FINDINGS AND CONCLUSIONS
FOR PROPOSED AMENDMENTS TO THE CITY OF KENMORE
SHORELINE MASTER PROGRAM

SMP Submitted November 8, 2010, and Complete on February 14, 2011, Ordinance Numbers 10-312 and 10-313
Prepared by David Radabaugh, on June 23, 2011
City Response to Required and Recommended Changes Submitted November 22, 2011
Further City Response on January 4, 2012
Revised Ordinance Adopted by the City of Kenmore on February 13, 2012
Revised by David Radabaugh on February 23, 2012 to address City of Kenmore Proposed Alternatives with Additional Rationale in Red.

Brief Description of Proposed Amendments:

The City of Kenmore is proposing a comprehensive update to their Shoreline Master Program (SMP). The City has requested that the Department of Ecology approve the following:

- Shoreline Policies,
- Shoreline Regulations (including incorporated ordinances), and
- Shoreline Restoration Plan.

The updated SMP will reside as a chapter in the Kenmore Comprehensive Plan, a chapter in the Kenmore Municipal Code with many provisions of the Kenmore Critical Areas Ordinance incorporated by reference.

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.


The Kenmore City Council considered the SMP from February 25, 2010 to September 13, 2010. The City Council opened a public hearing on the SMP on March 29, 2010. The public hearing was held open for public comment until September 13, 2010.
During the development of its SMP, the City received comments from property owners and their representatives, environmental organizations, government agencies, consultants, and various individuals.


The City issued a Determination of Nonsignificance for the SMP on August 25, 2009. With passage of Ordinances 10-312 and 10-313, on September 13, 2010, the City authorized staff to forward the proposed amendments to Ecology for approval.

The proposed SMP amendments were received by Ecology for state review on November 5, 2010. The submittal was found incomplete on January 21, 2011. Submittal of additional information was made on February 2, 2011 and February 11, 2011. The SMP submittal was verified as complete on February 11, 2011. The state comment period began on March 15, 2010 and continued through April 15, 2011. On March 31, 2011, Ecology held a public hearing in Kenmore 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 hearing/s and the manner in which interested persons may obtain copies and present their views was provided in the March 10, 2011 edition/s of the Seattle Times, the City official newspaper of record. Notices were mailed to interested parties identified by the City on March 11, 2011. Eighteen individuals or organizations submitted comments on the proposed amendments. Ecology sent all oral and written comments it received to the City on April 25, 2011. On May 3, 2011, the City submitted to Ecology its responses to issues raised during the state comment period. Ecology’s own responses to issues raised during the comment period are available as part of the SMP amendment process record.

Ecology approved the SMP with required and suggested changes on July 25, 2011. The City of Kenmore responded with correspondence on November 22, 2011, January 4, 2011, and adoption of a revised ordinance on February 13, 2012. Ecology received the revised ordinance on February 22, 2012. The City of Kenmore has acceptably revised required changes 6 and 9 and accepted all other required changes. The City has accepted 8 of the 11 recommended changes, including suggested changes 1, 2, 5, 6, 7, 8, 9, and 11. The City of Kenmore has rejected suggested changes 3 and 4. The City of Kenmore has acceptably revised recommended change 10. The City also proposed one clarification to the adopted CAO to make the language consistent with an update to the CAO which occurred in the summer of 2011.

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 (see above) 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.

Ecology reviewed SMP Inventory and Characterization Report, the Restoration Plan, and Cumulative Impacts Analysis for consistency with the Guidelines. Ecology reviewed the SMP goals, policies, regulations, environment designations, maps, administrative provisions, definitions, and legal provisions for consistency with the Guidelines.

The Inventory and Characterization Report and Chapters 4 and 7 of the SMP provide a foundation for the environment and buffer system contained in the SMP. The SMP contains provisions for shoreline environments, archaeological and historic resources, critical areas, flood hazard reduction, public access, shoreline vegetation conservation, shoreline stabilization, piers and docks, fill, and dredging, breakwaters, jetties, groins, and weirs. Shoreline habitat and natural systems enhancement is addressed through the restoration plan, and buffer requirements.

