ATTACHMENT B
FINDINGS AND CONCLUSIONS
FOR PROPOSED AMENDMENTS TO THE CITY OF KIRKLAND
SHORELINE MASTER PROGRAM

SMP Submittal January 6, 2010, Resolution R-4786
Prepared by Joe Burcar, on June 27, 2010

Brief Description of Proposed Amendments:
The City of Kirkland (City) has submitted to Ecology for review a comprehensive amendment to their Shoreline Master Program (SMP). The updated master program will reside as a ‘stand-alone’ SMP codified within Chapter 83 and 141 of the City of Kirkland Municipal Code, these elements including changes required by this approval (Attachment C) constitutes the City’s complete Shoreline Master Program.

FINDINGS OF FACT

Need for Amendment: The proposed amendments are needed to comply with the statutory deadline for comprehensive update of the local Shoreline Master Program pursuant to RCW 90.58.100.

SMP Provisions to be changed by the Amendment as proposed: This comprehensive SMP amendment is intended to replace the City’s existing SMP in entirety.

Amendment History (Timeline summary): The City initiated the comprehensive SMP update consistent with a scope of work described within SMA Grant No. GO600236, the original grant was subsidized through additional grant funding (G0900254) in 2009. The City’s statutory deadline pursuant to RCW 90.58.080 is December 1, 2009, however, the City applied for grant funding as an ‘early adaptor’, starting their comprehensive SMP update prior to their scheduled (RCW 90.58.100) grant cycle. The grant agreement originally provided $68,000 to be allocated to the City over two years between July 1, 2005 and June 30, 2007. The grant agreement was signed by both parties on February 6th, 2006, initiating the two-year update process. Pursuant to a legislative amendment to RCW 90.58, a third year was provided for jurisdictions determined to be making “progress toward completing their SMP-update”, thus extending the City’s grant deadline to July 1, 2008. In addition, the City formally requested an additional $9600 of grant funding to finalize the local SMP update process in the spring of 2009. Ecology awarded to the City the additional funding, increasing the total grant allocation to $77,600 spread out over 4-years between 2005 - 2009.

The City committed to locally adopt a SMP on December 1, 2009 through Resolution #4786, for which a formal submittal including supporting materials was provided to Ecology on December 17, 2009. In a letter dated January 6, 2010, Ecology acknowledged a complete SMP submittal initiating the formal State review process. Ecology held a public hearing related to the updated SMP on February 9, 2010, also accepting written comment from February 1st, 2010 through March 5, 2010. After completion of the comment period, Ecology summarized in a letter dated March 19, 2010 all of the comments received along with a request that the City provide a final
response to these comments. The City provided Ecology with the requested final response in a letter dated May 11, 2010.

**Amendment History** (Local Review Process) The City produced a draft Inventory/Characterization Report requesting public and agency comment on the analysis in October of 2006. Ecology provided the City with specific written comments on the report in a letter dated October 4th, 2006. After consideration of public and agency comments, the City produced a revised final Inventory/Characterization Report dated December 2006, which served as a basis of existing conditions, restoration and protection opportunities for the remainder of the update.

The City produced a draft SMP Designation/General Policy Report in June 2007, which served as a starting point for the final draft SMP produced in June 2009. During this timeframe the City continually refined multiple SMP drafts based on citizen input, agency comment, planning commission discussion and community council input. Ecology provided three sets of comments on the draft SMP, generally dated July, September and December 2009. City staff produced a final draft in October 2009, which served as the Planning Commission/Staff recommendation to the City Council for local adoption. The City Council was joined in three separate staff session meetings with the Planning Commission, key City Staff, Ecology and the City’s consultant. The Council generally endorsed the work done by the Planning Commission inserting a few minor changes into the City’s local adoption.

On December 1, 2009, following timely and effective notice, the City of Kirkland Council held a public hearing on local adoption of the Shoreline Master Program Amendment through adoption of Resolution #4786.

