works should <u>shall</u> provide access to public shorelines whenever possible, unless it is demonstrated that public access would cause unavoidable public health and safety hazards, security problems, unmitigatable ecological impacts, unavoidable conflicts with proposed uses, or unreasonable cost. At a minimum, flood hazard reduction works should not decrease public access or use potential of shorelines.	Required Change – The consideration for public access associated with new flood hazard reduction measures is a requirement of the SMP Guidelines at WAC 173-26-221(3)(c)(iv).	Done
Rec-12	23.40.150.B.1 – Dimensional Standards for Freshwater	Where a pier or dock cannot reasonably be constructed under the area limitation above to obtain a moorage depth of <u>5.5</u> feet measured below the ordinary high water mark, an additional 4 sq. ft. of area may be added for each additional foot of pier or dock length needed to reach <u>5.5</u> feet of water depth at the waterward end of the pier or dock; provided, that all other area dimensions, such as maximum width and length, have been minimized	Recommended Change – This change makes this provision consistent with the maximum length standards listed later within this same table at 5.5 feet. The change is consistent with other changes the county made to this section based on comments received by Bill Haynes of Ashton Engineering on April 22, 2021.	Done.
Req-19	23.40.150.B.2 – Dimensional Standards for Marine Waters	<u>Maximum Width</u> <ul style="list-style-type: none"> • For moorage structures accessory to a residential use • 4 feet for a single use or 6 feet for a joint use for pier or dock walkway or ramp • For a joint use structure – 8 feet 	Required Change – This change removes the ambiguous reference to an 8-foot maximum associated with joint use structures. After consultation with Whatcom County PDS staff, these changes clarify the original intent that the 8-foot width maximum applied to joint-use residential moorage structures. Staff also	Done.

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				suggested limiting the maximum width of such structures to 6-feet.	
Rec-13	23.40.150.B.1 – Dimensional Standards for Freshwater	Maximum Length o Marine Rails o Floats	<ul style="list-style-type: none"> 20 feet <u>waterward from the ordinary high water mark</u> 20 feet for float decking per user (e.g. single user – 20 feet, 2-users – 40 feet, etc.) 	<p>Recommended Change – This change clarifies that the 20 foot maximum length requirement for rail systems is measured waterward of the ordinary high water mark and not landward.</p> <p>Recommended Change – This change would provide flexibility for maximum float length for Joint-use docks which are preferred over single-user docks within the SMP. The changes are consistent with the proposed float length maximums for marine joint-use docks found in 23.40.150.B.2.</p>	Done.
Rec-14	23.40.150.D.4 – Additional Standards for Individual Moorage	b. Alternative moorage, such as mooring buoys or a dock <u>or marine rail</u> sized to accommodate a tender to provide access in conjunction with a mooring buoy, are not adequate or feasible; and		Recommended Change – Now that the SMP allows small marine rail systems, they should be considered for tender moorage accessory to a mooring buoy prior to permitting a new dock.	Done.
Rec-15	23.40.150.E.2 – Additional Standards for Shared Moorage	e. On marine shorelines a dock or pier may be approved only if it is not feasible to provide mooring buoys with an adequate landing area or a dock <u>or marine rail system</u> sized to accommodate tenders.		Recommended Change – Now that the SMP allows small marine rail systems, they should be considered for tender moorage accessory to a mooring buoy prior to permitting a new dock.	Done.
Rec-16	23.40.170.B – Standards for Single-Family Residential Use on Constrained Lots	3. The building area shall not exceed 2,500 square feet. The building area means <u>the proposed residence, normal appurtenances (except drainfields), and any proposed residential accessory structures.</u> Sidewalks and similar structures (except the single path allowed for shoreline access, parking areas, normal appurtenances (except drainfields). Additionally, another 500 square feet of low-impact development (LID) landscaping, including any lawn, turf, ornamental vegetation, or gardens is allowed, provided that it is set back as far as feasible from the shoreline.		Recommended Change – This change clarifies that the house itself is also part of what constitutes the building area. Other changes simplify this provision without changing its meaning. A single footpath to access the shoreline is already allowed within buffers elsewhere within the SMP.	Done.
Rec-17	23.40.170.B – Standards for Single-Family Residential Use on Constrained Lots	4. Consideration shall be given to view impacts in accordance with <u>In no case shall the proposed residence be located waterward of the common-line setback as determined in applicable sections of WCC 23.40.020(D)(2) (Common-Line Setback).</u>		Recommended Change – This change clarifies that the intent of this provision is to protect views from existing adjacent residences.	Done.
Rec-18	23.40.170.B – Standards for Single-Family Residential Use on Constrained Lots	7. Appropriate measures are taken to mitigate all adverse impacts, including but not limited to locating the residence <u>building area and landscaping allowance</u> in the least environmentally damaging location relative to the shoreline and any critical areas and their buffers.		Recommended Change – This change clarifies that the entire 2,500 square foot building area and the additional 500-square foot allowance for lawn/landscaping is required to locate in the least environmentally damaging location.	Done.