The SMP addresses uses that could be relevant to the Kenmore shoreline including aquaculture, boating facilities, commercial development, manufacturing, recreational development, residential development, transportation, and utilities. The SMP is also addresses shorelines of statewide significance. The SMP contains procedures for administering the shoreline regulations. Kenmore’s Lake Washington and Sammamish River shorelines are shoreline of statewide significance.

Consistency with SEPA Requirements: The City submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance for the proposed SMP amendments on August 25, 2009. Ecology did not comment on the DNS

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

- Draft Inventory of Data Sources dated November 5, 2007
- Shoreline Inventory and Characterization Report dated April 2008
- Shoreline Restoration Plan dated June 24, 2009
- Shoreline Restoration Plan dated November 2010
- Public Access Memorandum dated June 30, 2009
- Cumulative Impacts Analysis dated February 4, 2010
- Cumulative Impacts Analysis revised November 5, 2010
- SEPA Checklist dated August 2009
- Draft Shoreline Master Program dated June 30, 2009
- Draft Shoreline Master Program dated February 2010
- Shoreline Master Program dated September 13, 2010
Summary of Issues Raised During The Public Review Process: There was on-going public interest expressed during the City's SMP amendment drafting/public review process. Ecology conducted a formal public comment period and public hearing during its review of the SMP. Issues raised during the Ecology comment period have been addressed in a responsiveness summary. Considerable debate centered on the following topics:

Pier and Dock Standards

One individual advocated for less strict pier and dock standards. The standards adopted by the City substantially follow the standards articulated in the United States Army Corps of Engineers, Seattle District, Regional General Permit 3. This is an appropriate method to achieve no net loss of ecological function in this subject area.

Environment Designation of Log Boom Park

One individual advocated for designating Log Boom Park as a Natural environment. Given the level of development at the park, including a pier, parking and walkways, the Urban Conservancy designation adopted by the City seems appropriate.

Restoration Plan

Concern was raised that the Restoration Plan was not detailed enough and did not adequately identify priorities and funding. It is a suggested change that additional information regarding restoration priorities and funding be added.

Industrial Activities in Shoreline Areas

One individual raised concerns regarding the operation for water-dependent industrial uses. The City noted that water-dependent uses can located on the shoreline, including within buffers, so long as the use achieves no net loss of ecological function.

Height Limits- H-3 and H-4 Areas

Late is the City adoption process, building height limits were somewhat relaxed in two areas where redevelopment is anticipated or advocated. These were identified as the H-3 and H-4 areas. Building heights could be up to 45 feet in the building is at least 50 feet from the Ordinary High water mark and 65 feet if the building is at least 100 feet from the Ordinary High Water Mark.
Most of Area H-3 is in a floodway. Within a floodway, commercial buildings cannot cause any rise in the flood elevation and residences are prohibited. The increased height limits are inconsistent with other provisions for this area and inconsistent with recognizing the statewide interest of limiting development in floodways. This provision does not protect a statewide interest as discussed in WAC 173-26-181. A proposal is being made to reduce the area of the floodway in this area. A change to the SMP is required to ensure that increased building heights are not located in floodways or critical area buffers.

Most of Area H-4 is in a floodway, floodplain or critical area. The standard buffer for a Class 1 stream (as the Sammamish River is classified) is 150 feet. The necessary critical area buffers largely render the provision for increased height limits meaningless. As drafted, this provision is inconsistent with critical area provisions for this area as articulated in WAC 173-26-221. A change is required to ensure that increased building heights are not located in floodways or buffers.

Accessory uses counted as part of a water-dependent use

While accessory uses may be necessary for certain water-dependent uses to function, a focus on accessory uses should not be allowed to minimize the water-dependent uses in shoreline jurisdiction. Concern was raised that nonwater-dependent uses could be counted as water-dependent uses in this portion of the SMP. A change is required to ensure that a nonwater-dependent accessory uses are associated with a water-dependent use and are the minimum necessary to support the water-dependent use. This change provides a limit for how much an accessory use can encumber a site dedicated to a water-dependent use consistent with WAC 173-26-201(2)(d).

Shoreline Designations

During the review of the Draft SMP, we noted that:

The southern portion of Reach Lake WA – 2 is designated Urban Conservancy in the SMP. This area appears to have much in common with Reach Lake WA – 1, which is designated Natural. Why is this area designated Urban Conservancy rather than Natural?