With passage of Resolution #4786 on December 17, 2010, the City authorized staff to forward the proposed amendments to Ecology for formal review of: “A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING THE PROPOSED KIRKLAND SHORELINE MASTER PROGRAM UPDATE AND THE ACCOMPANYING GOALS AND POLICIES, ENVIRONMENT DESIGNATIONS, REGULATIONS, RESTORATION PLAN AND CUMULATIVE IMPACTS ANALYSIS”

Ecology verified the proposed SMP amendment as complete on January 6, 2010. Notice of the State (Ecology) comment period was distributed on January 20, 2010 to state task force members and interested parties identified by the City in compliance with the requirements of WAC 173-26 and as follows: The State Department of Ecology comment period began on February 1, 2010 and continued through March 5, 2010 including a public hearing held at Kirkland City Hall on the evening of February 9, 2010. Notice of the comment period and public hearing including: a description of the proposed amendment, a link to copies of the amendment and deadlines for public comment were provided in the January 18, 2010 edition of the Seattle Times Newspaper.

**Consistency with Chapter 90.58 RCW:** The proposed amendment has been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4) and (5). The City has also provided evidence of its compliance with SMA procedural requirements for amending their SMP contained in RCW 90.58.090.
Consistency with “applicable guidelines” (Chapter 173-26 WAC, Part III): The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program Guidelines (WAC 173-26-171 through 251 and -020 definitions). This includes review of a SMP Submittal Checklist. The checklist was originally completed by the City and submitted to Ecology with the City’s initial draft SMP on June 22, 2009. Working with City Staff, Ecology reviewed three updated versions of both the SMP and Checklist including the final SMP checklist listing all previous changes to the draft SMP as completed as of June 2010.

Consistency with SEPA Requirements: The City submitted evidence of SEPA compliance as part of their final submittal to Ecology in December 2009. Ecology did not provide comments on the City’s DNS threshold determination.

Other Studies or Analyses supporting the SMP update: Ecology reviewed the following reports, studies, map portfolios and data prepared by the City in support of the SMP amendment:

- City of Kirkland Shoreline Inventory & Characterization (draft) October 2006, (final) December 2006;
- City of Kirkland Shoreline Environment Designations Summary (draft) June 2007, (final) June 2009;
- City of Kirkland Restoration Plan dated June 2009;
- City of Kirkland, SMP Update – Cumulative Impacts dated June 2009;
- Final SMP-checklist dated December 2009.

Summary of issues raised during the Public Review Process:

Throughout Ecology’s 33-day comment period (February 1 – March 5, 2010) and formal testimony provided during the February 9, 2010 public hearing a range of issues, questions and comments were provided to Ecology related to the City’s SMP update. Below is a list of SMP topics referenced throughout the Ecology comment period:

- 3-testimon’s focused on the following issues: SMP Update Process (Use of Science, Public Involvement), SMP Protections (Marina Use/Wildlife Protection, Shoreline Armoring, Vegetation Management, Setback/Buffer standards).
- 7-written comments submitted on the following issues: SMP Update Process (Public Involvement, Analysis: Use of Science, Effectiveness of Regulations, No-Net-Loss, Restoration), SMP Protections (Setback/Buffers, Vegetation Management Standards, Aquatic Invasive Species), Shoreline Modifications (Piers/Docks, Shoreline Armoring Boating Facilities, Dredging), Shorelines of State-Wide-Significance, Shoreline Uses (Priority-Water-Oriented, Transportation, Utility), Non-Conforming Uses, Public Access and Shoreline Administration.

Pursuant to SMP Guidelines, Ecology summarized all comments received during the public comment period and then provided the summary to the City for a response. The City provided a final response to Ecology on May 11, 2010, for which Ecology has provided a final conclusion in consideration of the original comment, the City’s response and application of the SMP.
Guidelines (WAC 172-26). The complete record of Ecology’s comment summary, the City’s response and Ecology’s final conclusion are provided in Attachment D.

