

Attachment C – Ecology Recommended Changes to City of Blaine SMP

The following changes are recommended to clarify elements of the City’s amended SMP

ITEM	SMP PROVISION	TOPIC	BILL FORMAT CHANGES (<u>underline = additions; strikethrough = deletions</u>)	RATIONALE
Section 1.0 - Introduction				
	1.5.A.8	Definitions	<u>8. ARCHAEOLOGY – Means systematic, scientific study of the human past through material remains</u>	City requested changes to add new definitions, related to the protection of cultural and historic resources, based on comments received from the Washington State Department of Archaeology and Historic Preservation (DAHP) during Ecology’s public comment period.
	1.5.A.9	Definitions	<u>9. ARCHAEOLOGICAL OBJECT – Means an object that comprises the physical evidence of an indigenous and subsequent culture including material remains of past human life including monuments, symbols, tools, facilities, graves, skeletal remains and technological by-products.</u>	
	1.5.A.10	Definitions	<u>10. ARCHAEOLOGIST/PROFESSIONAL ARCHAEOLOGIST – Means a person with qualifications meeting the federal secretary of the interior’s standards for a professional archaeologist. Archaeologists not meeting this standard may be conditionally employed by working under the supervision of a professional archaeologist for a period of four years provided the employee is pursuing qualifications necessary to meet the federal secretary of the interior’s standards for a professional archaeologist. During this four year period, the professional archaeologist is responsible for all findings. The four year period is not subject to renewal. Means a person who has designed and executed an Archaeological course of study and has been awarded an advanced degree in archaeology, anthropology, or history or other germane discipline with a specialization in archaeology, and who has at least two (2) years of experience, including at least one(1) year of supervised field experience.</u>	
	1.5.A.48	Definitions	<u>48. HISTORIC PRESERVATION PROFESSIONAL – Means those individuals who hold a graduate degree in architectural history, art history, historic preservation, or closely related field, with coursework in American architectural history, or a bachelor’s degree in architectural history, art history, historic preservation or closely related field plus one of the following:</u> <ul style="list-style-type: none"> a. <u>At least two years of full-time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or</u> b. <u>Substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.</u> 	
Section 3.0 - Applicability				
	3.4.A.1	Exempt Activities	<ol style="list-style-type: none"> 1. Any development of which the total cost or fair market value, whichever is higher, does not exceed six thousand, four hundred sixteen dollars <u>seven thousand, forty seven dollars</u>, or other threshold amount established by the Washington State Office of Financial Management, 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 as defined in RCW 90.58.030 (2)(c). 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 Washington State Office of Financial Management amended the substantial development dollar threshold effective September 2, 2017. This change reflects the increase.

	3.4.A.15	Exempt Activities	15. A public or private project that is designed to improve fish or wildlife habitat or fish passage as described by WAC 173-27-040(2)(p), that conforms to the provisions of RCW 77.55.181;	This change makes the fish habitat exemption consistent with rule changes made in 2007.
	<u>3.4.A.17</u>	Exempt Activities	17. <u>The external or internal retrofitting of an existing structure with the exclusive purpose of compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) or to otherwise provide physical access to the structure by individuals with disabilities.</u>	This change adds a new exemption consistent with legislative amendments made to RCW 90.58.030 and WAC 173-27-040 in 2017.
	3.9.A 3.9.B	Nonconforming Development	<p>A. Nonconforming developments may be rebuilt and non-conforming uses may be continued regardless of whether the extent of the damage or causality casualty, exceeds seventy-five percent of the replacement cost of the original development. The property owner shall have two years from the date the damage occurred to submit an application for the permits necessary to rebuild the nonconforming structure or continue the nonconforming use. The redevelopment of the structure must be completed within two years of the permit issuance.</p> <p>B. For non-catastrophic-related events, if the nonconforming use of a conforming or nonconforming building or structure is discontinued for eighteen consecutive months or for eighteen months during any two-year period, the nonconforming use right shall expire and any subsequent use shall be conforming, provided that a subsequent conforming use of a nonconforming building or structure shall only be allowed as a conditional use. In the event of catastrophic damage to a nonconforming structure or use, the owner shall have two years from the date damage occurred to submit the applications necessary to rebuild said nonconforming structure or continue said nonconforming use. The redevelopment of the structure shall occur within two years of permit issuance. Catastrophic damage is damage that exceeds seventy-five percent of the replacement cost of the original development.</p>	
	3.9.F	Nonconforming Development	A nonconforming single family residence damaged by any means, other than by a purposeful act of demolition by the owner or his agent, may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, so long as restoration is completed within one year of the date of final resolution of all legal actions ensuing from the damage.	This change is recommended to eliminate conflict with the revisions to 3.9.C above. The existing provisions set up different timeframes and protocols for single-family residences versus other types of nonconforming development.
	<u>3.11</u>	<u>Developments Not Required to Obtain Shoreline Permits or Local Reviews</u>	<p><u>3.11 Developments Not Required to Obtain Shoreline Permits or Local Reviews</u></p> <p><u>Requirements to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other review to implement the Shoreline Management Act do not apply to the following:</u></p> <p>A. <u>Remedial actions. Pursuant to RCW 90.58.355, any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW.</u></p> <p>B. <u>Boatyard improvements to meet NPDES permit requirements. Pursuant to RCW 90.58.355, any person installing site improvements for storm water treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system storm water general permit.</u></p> <p>C. <u>WSDOT facility maintenance and safety improvements. Pursuant to RCW 90.58.356, Washington State Department of Transportation projects and activities meeting the conditions of RCW 90.58.356 are not required to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other local review.</u></p>	<p>These changes represent new or amended rules adopted in 2017:</p> <p>Ecology adopted WAC 173-27-044 to consolidate three separate laws that create special exceptions to applicability of local Shoreline Mater Programs. The rule clarifies that requirements to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other review conducted by a local government to implement the SMA do not apply.</p> <p>We also made housekeeping revisions to WAC 173-27-045, a separate rule that describes developments that are not required to meet SMA requirements.</p>

