

Public Comment Summary: City of Sumas Shoreline Master Program Comprehensive Update

The following written comments were received during the Ecology Comment Period (November 10 – December 15, 2014)

ITEM	SMP Section	Commenter	Comment / Concern	Local Government Response / Rationale	Ecology Response / Rationale
01	2.7 Historical/Cultural Resources Goals & Policies	Department of Archaeology & Historic Preservation	<p>Recommends adding the term “structures” to the following introductory paragraph:</p> <p>“An element related to the protection and restoration of buildings, <u>structures</u>, sites and areas having archaeological, historic, cultural, scientific or educational values within the shorelines of the City of Sumas.”</p>	The language in the City’s proposed master program is consistent with the language in RCW 90.58.100(2)(g) and WAC 173-26-176(3); therefore, the suggested change is not deemed necessary.	Ecology concurs with the City’s response. Section 2.0 of the Sumas SMP lists the general elements that must be considered in the preparation of master programs or amendments consistent with the language found in the Shoreline Management Act (RCW 90.58.100(2)). This is non-regulatory language and is intended to be broad in nature. The omission of the term “structures” in this section does not mean that historic or cultural structures are unregulated by the Sumas SMP.
02	2.7 Historical/Cultural Resources Goals & Policies	Department of Archaeology & Historic Preservation	<p>The following policy statement should be added:</p> <p>“Protection and rehabilitation of significant archaeological, historic, and cultural sites is encouraged and when and where appropriate, should be required.”</p>	The suggested new policy has been reworded slightly for incorporation into the draft SMP as follows: <u>Policy 2.7C: Protection and rehabilitation of significant archaeological, historic, and cultural sites should be encouraged and, where appropriate, should be required.</u>	Ecology supports the City’s decision to incorporate this protection and rehabilitation policy into the SMP as requested by DAHP. The City requested change is included in Attachment C – Ecology Recommended Changes.
03	Policy 2.7A – Historical/Cultural Resources Goals & Policies	Department of Archaeology & Historic Preservation	<p>Recommends the following changes:</p> <p>“Policy 2.7A: Developments <u>that are proposed</u> within shoreline areas should be encouraged and, where appropriate, are required to avoid or minimize impacts to sites having archaeological, historic, cultural, educational or scientific value or significance. <u>Developments with unavoidable impacts on these resources shall be mitigated in consultation with affected Tribes and other interested parties.</u>”</p>	The policy language in the City’s proposed master program is consistent with the language in WAC 173-26-221(1); therefore, the suggested change is not deemed necessary.	Ecology concurs with the City’s response. Section 2.7 of the Sumas SMP lists goals and policies that support the planning element related to the protection of archaeological, historic and cultural resources. The SMP contains regulations (SMC 15.04.460) that implement this policy by requiring the study and protection of both known and inadvertently discovered historic/cultural resources. The regulations require consultation with DAHP and affected tribes when significant archaeological, cultural or historic resources are identified in a cultural resource site assessment or an inadvertent discovery is made during ground disturbing activities.
04	6.1 – Archaeological Areas & Historic Sites	Department of Archaeology & Historic Preservation	<p>Recommends deleting “whenever possible from the following introductory paragraph:</p> <p>“Native American and pioneer villages, military forts, old settlers homes, and trails were often located on shorelines because of the proximity of food resources and because water provided a practical means of transportation. These sites are nonrenewable resources and many are in danger of being lost through present day changes in land use and urbanization. Because of their rarity and the educational and cultural links they provide to our past, these</p>	The inclusion of the words “whenever possible” reflects the understanding that preservation may not be possible in absolutely every situation. This approach is consistent with the multiple policy goals set forth in the Act.	Ecology concurs with the City’s response. Section 6.0 of the Sumas SMP contains non-regulatory policy language. The regulations found in SMC 15.04.460 implement these policies and require consultant with DAHP and affected tribes prior to a finding that preservation of archaeological, historic and/or cultural resources is not possible on a given development site.