The Planning Commission did not believe that private property should be placed in a Natural designation. After reviewing this rationale, Ecology believes that private property can be designated Natural if it meets that designation criteria for doing so. The designation of the property immediately north of St. Edwards Park on Lake Washington should be based on the designation criteria at WAC 173-26-211(5)(a) and (e) and the Natural and Urban Conservancy designation criteria in the SMP. This change is consistent with WAC 173-26-211(5)(a)(iii).

Alternative Pier Design
Concern was expressed regarding the SMP's allowance for piers serving commercial or industrial uses. While the SMP allows for alternative pier design so long as the pier achieves no net loss of ecological function, it is not a well defined provision. The required changes make it clear that commercial piers can be proposed that are the documented minimum necessary to accomplish the water dependent for which they are designed and that the meets or exceeds the specific ecological protective measures in the remainder of the pier and dock section. This change provides consistency with WAC 173-26-231(3)(b) and WAC 173-26-201(2)(c).

The City of Kenmore proposed an alternative to clearly allow piers for water dependent manufacturing activities. This clarifies the intent of the required change that piers for water-dependent commercial or manufacturing uses be allowed. Such piers must expressly meet the "no net loss of ecological function" standard. This change is necessary so that the Kenmore SMP makes provision for water-dependent uses as envisioned by the Shoreline Management Act.

Commercial Uses in Urban Conservancy Environment Designation

Concern was expressed regarding commercial uses in the Urban Conservancy environment. While the Kenmore SMP does allow for commercial uses in the Urban Conservancy environment, it is required that any such project demonstrate ecological enhancement. Given that the standard buffer from Lake Washington for commercial uses is a minimum of 115 feet. The standard buffers on the Sammamish River and Swamp Creek are 150 feet in the Urban Conservancy environment, the environment designation is consistent with the Urban Conservancy management policies found at WAC 173-26-211(5)(e).

Summary of Issues Identified by Ecology as Relevant To It’s Decision:

Channel Migration Zone on Swamp Creek

In order to meet the requirements of WAC 173-26-221(3)(c) provision for a channel migration zone on Swamp Creek has been added as a required change. As adopted by the City Council, the Kenmore SMP relies on a future administrative policy will regulate channel migration zones. This is insufficient to be compliant with the Shoreline Guidelines. In order to be consistent with WAC 173-26-221(3)(c), a required change identifies the channel migration area for Swamp Creek and provides regulations to be minimally compliant with the Guideline requirements.

Expansion of Nonconforming Piers and Docks
The SMP has a strong set of design standards for new piers and docks that include a requirement for 3 foot wide ramps, 4 foot wide piers, deck grating, size limits on the first set of piles near shore, and a 150 foot overall limitation. The adopted SMP allows for an expansion of a legally existing dock of 25 percent of the existing size so long as there is a demonstration that the proposal would reduce the impacts to critical fish habitat and cause no harm to adjacent uses of the shoreline. The required change incorporates many of the design standards for new piers and docks and requires that expanded docks be no larger than the minimum necessary to accomplish their water dependent use. This change is necessary to address public comments while still providing an incentive to improve the environmental performance of docks consistent with WAC 173-26-231(3)(b).

Definition of Critical Areas

Rather than simply make a reference to another section of the Kenmore Municipal Code the definition of "critical areas" should be within, or incorporated into, the SMP. The definition of critical areas is being added to the SMP.

Wetland Definition

The definition of wetland is being changed to ensure that wetland definition is current.

Wetland Mitigation Ratios

The SMP incorporates the following wetland mitigation ratios:

<table>
<thead>
<tr>
<th>Wetland Class</th>
<th>Mitigation Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class 1</td>
<td>3 to 1</td>
</tr>
<tr>
<td>Class 2</td>
<td>2 to 1</td>
</tr>
<tr>
<td>Class 3</td>
<td>1 to 1</td>
</tr>
</tbody>
</table>