			D. <u>Projects consistent with an environmental excellence program agreement pursuant to RCW 90.58.045.</u>	
			E. <u>Projects authorized through the Energy Facility Site Evaluation Council process, pursuant to chapter 80.50 RCW.</u>	

Section 4.0 – General Elements

4.6A	Conservation	Policy 4.6A: Critical areas should be protected in accordance with policies and regulations established in Chapter 17.82 and 17.83 BMC adopted by Ordinance No. 09-2729 in 2009 <u>and Ordinance 10-2762 in 2010</u> , with the exceptions noted in the Program. <u>The above referenced ordinances are combined and included as Appendix A of this Program.</u>	
4.7	Historical/Cultural Resources	<p>4.7 HISTORICAL/CULTURAL RESOURCES</p> <p>An element related to the protection and restoration of buildings, <u>structures, sites, districts, object and areas landscapes</u> having archaeological, historic, cultural, scientific or educational values within the shorelines of the City of Blaine.</p> <p>GOAL 4.7: Preserve, protect and restore areas having archaeological, historic, cultural, educational or scientific values or significance through coordination and consultation with the appropriate local, state, tribal and federal authorities.</p> <p>Policy 4.7A: Developments within shoreline areas should be encouraged and <u>shall avoid and minimize, as feasible, where appropriate, required to avoid or minimize</u> impacts to sites having archaeological, historic, cultural, educational or scientific value or significance.</p> <p>Policy 4.7B: Encourage o <u>Opportunities for education related to archaeological, historical and cultural features shall be sought and where appropriate and incorporated such opportunities</u> into public and private programs and development.</p> <p>Policy 4.7C: Encourage the redevelopment of <u>Preserve and re-develop</u> historic structures in a manner that preserves their context, <u>as feasible</u>, while allowing new uses that enhance the goals of this Program.</p>	City requested changes based on comments received from the Washington Department of Archaeology and Historic Preservation (DAHP).

Section 7.0 – Shoreline Jurisdiction and Environment Designations

7.5.3B	Natural Environment Designation – Policies	Access may be permitted for scientific, historical, cultural, educational, and low-intensity water-oriented recreational purposes, provided that <u>these resources will be protected and no significant ecological impact on the area or resource will result.</u>	City requested change.
7.9.1.A	Wharf District	The Wharf District includes a working waterfront with an industrial area, port facilities, a marina providing moorage for commercial fishing vessels, warehouse and storage space for the fishing industry, and space for recreational vessels. The Wharf District plan includes provisions for substantial public access to the shoreline and also for commercial uses and multifamily housing consistent with the character of the area. The plan recognizes the need to regulate development on the shoreline consistent with the wide range of water dependent, water related and water enjoyment commercial, industrial, residential and recreational uses. The Wharf District also includes some of the city’s largest shoreline areas managed for shoreline recreation, those are Marine Park, the Blaine Fishing Pier, and the proposed Plover Park. <u>The Wharf District also includes a public boat launch located at the southeast corner of the marina.</u>	City requested change.

