ATTACHMENT A: FINDINGS AND CONCLUSIONS – REVISED

AMENDMENTS TO THE CITY OF BURIEN’S SHORELINE MASTER PROGRAM
FIRST SUBMITTED TO THE DEPARTMENT OF ECOLOGY AS RESOLUTION 317
ALTERNATIVE LANGUAGE APPROVED THROUGH ORDINANCE 518

Brief Description of Proposed Amendments: The City of Burien (City) has submitted to the Department of Ecology (Department) a comprehensive update of its shoreline master program (SMP). The City is adopting the Critical Areas Ordinance (CAO) as part of the SMP by direct reference. The CAO was originally adopted as Ordinance 394, BMC 19.40, on October 20, 2003, and utilized Best Available Science. In order to be consistent with Chapter 173-26 WAC - Part III Guidelines, (Guidelines) and the no net loss of ecological functions standard, some changes were required.

FINDINGS OF FACT

Need for Amendment: The City currently uses an older version of King County’s SMP hence a tailored set of policies and regulations are needed. The proposed update is required to bring the SMP into compliance with RCW 90.58.080 – Timetable for local governments to develop or amend master programs and the most recent standards for SMPs as set forth in the Guidelines.

Amendment History, Review Process: The data shows that the City’s developed shorelines consist almost entirely of single, family, residential homes. Roughly 5-miles of marine shorelines exist, a little over a mile of which is City park. The marine shorelands consist of a mix of high density homes and undeveloped, steep slopes. Few lots are completely undeveloped. Lake Burien is roughly 1.5-miles of shoreline surrounded by single family homes with the exception of a single parcel currently utilized as a children’s center.

The City began its SMP update in late 2007 through a grant from the Department. The record shows numerous Citizen Advisory Committee meetings and public workshops conducted by the Citizen Advisory Committee, Planning Commission and City Council between March 2008 and September 2010.

The record shows that a SEPA Final Environmental Impact Statement Addendum was issued on April 9, 2010. The State of Washington Department of Commerce (Commerce) received the shoreline master program materials on April 12, 2010, for the required 60-day review period. In a letter dated April 13, 2010, Commerce indicated that it had received the document and had forwarded notice of the City’s actions to other state agencies.

The Burien Planning Commission recommended approval of the SMP at its March 30, 2010, meeting. The Burien City Council adopted the SMP on September 27, 2010, through Resolution 317. The Resolution references Exhibit A which is the City’s SMP comprised of Chapters I through VI which includes the Shoreline Environment Designation Map – 20.25.025 Figure 3 and Critical Areas Ordinance BMC 19-40 (Ordinance 394, adopted October 20, 2003).
The proposed SMP amendment was received by Department for state review and approval on October 19, 2010. The submittal was verified as complete on October 21, 2010.

Along with interested parties identified by the City, notice of the state comment period was distributed to state task force members and other interested parties on November 2, 2010, in compliance with the requirements of WAC 173-26-120 – State process for approving/amending shoreline master programs. The state comment period began on November 5, 2010, and continued through December 17, 2010.

The Department held a public hearing at the Burien City Hall to seek input on the proposed amendments. Notice of the hearing, including a description of the proposed amendment and the authority under which the action is proposed, the times and locations of the hearings, and the manner in which interested persons may obtain copies and present their views was provided in the Seattle Times, the City's official newspaper of record.

Over fifty individuals or organizations submitted comments on the proposed amendments during the state comment period. The Department sent a summary of the comments to the City on January 5, 2010. The City subsequently submitted to the Department its responses to issues raised during the state comment period on February 18, 2011.

On April 22, 2011, the Department forwarded the City notice of approval of its SMP (Director’s Letter and Attachment A) with required (Attachment B) and recommended changes (Attachment C). On May 25, 2011, the Department received the City response. Most of the changes were accepted, some alternative language was proposed and a few required changes were not accepted. The City initially chose not to negotiate a resolution to the disputed required changes and the Department began planning for the rule adoption process. Subsequently, the Department was approached by a city council member with the idea of forming a “Shoreline Working Group” (SWG) to develop alternative language acceptable to both the City and the Department. The SWG was made up of four citizens and the city council member. At the Department’s suggestion, the City withdrew its May 25th letter as the SWG began meeting in late 2011.

Over roughly the next 18-months the SWG met regularly while occasionally conferring with the Department. Most of that time was spent developing alternative marine, shoreline buffers. In order to comply with Ecology Guideline requirements, the SWG updated the SMP supporting documents to justify the alternative approach. Eventually revised language prepared by the SWG was offered to the City Officials for review and approval. The City held a public hearing on May 6th, 2013, and on June 3, 2013, approved by Ordinance #518 a new response to the Department’s required and suggested changes. The ordinance and supporting documents were sent to the Department on June 10, 2013. The city indicated the changes by editing the originally submitted SMP in underlining/strikeout format and with imbedded comments indicating the source of the change i.e. required by DOE, suggested by DOE, suggested by SWG. The City also took the opportunity to make clerical changes and minor edits.