Summary of Issues Identified by Ecology as Relevant To Its Decision:

Based on on-going coordination throughout the SMP update with City Staff, Ecology comments on draft SMP deliverables and review, response and conclusion of public comments (Attachment D), the following provides a general summary of issues relevant to Ecology’s final decision on the City of Kirkland’s SMP:

**Shoreline Update Process:** The City spent more than 4-years working on this SMP update. During this time they provided significant local contributions necessary to supplement grant funding provided by the State. The extra time, staff resources and funding required of this update can largely be contributed to the City’s commitment to actively involve interested parties in the City’s SMP update, beyond the minimal Public Involvement requirements of the Guidelines. This extra effort has helped produce some innovative solutions as part of this SMP update. As stated in the City’s response to a citizen comment related to public involvement, the City held 16-study sessions with their Planning Commission, 9-study sessions before the Houghton Community Council, 4-study sessions before the City Council, 2-open houses, 1-public forum, 1-property owner workshop, 1-shoreline tour, and a separate boat tour. All of these events were advertized and open to the general public. In addition, the City held numerous meetings with specific interest groups including neighborhood associations and other advocacy groups. Despite this dedicated effort by the City, comments critical of the City’s outreach where still voiced throughout the City’s SMP update process. It is important to note that the City did incorporate public input into the Shoreline Master Program as evidence by the many master program amendments between the initial draft SMP release in June 2009 through the final program adoption by the Council under Resolution #4786 in December of 2009.

Ecology also provided an additional public hearing and public comment period after local adoption of the updated SMP. As described within the Findings/Conclusion (Attachment B) at Ecology’s Public Hearing 3-people provided public testimony followed by 7-written comments submitted throughout the 33-day Ecology public comment period. Pursuant to WAC 173-26-120, the City provided a response to these comments, which are included in Attachment D.

**Shoreline Protections:** The City faced a challenge at the onset of this update in creating shoreline Setback/Buffer and Vegetation Management standards that could satisfy no net loss and be administered equitably within the urbanized shoreline environment. Further complicating this task was the existing SMP’s (standard) 15-foot building setback, which was not anticipated to provide neither adequate critical area protection nor satisfy the no net loss Guideline requirement related to future development. Existing development patterns generally established upland structures located at the minimum (15-foot) setback in the urban core of the City, contrasted by large variation throughout the City’s residential shoreline segments, ranging from a median 43-foot setback in the low density residential segment to a 25-feet (median) setback in the medium/high residential shoreline segment.
With the exception of both the Juanita and Yarrow Bay wetland areas, past shoreline development resulted in characterization of a majority of the City’s shoreline as moderate to highly impaired. However, within residential shoreline segments, future redevelopment potential was not consistent, indicating lot-by-lot variation, largely as a result of variation in lot depth or overall parcel size and the ability to accommodate future expansion. Therefore, the City proposed a variable shoreline Setback/Buffer of 30% of the lot depth within a range of a minimum of 30-feet and a maximum of 60-feet. As illustrated within the City’s Cumulative Impact Analysis and based on the existing residential development pattern and variation in redevelopment potential the 30% (lot depth) setback was determined to be the minimum Setback/Buffer to satisfy no net loss\(^1\) of shoreline habitat requirement for the variable residential shoreline parcels. By contrast, both the City’s urban and natural shorelines exhibited more consistent development patterns, not showing significant opportunity for future physical expansion through redevelopment. Therefore, SMP standards related to these areas were more or less upgraded to ensure on-going consistency with the Guidelines.

**Shoreline Modifications:** SMP regulations related to both Piers/Docks and Shoreline Armoring modifications received a lot of attention during the City’s update. Because of the urban/developed condition of a majority of the City’s residential shoreline, many property owners voiced concerns related to maintaining existing Piers/Docks and bulkheads structures. The City proposed Shoreline Armoring regulations consistent with the standards provided in Guidelines, allowing for repairs of existing hard armoring structures, but limiting new and replacement hard armoring to those situations where a primary structure is shown to be in need or dependent on a hard armored bulkhead to protect the upland structure from erosion.

For Pier/Dock standards, the City’s obligation under the update was to maintain or improve aquatic ecological functions by minimizing or reducing (overall) overwater structure. Again, because of the urban/developed nature of the City’s shoreline, a majority of the existing residential lots are already developed with private Pier/Docks, for which property owners voiced concern related to maintenance and redevelopment potential of these structure. Further, most of the existing Pier/Dock structures were developed prior to current State or Federal standards specifying construction material and orientation/dimension of these overwater structures to minimize impacts to aquatic species. Through regional coordination with neighboring Lake Washington jurisdictions, the City incorporated impact minimizing residential Pier/Dock standards based on Regional General Permit standards developed by the Army Corps of Engineers (ACOE) with input from Washington Department of Fish and Wildlife (WDFW) and NOAA-Fisheries. These Pier/Dock standards are intended to address Endangered Species Act (ESA) fish habitat concerns, for which individual ESA