Section 8.0 – General Master Program Provisions

8.1	Archaeological Areas and Historic Sites	Native American and pioneer villages, military forts, old settlers’ homes, and trails were often located on <u>Significant archaeological, cultural, and historic resources can include sites, districts, buildings, structures, objects and landscapes</u>	City requested change based on comments received from the Washington Department of Archaeology and
-----	---	--	--

			<p><u>that enrich our quality of life, provide economic benefits, and provides us with information about the past that continues to shape our community. These resources can be found anywhere but particularly along 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 locations should <u>shall</u> be preserved whenever possible.</u></p>	<p>Historic Preservation (DAHP) during the state comment period for this SMP update.</p>
<p>8.1.1</p>	<p>Archaeological Areas and Historic Sites – Development Regulations</p>		<p>A. The National Historic Preservation Act of 1966 and Chapter 43.51 RCW provide for the protection, rehabilitation, restoration and reconstruction of areas and structures in American and Washington State history. The regulations in these acts shall be followed.</p> <p>B. Following application and prior to issuance of a permit or statement of exemption for a site located within 500 feet of an area known to contain archaeological, cultural or historic resources, the City shall require the proponent to provide a cultural or historic resource site assessment and evaluation by a professional archaeologist or historic preservation professional. Said assessment shall be prepared in consultation with affected tribes and the Washington State Department of Archaeology and Historic Preservation. The cost of any such assessment shall be paid by the proponent. All such evaluations shall be completed to the satisfaction of the Administrator, and the proposed use or development properly conditioned, prior to issuance of a permit and prior to beginning ground disturbing activities. This requirement may be waived by the Administrator upon a finding that the proposed use or activity does not include any ground-disturbing activities and will not impact a known historic, cultural or archaeological site.</p> <p>C. If the cultural resource site assessment identifies the potential presence of significant archaeological, cultural or historic resources, a Cultural Resource Management Plan (CRMP) shall be prepared by a professional archaeologist or historic preservation professional, as applicable. The cost of preparing any such CRMP shall be paid by the proponent. The CRMP shall be prepared in consultation with affected tribes and the State Department of Archaeology and Historic Preservation. The recommendations and conclusions of the CRMP shall be used to assist the Administrator in making final administrative decisions concerning the presence and extent of historic/archaeological resources and appropriate mitigating measures. The Administrator may request revision of a CRMP when the Administrator can demonstrate that the assessment is inaccurate or does not fully address the historic/archaeological resource management concerns involved.</p> <p>D. All shoreline permits involving excavation shall contain provisions which require developers to stop work immediately and secure the affected area and notify the City, affected tribes and the State Department of Archaeology and Historic Preservation if any archaeological, cultural or historic resources or human remains are uncovered during excavation or construction. Upon notification of any such inadvertent discovery, the Administrator shall conduct a site visit and shall consult with the above agencies and appropriate law enforcement authorities to determine the potential significance of the site, whether or not a site assessment and/or Cultural Resource Management Plan is required and whether any additional conditions are necessary to ensure the protection of said resources. Work in the affected area shall not resume until the proponent receives written authorization from the Administrator.</p> <p><u>Known Historic, Cultural or Archaeological Sites</u></p> <p>A. <u>Upon receipt of an application for a shoreline permit or request for a statement of exemption, or application for a demolition permit within the shoreline jurisdictional area, the Shoreline Administrator shall review the DAHP</u></p>	<p>City requested change based on comments received from the Washington Department of Archaeology and Historic Preservation (DAHP) during the state comment period for this SMP update</p>