			locations should be preserved whenever possible. ”		
05	Policy 6.1B – Archaeological & Historic Sites	Department of Archaeology & Historic Preservation	<p>Recommends the following changes:</p> <p>“Policy 6.1B: In areas <u>known to have/potential to have documented to contain</u> archaeological or cultural resources, developers should be <u>are</u> required to have the <u>site project area inspected surveyed</u> by a professional archaeologist in consultation with affected Indian tribes prior to permit issuance.”</p>	<p>The language in the draft City master program is generally consistent with WAC 173-26-221. Revisions to ensure consistency include the following:</p> <p>Policy 6.1B: In areas documented to contain archeological or cultural resources, developers <u>shall</u> should be required to have the site inspected <u>and evaluated</u> by a professional archaeologist in consultation with affected Indian tribes prior to permit issuance.</p>	Ecology supports the City’s decision to alter this policy provision. The City requested change is included in Attachment C – Ecology Recommended Changes. The regulations found in SMC 16.04.460 include a requirement for professional assessment of historic sites in addition to known archaeological and cultural sites.
06	Policy 6.1C – Archaeological & Historic Sites	Department of Archaeology & Historic Preservation	<p>Recommends deleting “should be” and capitalization of agency name:</p> <p>“Policy 6.1C: Developers should be <u>are</u> required to stop work immediately and notify City officials, affected Indian tribes and the sState dDepartment of aArchaeology and hHistoric pPreservation if sites containing archaeological or cultural resources are uncovered during excavation.”</p>	<p>The language in the draft City master program is generally consistent with WAC 173-26-221. Revisions to ensure consistency include the following:</p> <p>Policy 6.1C: Developers <u>shall</u> should be required to stop work immediately and notify City officials, affected Indian tribes and the state department of archaeology and historic preservation if sites containing archaeological or cultural resources are uncovered during excavation.</p>	Ecology supports the City’s decision to alter this policy provision. The City requested change is included in Attachment C – Ecology Recommended Changes.
07	Policy 6.1.D – Archaeological & Historic Sites	Department of Archaeology & Historic Preservation	<p>Recommends deleting “should be” as follows:</p> <p>“Policy 6.1D: Developers should be <u>are</u> required to obtain all legal permits regarding archaeological areas and historic sites.”</p>	Requirements for obtaining related permits are addressed more generally in the draft master program and are not required at this location to ensure consistency with specific requirements identified under WAC 173-26-221.	Ecology concurs with the City’s response. Section 6.1 contains non-regulatory policy language where use of the term “should” is appropriate. The regulation that implements this policy is found in SMC 15.04.460.A and requires compliance with applicable state and federal laws.
08	Policy 6.1E – Archaeological & Historic Sites	Department of Archaeology & Historic Preservation	<p>Add RCW 68.50 and RCW 68.60 to the list of required laws and rules:</p> <p>“Policy 6.1E: In accordance with state law, all activities and development within shoreline jurisdiction shall comply with the applicable requirements of RCW 27.44, RCW 27.53, <u>RCW 68.50, RCW 68.60</u> and WAC 25-48-060.”</p>	<p>The additional statutory references may be incorporated as suggested:</p> <p>Policy 6.1E: In accordance with state law, all activities and development within shoreline jurisdiction shall comply with the applicable requirements of RCW 27.44, RCW 27.53, <u>RCW 68.58, RCW 68.60</u> and WAC 25-48-060.</p>	Ecology supports the City’s decision to alter this policy provision. The City requested change is included in Attachment C – Ecology Recommended Changes.
09	15.04.460.A – Archaeological & Historic Sites General Requirements	Department of Archaeology & Historic Preservation	<p>Recommends the following language be added:</p> <p>“The National Historic Preservation Act of 1966 and Chapter 27.53 RCW provide for the protection, rehabilitation, restoration and reconstruction of areas and structures in American and Washington State history. The <u>policies and implementing</u> regulations in these acts shall be followed.”</p>	The additional detail included in the suggested revision to Section 15.04.460(A) is not necessary to provide consistency with the applicable State Guidelines and is not deemed necessary.	Ecology supports the City’s decision to alter this policy provision. The City requested change is included in Attachment C – Ecology Recommended Changes.
10	General – Data Sharing	Department of Archaeology & Historic Preservation	Recommends that the City of Sumas enter into a data sharing agreement so that identification and protection of known cultural resources can be improved.	The recommendation is unrelated to the current review: however, the City will consider the suggestion outside the SMP update process if determined to be appropriate based on the prevalence of known sites in the Sumas area.	No further Ecology comment.