Rec-19	23.40.170.B – Standards for Single-Family Residential Use on Constrained Lots	8. All reductions to side yard and/or frontage setbacks are pursued, <u>Such reductions may be approved administratively without a zoning variance,</u> when doing so will not create a hazardous condition or a condition that is inconsistent with this program and WCC Title 20.		Recommended Change – Without the proposed change, every application to use the constrained lot provisions will require a concurrent application for a variance to WCC Title 20 – Zoning. For many years, the Zoning Ordinance contained a “shoreline flip” provision that allowed for administrative reduction of the roadside setback down to five-feet when it was determined by Whatcom County Public Works that such a distance met applicable development standards for site distance, etc. This change would restore this administrative option and result in	Done.

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			more expeditious review of new residential development in this scenario.	
Req-20	23.40.170.B – Standards for Single-Family Residential Use on Constrained Lots	10. The shoreline jurisdiction shoreline area outside of the approved development is <u>retained if fully functional, and/or enhanced with native trees, shrubs and groundcovers through development of a mitigation plan, including monitoring and maintenance contingencies per 16.16.260.G.</u> optimized to provide the maximum shoreline ecological functions and ecosystem wide functions;	Required Change – It is unclear what the term “optimized” means but this change restores the exiting requirement that the remaining buffer areas are enhanced with trees, shrubs and groundcovers and maintained in perpetuity.	Done.
Req-21	23.40.170.C – Additional Standards for Multifamily Residential Development	3. Multifamily development with more than four units and shall incorporate public access to waters of the state as provided for in WCC 23.30.070 (Public Access) unless the site is designated in a shoreline public access plan for a greater component of public access or public access is demonstrated to be infeasible or inappropriate. The amount and configuration of public access shall depend on the proposed use(s) and the following criteria:	Required Change – This change restores the existing language that requires consideration for all multifamily development. There is nothing in the public access standards of the SMP Guidelines that exempt multifamily developments under a certain unit size [WAC 173-26-221(4)]	Done.
Rec-20	23.40.170.D – Additional Standards for Accessory Uses and Development	Restore the following language: 2. Shoreline permits shall be required for accessory development that does not meet the intent and definition of an appurtenance as defined in WCC 23.100.010(16).	Recommended Change – This change would restore an existing clarification that comes up often in SMP implementation that explains the difference between a residential appurtenance which can be exempt from the requirement to obtain a shoreline substantial development permit and a residential accessory structure that may require a substantial development permit.	Done.
Req-22 Rec-21	23.40.190.A – Shoreline Stabilization	5. Alternatives for shoreline stabilization shall be based on the following order of preference: a. No action, increase building setbacks, relocate structures; b. Nonstructural shoreline stabilization <u>stabilization, including building setbacks, relocation of structures to be protected and groundwater management;</u> c. Other Soft shoreline stabilization treatment; d. Hybrid shoreline stabilization; e. Hard shoreline stabilization.	Required Change – This change clarifies that increased setbacks are a form of nonstructural shoreline stabilization. In addition, the change restores existing language that requires consideration of structure relocation when feasible to avoid the need for stabilization and lists additional forms of nonstructural stabilization measures per the SMP Guidelines at WAC 173-26-231(3)(a). Recommended Change – Scrivener’s error (spelling).	Done.
Rec-22	23.40.190 – Shoreline Stabilization	12. Revetments are prohibited, except for use in water dependent and public infrastructure projects, which may be permitted as <u>a</u> conditional use.	Recommended Change – It is unclear why a revetment would be a prohibited form of shoreline stabilization when determined to be the least damaging and most appropriate choice for protection of primary structures. This change retains the conditional use requirement which will bring added scrutiny to these types of proposals to determine whether a revetment treatment is appropriate.	Not done. Should not normally be allowed.
Rec-23	23.40.190 – Shoreline Stabilization	15. Minimize disturbance pertaining to beach access by avoiding trails <u>that may be subject to loss or damage by erosion</u> require hard stabilization.	Recommended Change – This change clarifies that trails are not primary structures allowed to be protected with hard stabilization per the SMP. The provision has been reworded to leave the intent while removing language that could be perceived as allowing hard stabilization to protect accessory developments/structures.	Done.

ITEM	PROVISION	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)	RATIONALE	W/C Response
Rec-24	23.60.030 – “C” Definitions	Restore the following condition of “Clearing”: <u>“Clearing” means the removal of vegetation or plant cover by manual, chemical, or mechanical means. Clearing includes, but is not limited to, actions such as cutting, felling, thinning, flooding, killing, poisoning, girdling, uprooting, or burning.</u>	Recommended Change – While this term is defined in WCC 16.16 and incorporated into the SMP by reference, the term could apply outside of critical areas within shoreline jurisdiction. In such cases, a definition within the SMP could be helpful for implementation purposes.	Done.
Req-23	16.16.225.B – General Regulations	7. Alteration of Type III or IV wetlands, <u>within exception of shoreline associated wetlands subject to WCC Title 23</u> , that have a habitat area score of less than 6 when associated with an approved commercial development within an Urban Growth Area; or	Required Change – This change is based on conversations with Whatcom County clarifying that this exception does not apply within shoreline jurisdiction.	Done.