			<p><u>WISSARD data to determine if the proposed activity is located within 500 feet of an identified archeological resource site.</u></p> <ol style="list-style-type: none"> 1. <u>For development, demolition or exemption of activity on properties within 500 feet of a site known to contain an archaeological resource(s), the City shall require a cultural resource site assessment.</u> 2. <u>The Administrator may waive an archeological resource site assessment for a statement of exemption or demolition permit located within 500 feet of an identified archeological resource site subject to a finding that the proposed use or activity does not include any ground-disturbing activities and will not impact a known archaeological site.</u> 3. <u>Any required archeological site assessment shall be conducted by a professional archaeologist.</u> 4. <u>Archaeological sites identified through an assessment shall be recorded on DAHP Archaeological Site Inventory Forms.</u> <p>B. <u>Buildings or structures over 50 years in age located within the SMU-S or SMU-W Shoreline Designation proposed for demolition or subject to a substantial development permit shall be evaluated by a historic preservation professional and an historic site assessment shall be prepared.</u></p> <ol style="list-style-type: none"> 1. <u>Buildings or structures determined to be of potential historic significance shall be inventoried in a DAHP Historic Property Inventory Database</u> <p>C. <u>The fee for the services of the professional archaeologist or historic preservationist shall be paid by the applicant.</u></p> <p>D. <u>If the site assessment identifies the presence of archaeological or significant historic resources, recommendations shall be prepared by a professional archaeologist or historic preservation professional, as part of the assessment. The fee for the services of the professional archaeologist or historic preservation professional shall be paid by the applicant. In the preparation of such recommendations, the professional archaeologist or historic preservation professional shall solicit comments from the Washington State Department of Archaeology and Historic Preservation, the Lummi and Nooksack tribes, as appropriate for the resource affected. Comments received shall be incorporated into the conclusions and recommended conditions of the assessment to the maximum extent practicable.</u></p> <ol style="list-style-type: none"> 1. <u>A Cultural Resources assessment shall contain the following minimum elements:</u> <ol style="list-style-type: none"> (a) <u>The purpose of the project; a site plan for proposed on-site development; including indication of any existing building or structures on-site as well as any that are proposed for removal; depth and location of all ground disturbing activities including, but not limited to, utilities, paved areas, clearing and grading, landscaping or new landscape features (i.e. fencing, walls, etc.); an examination of project on-site design alternatives; and an explanation of why the proposed activity requires a location on, or access across and/or through, an historic or archaeological resource; and</u> (b) <u>A description of the historic/archaeological resources present, including any building or structure over 50 years of age affected by the proposal; and</u> (c) <u>An analysis of the significance of the historic resource and an analysis of the potential adverse impacts as a result of the activity;</u> 	
--	--	--	---	--

			<p><u>(d) An analysis of how these impacts will be/have been avoided; or</u></p> <p><u>(e) A recommendation of appropriate mitigation measures if the resources cannot be avoided. Some mitigation measure may require a permit from DAHP. In the case of archaeological resources mitigation measures may include but are not limited to the following:</u></p> <ul style="list-style-type: none"> <u>(i) Recording the site with the State Department of Archaeology and Historic Preservation, or listing the site in the National Register of Historic Places, Washington Herritage Register, as applicable, or any locally developed historic registry formally adopted by the City Council;</u> <u>(ii) Adaptive re-use of buildings or structures according to the U.S. Secretary of the Interior’s Standards for Rehabilitation.</u> <u>(ii) Preservation in place;</u> <u>(iv) Covering an archaeological site with a nonstructural surface to discourage pilferage (e.g., maintained grass or pavement);</u> <u>(v) Excavation and recovery of archaeological resources;</u> <u>(vi) Inventorying prior to covering of archaeological resources with structures or development; and</u> <u>(vii) Archaeological monitoring of construction excavation.</u> <p>2. <u>The Administrator shall solicit comments from the Washington State Department of Archaeology and Historic Preservation, and Lummi and Nooksack tribes prior to approval and acceptance of the survey/assessment.</u></p> <p>3. <u>The Administrator may reject or request revision of the conclusions reached in a assessment when the Administrator can demonstrate that the assessment is inaccurate or does not fully address the historic/archaeological resource management concerns involved.</u></p> <p>4. <u>In granting shoreline permits or statements of exemption for such development, the City may attach conditions to require consultation with the Washington State Department of Archaeology and Historic Preservation, Lummi and Nooksack tribes to assure that historic/archaeological resources are properly protected, or for appropriate agencies to contact property owners regarding purchase or other long-term arrangements. Provision for the protection and preservation of historic/archaeological sites, structures or areas shall be incorporated to the maximum extent practicable.</u></p> <p><u>Inadvertent Discovery</u></p> <ul style="list-style-type: none"> A. <u>Whenever archaeological sites or artifacts are discovered in the process of development on shorelines, work on that portion of the development site shall be stopped immediately and the find reported o the Administrator via telephone or direct contact within the same day or as soon as possible.</u> B. <u>The Administrator shall then notify the Washington State Department of Archaeology and Historic Preservation,</u> 	
--	--	--	--	--