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\(^1\) In other words, a setback buffer based on a lower % of lot depth would increase overall redevelopment potential resulting in a larger net loss of shoreline habitat (upland buffer area), which would then have to be offset with some type of restoration. Alternatively, establishment of a Setback/Buffer based on a higher lot percentage would further restrict redevelopment to locations further away from the shoreline edge, increasing overall (potential) shoreline habitat area above existing conditions.
consultation is waived for proposals that are consistent with these standards. By including the Regional General Permit standards into the City’s SMP, property owners are provided with an incentive to upgrade their Pier/Dock structures to comply with these standards, thus avoiding expensive, unpredictable and time consuming individual ESA consultation.

Finally, the City spend a significant amount of time creating Vegetation Management standards that their residential property owners could accept while also satisfying their no net loss obligation under the Guidelines. The central issue was related to tree planting mitigation standards and concerns associated with view impacts. Along these same lines, the City also developed tree retention standards, defining significant tree characteristics and establishing replacement standards for both volunteer and involuntary removal.

Changes to the locally adopted SMP: Attachment C provides an itemized list of amendments to the December 1, 2009 (Resolution #4786) locally adopted SMP. These changes are required as part of Ecology’s approval of the updated SMP pursuant to WAC 173-26-120. Specifically, the required changes will ensure that the updated SMP is consistent with WAC 173-26 (SMP Guidelines).

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the City’s SMP proposal, subject to and including Ecology’s required changes (itemized in Attachment C), is consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions). This includes a conclusion that the proposed SMP, subject to required changes, contains sufficient policies and regulations to assure that no net loss of shoreline ecological functions that is anticipated to result from implementation of the new master program amendments (WAC 173-26-201(2)(c).

Consistent with RCW 90.58.090(4), Ecology concludes that those SMP segments relating to critical areas within Shoreline Management Act jurisdiction provide a level of protection that will achieve no net loss of ecological functions.

Ecology concludes that those SMP segments relating to shorelines of statewide significance provide for the optimum implementation of Shoreline Management Act policy (RCW 90.58.090(5).

Ecology concludes that the City has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the City has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 regarding public and agency involvement in the SMP amendment process.

Ecology concludes that the City has complied with the purpose and intent of the local amendment process requirements contained in WAC 173-26-100, including conducting open houses and public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.
Ecology concludes that the City has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the City’s SMP amendment was complete pursuant to the requirements of WAC 173-26-110 and WAC 173-26-201(3)(a) and (h) requiring a SMP Submittal Checklist.

Ecology concludes that it has complied with the procedural requirements for state review and approval of shoreline master program amendments as set forth in WAC 173-26-120.

Ecology concludes that the City has chosen not to exercise its option pursuant to RCW 90.58.030(2)(f)(ii) to increase shoreline jurisdiction to include buffer areas of all critical areas within shorelines of the state. Therefore, as required by RCW 36.70A.480(6), for those designated critical areas with buffers that extend beyond SMA jurisdiction, the critical area and its associated buffer shall continue to be regulated by the City’s critical areas ordinance. In such cases, the updated SMP shall also continue to apply to the designated critical area, but not the portion of the buffer area that lies outside of SMA jurisdiction. All remaining designated critical areas (with buffers NOT extending beyond SMA jurisdiction) and their buffer areas shall be regulated solely by the SMP.

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendments are consistent with the policy of the Shoreline Management Act, the applicable guidelines and implementing rules, once changes set forth in Attachment C are acknowledged by the City. Ecology approval of the proposed amendments with changes (Attachment C) will become effective on the date at which Ecology receives written notice that the City has agreed to all of the changes listed in Attachment C.

As provided in RCW 90.58.090(2)(e)(ii) the City may choose to submit an alternative to all or part of the changes required by Ecology. If Ecology determines that the alternative proposal is consistent with the purpose and intent of Ecology’s original changes and with RCW 90.58, then the department shall approve the alternative proposal and that action shall be the final action on the amendment.