11	General – DAHP Model Language	Department of Archaeology & Historic Preservation	The archaeological and historic sites language in the Sumas SMP is too broad. It is recommended that the City adopt DAHP’s model SMP language to provide more specificity and guidance when dealing with these resources.	The very limited presence of sites of significance within the Sumas shoreline area does not warrant the more-detailed provisions provided in the DAHP model. The language in the draft City master program is deemed to be sufficient to ensure protection of the resource and consistency with State Guidelines.	Ecology concurs with the City’s response regarding compliance with the master program guidelines. Specifically, the goals, policies and development regulations found in Sections 2.7 and 6.1, and the corresponding development regulations found in SMC 15.04.460 are consistent with the required general master program provisions found in WAC 173-26.211(1). The regulations require consultation with DAHP and affected tribes when a development is proposed in an area known to contain archaeological, cultural and/or historic resources and in the event of inadvertent discovery during ground disturbing activity.
12	5.0 – Shoreline Jurisdiction and Environment Designations	Dannon Traxler on behalf of Margo Dornan	<p>Inconsistencies exist between the shoreline environment designations and the applicable policies and regulations. Concerned that such inconsistencies could be used to severely and illegally limit the development on Ms. Dornan’s property.</p> <p>Ms. Dornan’s property is designated Urban Conservancy. The property is zoned for commercial use and is located in an area surrounded by existing commercial and industrial developments. The policies of the Urban Conservancy environment designation are not consistent with commercial use even though such uses are outright permitted in these areas according to the SMP. There is concern that the policies could be used to override the use regulations at the time of permit review.</p> <p>These inconsistencies should be corrected on the Dornan property by creating a new Urban Environment designation. WAC 173-26-211(4)(c) allows local governments to establish different designations systems. Such an alternative system is a sensible choice for Sumas, since there are large areas of the City within shoreline jurisdiction that flank the downtown core.</p>	<p>The environment designations, management policies and associated regulations are in most cases drawn directly from the Shoreline Guidelines and therefore are consistent with these Guidelines.</p> <p>Although the purpose statement for the Urban Conservancy environment included in the City’s draft master program was drawn directly from the State Guidelines, in an effort to provide increased clarity regarding the City’s intent in this regard, the Urban Conservancy Purpose statement may be amended as follows:</p> <p>5.7.1 Purpose The purpose of the “urban conservancy” environment is to protect and restore ecological functions of open space, floodplain, and other sensitive lands where they exist in urban and developed settings, while allowing for a variety of compatible uses. <u>To further clarify the above purpose statement, the purpose of the “urban conservancy” environment is to allow a variety of compatible uses, including those identified as permitted and conditional uses, within those portions of the shoreline area located outside of required buffers while limiting development within required buffers to protect and restore ecological functions over time.</u></p> <p>The concerns raised regarding use of policy language by the City to override regulations is speculative and is inconsistent with standard planning principles whereby regulations provide more-detailed implementation of the more-general policy statements.</p> <p>The City has found the Urban Conservancy environment</p>	<p>Ecology concurs with the City’s response. Early in the SMP update process, the City elected to follow the environment classification system recommended in the master program guidelines (WAC 173-26-211(4)(b)). Based on this system, this reach of shoreline along Johnson Creek best fits within the category of Urban Conservancy. This is supported by the 2010 Shoreline Inventory and Characterization Report and the Conservancy designation assigned to this area under the City’s existing SMP adopted in 1999.</p> <p>Ecology supports the City’s decision to incorporate additional language into the purpose statement of the Urban Conservancy environment designation to further clarify that commercial uses can be accommodated when located in a manner consistent with the SMP regulations. The City requested change is included in Appendix C – Ecology Recommended Changes.</p>

				as set forth in the Shoreline Guidelines to be appropriate based on several factors, including its similarity to the existing “Conservancy” environment designation under the City’s current master program, the City’s history under the current Master Program of allowing development in the Conservancy environment in those areas outside of required buffer areas while prohibiting development and encouraging restoration within required buffer areas, and the City’s intent to continue to support commercial and industrial development in the Urban Conservancy environment while protecting ecological functions within required buffer areas. The Urban designation suggested in the comment is understood to be a variation on the High Intensity environment presented in the Shoreline Guidelines and is understood to be the appropriate designation for areas supporting water-dependent uses, which are unlikely in Sumas. In addition, the Urban environment is not seen as being consistent with City’s past history and future goals in this part of the city of encouraging both use and conservation.	
13	Policy 5.7.3C – Urban Conservancy Environment Designation	Dannon Traxler on behalf of Margo Dornan	Concerned about the emphasis on public access across private property. Suggests adding language stating that any required public access must comply with established constitutional and legal limitations on the regulation of private property.	The provisions in the City’s draft master program addressing public access are consistent with State Guidelines and with Constitutional limitations on the taking of private property. No change deemed necessary.	Ecology concurs with the City’s comment in the context of the referenced Urban Conservancy policy, however a specific reference to constitutional or other legal limitations that may render public access infeasible should be included in the City’s SMP regulations for public access in SMC 15.04.490. This change can be found in Appendix B – Ecology Required Changes.