Req-24	16.16.230 – Activities Allowed without Notification	The following activities do not require authorization from Whatcom County. However, this chapter shall not be construed to grant authorization for any work to be done in any manner in violation of the provisions of this chapter or any other laws or ordinances of this jurisdiction. <u>Activities within the shoreline jurisdiction (WCC 23.20.10) may require a shoreline permit or statement of exemption.</u>	Required Change – This change is required for consistency with minimum procedural requirements for permit review in WAC 173-27. There may be instances where a shoreline permit or statement of exemption are required for developments that may otherwise be exempt outside of shoreline jurisdiction. The required language mimics that included in WCC 16.16.235.1 – Activities Allowed with Notification	Done.
Req-25	16.16.235.A – Activities Allowed With Notification	1. The applicant provides a written notification to the Director on a form provided by the Department. Activities within the shoreline jurisdiction (WCC 23.20.010) shall <u>may</u> require a shoreline permit or statement of exemption.	Required Change – This change clarifies the fact that some actions allowed through this process may not meet the definition of “Development” as defined by the SMP. In such cases, a shoreline permit or statement of exemption would technically not be required. In such instances, any applicable standards of the SMP would still apply but the process outlined within this section could still be utilized. For example, removal of a single hazard tree would not require a development permit or exemption per the SMP, however mitigation would still be required consistent with the SMP, including applicable sections of the CAO.	Done.
Req-26	16.16.270.C.12 – Reasonable Use Exceptions	a. On lots outside of the shoreline jurisdiction, w hen an extended driveway is necessary to access a portion of a development site with the least impact on critical areas and/or buffers, those portions of the driveway shall be excluded from the 4,000-square foot maximum impact area; provided, that the access road or driveway meets the standards of WCC 16.16.620(D) or 16.16.720(D), as applicable. b. On lots within the shoreline jurisdiction, when an extended driveway is necessary to access a portion of a development site with the least impact on critical areas and/or buffers, the applicant shall demonstrate that the size and location of the driveway is the minimum necessary to access the development site.	Required Change – This change removes any reference to the SMP as 16.16.270 is not incorporated by reference as part of the SMP at 23.05.065.A.	Done.
Rec-25 Req-27	16.16.720.G.4 – Accessory Uses	Accessory Uses <u>Structures</u> . When located in the shoreline jurisdiction, residential water-oriented accessory structures <u>including a boat equipment storage shed, an uncovered small boat storage rack, a fire pit, and a pathway leading to the shoreline</u> , may be permitted in an HCA buffer; provided. a. <u>Such structures are located as far from the shoreline as feasible and on previously-impacted buffer areas, and</u>	Recommended Change – This change clarifies that this section is related to accessory structures rather than uses. Required Changes – These changes are required for consistency with the SMP Guidelines governing principle that SMP regulations must be designed to achieve no net loss of ecological functions (WAC 173-26-186(8)). The changes add	Done.

ITEM	PROVISION	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)	RATIONALE	W/C Response
		<ul style="list-style-type: none"> b. <u>The maximum area, inclusive of existing lawfully-established accessory structures, They</u> shall be limited to 10% of the buffer's area or 500 square feet, whichever is less; and, c. No more than 20% of the linear length of shoreline is occupied by a building or structure; and d. <u>Individual structures shall be limited to a total footprint area of 100-square feet and 10-feet in height, and</u> e. The shoreline is 75% planted (or replanted), <u>or at ratios outlined in 16.16.760 whichever is greater,</u> with native vegetation to a minimum depth of 15 feet landward from the ordinary high water mark. f. <u>This provision shall not apply to residential developments authorized using the constrained lot provisions outlined in 23.40.150.B.</u> 	<p>appropriate sideboards to allow a limited and predictable list of common residential developments that may be located within regulated buffers. The changes include more emphasis on the required mitigation sequence including avoidance, minimization and mitigation of impacts to buffers [WAC 173-26-201(2)(e)]</p>	
Rec-26	16.16.730.A – Habitat Conservation Area Buffers	<p>1. Buffers shall be established for activities adjacent to habitat conservation areas as necessary to protect the integrity, functions, and values of the resource. Buffer widths shall reflect the sensitivity of the species or habitat present and the type and intensity of the proposed adjacent human use or activity. Buffers shall not include areas that are functionally and effectively disconnected from the wetland <u>habitat conservation area</u> by an existing, legally established road or other substantially developed surface.</p>	<p>Recommended Change – Scrivener's error correction. It appears this language was copied from the wetland section without changing the reference to HCAs.</p>	Done.
Rec-27	16.16.740. C – Habitat Conservation Area Buffer Modification	<p>2. In all circumstances when the buffer between the area of reduction and the wetland <u>habitat conservation area</u> is degraded, this degraded portion of the buffer shall include replanting with native vegetation in order to achieve a dense vegetative community.</p>	<p>Recommended Change – Scrivener's error correction. It appears this language was copied from the wetland section without changing the reference to HCAs.</p>	Done.