			<p><u>Lummi and Nooksack tribes, and other appropriate agencies and shall require that an immediate site assessment be conducted by a professional archaeologist, pursuant to subsection D 1 of this section, documenting any damage to the resource. The site assessment shall be distributed to the Washington State Department of Archaeology and Historic Preservation, the Lummi and Nooksack tribes for a 15-day review period. If the above listed agencies or governments have failed to respond within the applicable review period following receipt of the site assessment, such stopped work may resume.</u></p> <p>C. <u>If human remains are encountered, all activity must cease and the area must be protected and the find reported to City of Blaine Police, the Whatcom County Medical Examiner, and the Administrator.</u></p>	
	8.2	Critical Areas	<p>Impacts to critical areas can result in significant adverse effects to public health and safety, the land and its vegetation and wildlife, and the waters of the state and their aquatic life.</p> <p>Critical Areas include wetlands, fish and wildlife habitat conservation areas, frequently flooded areas, aquifer recharge areas and geologically hazardous areas. Where not specifically addressed within this Program, either directly or through reference, regulation of critical areas within shoreline jurisdiction shall be pursuant to applicable provisions contained in BMC Chapter 17.82 adopted by Ordinance No. 09-2729 in 2009 <u>and Ordinance 10-2762 in 2010. The above-referenced ordinances have been combined and included in Appendix A.</u></p>	City requested change.

Critical Areas Management Regulations			
8.2.2.A	Fish and Wildlife Habitat Conservation Areas – Development Regulations	Buffers shall be established adjacent to critical saltwater habitat and critical freshwater habitat that are equivalent to half the setback distance, or as required in BMC 17.82.410 adopted by Ordinance No. 09-2729 in 2009 <u>and 10-2762 in 2010 (See Appendix A of this Program)</u> , whichever is greater. Where setback is reduced, the buffer shall maintain the nominal distance corresponding to the full setback distance and shall not be reduced proportional to the reduced setback.	
8.2.2.B	Fish and Wildlife Habitat Conservation Areas – Development Regulations	A. When construction of an overwater or near-shore development or establishment of a use requires reduction of a buffer; the proponent shall provide an inventory of site and adjacent upland and aquatic areas to assess the presence of critical saltwater habitats. The methods and extent of the inventory shall be consistent with accepted research methodology, and at a minimum BMC 17.82.400 and 430 as adopted by Ordinance 2729 in 2009 <u>and Ordinance 10-2762 in 2010 (See Appendix A of this Program)</u> . New studies shall be developed only where existing information is inadequate or does not exist.	
8.2.2.G	Fish and Wildlife Habitat Conservation Areas – Development Regulations	The regulation of rivers and streams within shoreline jurisdiction shall be pursuant to Chapter 17.82 BMC, adopted by Ordinance No. 09-2729 in 2009 <u>and Ordinance No. 10-2762 in 2010</u> , which is <u>are combined and</u> incorporated by reference as <u>Appendix A</u> a part of the Blaine Shoreline Master Program with the exception of sections specifically listed in 8.2.1.A of this program. 17.82.140 Reasonable Use Exception and 17.82.120 Exception for Minor Additions & Remodels both of which shall not apply in the shorelands.	
8.5.1.E	Vegetation Conservation – Development Regulations	Tree removal in areas with a slope of 35-percent or greater or on steep slopes or feeder bluffs, as defined in Sec. 10.12 of this Program, is subject to the provisions of BMC 17.82.470 and 480 regarding Geologically Hazardous Areas as adopted by Ordinance No. 09.2729 in 2009 <u>and 10-2762 in 2010</u> , combined and included as Appendix A of this Program.	

Section 9.0 – Shoreline Use Polices & Regulations				
	9.0	Shoreline Use Policies	9.0 SHORELINE USE POLICIES & REGULATIONS	Requested Change – This change clarifies that this section covers both use policies and regulations.
	Policy 9.2D	Commercial Development	Although some activities, such as restaurants, do not require a shoreline location, they do increase public enjoyment of the shoreline and should be given consideration for location there. The design, layout and operation of certain commercial uses directly affects their classification with regard to whether or not they qualify as a water-related or water enjoyment use. For example, restaurants do not require a shoreline location, however if they are designed to facilitate physical and visual access to the shoreline, they can be determined a water enjoyment use.	This change clarifies that the design of a proposed use must be considered on a case-by-case basis before making a determination as a water-oriented use.
	10.7.1.A.2	Landfill and Excavation – Use Regulations	Development within a wetland consistent with the wetland management requirements of Section 78.2 of this Program.	Citation correction.
	10.12.1.C	Geologic Hazardous Areas – Use Regulations	All development shall comply with the applicable provisions set forth in Chapter 17.82 BMC adopted by Ordinance No. 09-2729 in 2009 and 10-2792 in 2010 ⁹ , which have been consolidated and included as Appendix A of this Program.	

Section 11.0 – Shoreline Use Matrix				
	11.0	Shoreline Use Matrix	Add footnote: <u>In the event this table conflicts with other sections of this Program, the written text shall prevail.</u>	This change is recommended to refer to the specific written text of the SMP when there is a conflict with the table. The table is intended to be a quick reference to allowed uses and permitting paths, however the written text found in each specific section is more instructive.