14	5.0 – Shoreline Jurisdiction and Environment Designations	Dannon Traxler on behalf of Margo Dornan	None of the shoreline environment designations within the SMP are consistent with commercial and industrial uses.	The Urban Conservancy designation included in the City’s draft master program is very similar to the Conservancy designation under the City’s existing SMP, which the City has shown over many years does allow commercial and industrial development while limiting development in required buffer areas adjacent to Johnson Creek. The proposed Urban Conservancy environment is intended to continue this approach where it has been found that commercial and industrial uses can be developed in ways that support conservation and restoration.	Ecology concurs with the City’s comments. Nothing in section 5.0 of the SMP states that commercial or industrial uses are not compatible with the environment designations, as long as such uses are developed and operated in a manner that does not represent a net loss of shoreline ecological functions. One exception would be the Natural environment designation, however it should be noted that the City has not identified any shoreline areas as Natural. In addition to the purpose statement, designation criteria and management policies found in SMC 5.0, the guidelines require environment specific regulations that identify allowed uses, bulk and dimensional standards and other standards as necessary. The SMP allows both commercial and industrial uses within the Urban Conservancy environment designation (15.04.380).

15	5.7 – Urban Conservancy Environment Designation	Dannon Traxler on behalf of Margo Dornan	The language in WAC 173-26-241(3)(d) relating to commercial development is not necessarily consistent with the language in WAC 173-26-211(5)(e) relating to Urban Conservancy designations. The current policy language in the SMP should be softened to ensure that non-water-oriented commercial and industrial development is supported without a public access requirement in areas that are not conducive to water-oriented development.	The comment appears to suggest that two different provisions in the Sate Guidelines are not consistent with each other. The City has incorporated these provisions as required by the Guidelines and has no control over whether or not such provisions are inconsistent. No change to the draft master program is deemed necessary.	Ecology concurs with the City’s comment in that SMC Section 5.7 – Urban Conservancy Environment and SMC 15.04.530 C – Commercial Development Regulations are consistent with the guidelines found in WAC 173-26-211(5)(e) and 173-26-241(3)(d), respectively. No conflict exists between the commercial use urban conservancy guidelines in regards to public access requirements. The urban conservancy standards found in WAC 173-26-211(5)(e)(ii)(C) provides a general policy statement that public access and public recreation objectives should be implemented whenever feasible. The guidelines in WAC 173-26-241(3)(d)(ii) are intended to be more specific to commercial uses. They state that non-water-oriented commercial uses should be prohibited except when navigation is severely limited at the proposed site and the use provides a significant benefit with respect to the Shoreline Management Act’s objectives such as providing public access and ecological restoration.
16	5.7 – Urban Conservancy Environment Designation	Dannon Traxler on behalf of Margo Dornan	Policy language should be clarified to ensure that areas outside of shoreline buffers are not subject to the same level of protection and restoration so that development can locate more freely and the code language cannot be misconstrued to unreasonably limit development.	The suggestion that code language will be used to unreasonably restrict development is speculative and not supported by the City’s history of allowing development in areas outside of required buffers while limiting development and encouraging restoration within required buffers. No change deemed necessary.	Ecology concurs with the City’s comments. Limiting the application of the urban conservancy policy language to only the required buffer areas would not be consistent the guidelines. WAC 173-26-211(2) requires master programs to contain a system to classify all shoreline areas.
17	15.04.478 – Fish and wildlife habitat conservation area standard buffers	Dannon Traxler on behalf of Margo Dornan	The stream and non-stream buffer and setback requirements are unreasonable and must be reduced. Ms. Dornan’s property is subject to a 100-foot buffer plus a 10-foot building setback. This is an onerous requirement, which is not based in any sort of scientific rationale. It takes a large portion of Ms. Dornan’s property and renders it undevelopable in violation of state and constitutional laws.	The required stream buffers in the City’s draft master program are the same as what is in place at the current time and the same as what was in place when Ms. Dornan acquired her property. In addition, the proposed stream buffers were selected based on a review of best available science and are within, but at the lower end of, the range supported by the scientific literature. Reducing the stream buffer requirement is not deemed necessary.	Ecology concurs with the City’s comments. The City’s shoreline inventory and characterization report outlines priority actions within this reach of Johnson Creek that include preservation of the existing, relatively intact riparian corridor and terrestrial habitats in addition to water quality improvement. Based on the most current scientific and technical information available, 100-foot buffers are on the lower end of the scale in terms of wildlife and water quality effectiveness.