In order to summarize the changes, the Department has created three matrices which are attached: Matrix A, Alternative Language to Ecology’s Required Language; Matrix B, Ecology
Recommended Changes Not Accepted or Alternative Language Offered; Matrix C, Additional Changes Approved by the City of Burien. Justification for any changes is in the matrix.

**Consistency with Chapter 90.58 RCW:** The proposed amendments have 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 an 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 included review of a SMP Submittal Checklist, which was completed by the City.

**Consistency with SEPA Requirements:** The City issued a SEPA addendum on April 9, 2010, consistent with WAC 197-11-600. The preparation and notice of addenda was done in accordance with WAC 197-11-625.

**SUMMARY OF ISSUES RAISED DURING THE PUBLIC REVIEW PROCESS:**

Nonconforming structures, buffers and public access were among the list of concerns expressed by citizens.

**Nonconforming structures and buffers:** The SMP development process initially proposed a marine, shoreline buffer of 50-feet with a 15-foot setback for single family homes and most accessory structures. The distance was based primarily on information found in "Protecting Nearshore Habitat and Functions in Puget Sound, an Interim Guide" – EnviroVison et al., October 2007, (Revised June 2010) and analysis of the existing development pattern. The 50-foot buffer was proposed as a reasonable balance between the distances of existing primary structures from the shoreline with the science for protecting the remaining ecological functions. It should be noted that the submitted SMP includes a 150-foot “vegetation conservation buffer”. This buffer allows new development and redevelopment while regulating the removal of vegetation through a vegetative management plan. Among other things, the regulations state that the management plan should place an emphasis on mitigation that revegetates the first 20-feet adjacent to the ordinary high water mark (OHWM) with native vegetation.

The 50-buffer with 15-setback was advanced by both the citizen Shoreline Advisory Committee and Burien Planning Commission. Allowances were included in the SMP for the reduction of this distance through a common line setback up to 20-feet in areas where density is the highest and homes are closest to the shoreline. Provisions were also created that utilized conditional use and variance permits to reduce the buffer/setback. During the review stage by the City Council, concern was expressed by property owners that homes made nonconforming because of the buffer/setback would lose their value, be difficult to sell and the possibility of expansion or to rebuild questionable. Ultimately the City Council directed staff to reduce the buffer from 50-feet to 20-feet consistent with the existing 20-foot marine setback, and eliminate the proposed 15-foot setback to the buffer. At the same time the City chose to make all legal use and development
conforming. As previously stated the SWG has developed an alternative buffer that has been adopted by the City and submitted for the Department’s approval.

Public Access: While there is currently no public access to the Lake Burien, there is a possibility that it could exist in the future, primarily as a part of redevelopment of one particular lot. The City chose to adopt language in the Recreation section of the SMP that prohibits the launching of watercraft from any future public access site on the lake. The Department denied this language as part of its original decision based on a determination that such a prohibition was inconsistent with the public access requirements of the SMA and Guidelines. The City has now accepted the removal of the language.

CONCLUSIONS OF LAW

The City of Burien’s updated shoreline jurisdiction does not include expanded jurisdiction necessary for buffers of critical areas within shorelines of the state (RCW 90.58.030(2)(f)). Therefore, as required by RCW 36.70A.480(6), those critical areas and their buffers not within shoreline jurisdiction as defined by RCW 90.58.030(2.d. or 2.d.i.) shall be regulated by the City’s Critical Areas Ordinance.

The review of the record indicates that the City has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

The review of the record indicates 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.

The review of the record indicates 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 and government agencies.

The review of the record indicates that the City has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

The City’s amendment submittal to the Department was complete pursuant to the requirements of WAC 173-26-110.

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

With the City’s acceptance of the Department’s required changes in addition to alternative language offered by the City, the record submitted indicates that the City’s SMP proposal is fully 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). The Department further concludes that those SMP segments relating to shorelines of statewide
significance provide for the optimum implementation of SMA policy. The record shows that the implementing policies and regulations, as well as the shoreline environment designations, are based on the inventory, characterization and analysis.

DECISION AND EFFECTIVE DATE

The Department has required a number of changes as indicated in Attachment “B”. The Department has also provided a number of suggested changes listed in Attachment “C”. Based on all preceding records, the Department has determined the proposed amendments, with required and alternative changes proposed by the City, are consistent with the policy of the Shoreline Management Act, the applicable Guidelines and implementing rules. The Department’s approval of the proposed amendments along with the required and alternative changes is effective 14 days from the date of the Director’s letter approving the changes. This will represent the City’s and the Department’s final action regarding the proposed SMP update.