18	15-04.478.C.2 – Non-Stream Habitat Performance Requirements	Dannon Traxler on behalf of Margo Dornan	Concerned about the non-stream habitat buffers which allow the Administrator extraordinary discretion to determine buffer widths without a clear method for such application. This approach leaves property owners unaware of requirements that may be imposed on their land and is unacceptable. Codes should be written in a manner such that a person with reasonable intelligence doesn’t have to guess at its meaning.	The City sees very limited if not zero likelihood of situations arising where non-stream buffers would come into play within the Sumas shoreline area. However, if any such circumstance did arise, the proposed regulations rely on a recognized source for guidance: namely, the Washington State Department of Fish and Wildlife Management Recommendations for Priority Habitats and Species. No change deemed necessary.	No further Ecology comment.

19	Multiple provisions	Dannon Traxler on behalf of Margo Dornan	Various comments.	In relation to all comments provided by Dannon Traxler on behalf of Margo Dornan, please also see the City's previous responses prepared by Sehome Planning and Development Services from May 5, 2014, June 9, 2014 and June 18, 2014.	Noted. The City is referring to comments they received during the local review and approval process. These comments, along with the City's responses have been reviewed by Ecology.
20	15.04.530(H)(3) Code Reference	City of Sumas	In subsection 15.04.530(H)(3)(a), the code reference for the City's Flood Damage Prevention Ordinance should be corrected to be Chapter 14.30 rather than Chapter 15.10.	This appears to be a scrivener's error. The correct code reference for the City Flood Damage Prevention Ordinance is Chapter 14.30.	Ecology concurs with this City-requested change. See Appendix C – Ecology Recommended Changes.
21	Section 7.7 – Recreational Development	City of Sumas	Add: <u>Policy 7.7J: The City should work in cooperation with the Washington Departments of Ecology and Fish and Wildlife to explore opportunities to reconfigure stream channel morphology in that segment of Johnson Creek between Cherry Street and Sumas Avenue to provide safe access for fishing and other water-dependent recreational activities while protecting, restoring and enhancing the shoreline functions provided in that area.</u>	In 2012, the Sumas Planning Commission recommended to the City Council that this policy be added to the draft Master Program. Although the recommended policy was presented at the City Council public hearing in June 2012 and was supported by the Council at that time, it was inadvertently not included in the final draft SMP that was adopted by the City Council in 2014.	Ecology concurs with this City-requested change. See Appendix C – Ecology Recommended Changes.
22	15.04.530(G)(2) – Recreational Development	City of Sumas	Add: <u>Section 15.04.530(G)(2)(i): Any reconfiguration of stream channel morphology to provide safe access for fishing and other water-dependent recreational activities shall mitigate impacts to ensure no net loss of shoreline ecological functions and ecosystem-wide processes. Any such proposed action shall require approval of a City shoreline conditional use permit as well as Hydraulic Project Approval from the Washington Department of Fish and Wildlife.</u>	In 2012, the Sumas Planning Commission recommended to the City Council that this regulation be added to the draft Master Program. Although the recommended regulation was presented at the City Council public hearing in June 2012 and was supported by the Council at that time, it was inadvertently not included in the final draft SMP that was adopted by the City Council in 2014.	Ecology concurs with this City-requested change. See Appendix C – Ecology Recommended Changes.
23	Section 2: Definitions - Buffer	City of Sumas	Add to the definition of "Buffer" as follows: BUFFER - Means an upland land area adjacent to a shoreline, river, stream, wetland or critical area that protects the water feature or area from human disturbance by providing separation between the area and the adjacent land uses. A buffer shall be measured horizontally from the wetland edge or ordinary high water mark where appropriate. <u>Buffers shall not extend in a landward direction beyond a developed structure, such as a residence, or an impervious surface, such as a roadway, where such feature has been lawfully established.</u>	In 2012, the Sumas Planning Commission recommended to the City Council that this amended definition be incorporated into the draft Master Program. Although the recommended addition was presented at the City Council public hearing in June 2012 and was supported by the Council at that time, it was inadvertently not included in the final draft SMP that was adopted by the City Council in 2014.	Ecology concurs with this City-requested change with some slight modifications to ensure no net loss of shoreline ecological functions. See Appendix C – Ecology Required Changes.