Current Department of Ecology guidance calls for the following mitigation ratios:

| Category and Type of Wetland | Creation or Re-establishment | Rehabilitation | Enhancement | Preservation |
|------------------------------|------------------------------|----------------|-------------|--------------|--------------|
The mitigation ratios found in the adopted KMC 18.55.330(G) compare unfavorably with Table 8C-11 from Wetlands in Washington State, Volume 2 – Protecting and Managing Wetlands, April 2005 – Ecology Publication #05-06-008. The city has not demonstrated that the inclusion of the standards for mitigation ratios in KMC 18.55.330(G) meets current BAS and will not result in a net loss of functions within the shoreline jurisdiction. The submittal of a single page (Page 10 of “Draft BAS Technical Memorandum” – Section 2.6.2 Mitigation Ratios) does not demonstrate that the proposed mitigation replacement ratios would assure no net loss of shoreline ecological functions necessary to sustain shoreline natural resources. The proposed ratios are not consistent with BAS which Ecology utilized in the creation of Table 8C-11 from Wetlands in Washington State, Volume 2 – Protecting and Managing Wetlands, April 2005 – Ecology Publication #05-06-008.

After additional discussion, the City and Ecology agreed to the flowing mitigation ratios:

<table>
<thead>
<tr>
<th>Category and Type of Wetland</th>
<th>Creation or Reestablishment (C/R)</th>
<th>Creation (C) or Reestablishment (R) plus Enhancement (E)</th>
<th>Enhancement (E) Only</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class 1</td>
<td>3:1</td>
<td>1:1 C/R plus 6:1 E</td>
<td>Not Allowed</td>
</tr>
<tr>
<td>Class 1 (Mature Forested)</td>
<td>6:1</td>
<td>1:1 C/R plus 20:1 E</td>
<td>Not Allowed</td>
</tr>
</tbody>
</table>

Table 3
Ecology/City of Kenmore Agreed Mitigation Ratios
The City provided supplemental analysis on June 21, 2011 supporting the revised mitigation ratios. The analysis noted that:

*This proposed mitigation ratios are similar to Ecology’s recommended ratios, except with regard to the creation-plus-enhancement ratio recommended by Ecology for Category II. The slightly smaller enhancement component (6:1 proposed versus 8:1 in the Ecology system) still more than mitigates for wetland impacts in the City’s shoreline, and provides sufficient disincentive to prevent most wetland impacts. The mitigation sequencing and prohibition on impacts to Class 1 wetlands, which represents the majority of wetlands in Kenmore’s shoreline, has proven effective in the five years since the Kenmore CAO was adopted.*

Ecology has concluded that the memo adequately explains the City of Kenmore’s proposed wetland mitigation ratios for the city’s 3-tier wetland rating system relative to Ecology’s recommended ratios based on a 4-tier system and Ecology’s wetland functional rating system. Ecology is prepared to accept the alternative proposal for the City of Kenmore’s SMP update for wetland mitigation ratios as presented in Table 3.

The City has proposed language that makes it clear that the revised wetland mitigation ratios only apply within shoreline jurisdiction.

Ecology has noted its strong preference to see the city adopt Ecology’s 4-tier wetland ratings system and the corresponding mitigation ratios. Ecology has also noted that any proposed impacts to wetlands within shoreline jurisdiction that require state or federal authorization will also require the use of Ecology’s 4-tier wetland rating system and corresponding mitigation ratios.

**Measurement of Wetland Buffers**

A change within the incorporated critical area ordinance is necessary to ensure that wetlands are delineated correctly and that wetland buffers are measured correctly. Wetland buffers shall be measured from the wetland edge as delineated and marked in the field using the Washington State Wetland Delineation Manual (1997) or as may be revised in WAC 173-22-035 and WAC 173-22-080.

This minor change will allow the SMP to stay current with state law.

**Mitigation Standards**
Change is necessary to ensure that wetland standards are current. This section in the adopted SMP references outdated mitigation guidelines for developing freshwater wetland mitigation plans. While it does say “as revised” it is not clear whether this means that applicants should be using the most current Ecology guidance on developing wetland mitigation plans. Adopting the current language found in KMC 18.55.330(A) within the SMP update would not be consistent with BAS. This section of code should be amended.

Mitigation Sequencing

A change is necessary to make the mitigation sequencing requirements in the SMP consistent with the mitigation sequencing requirements in the Guidelines. The required change clarifies that mitigation sequencing is a requirement for all projects consistent with WAC 173-26-201(2)(e)(i). The incorporated mitigation sequencing section was missing the requirement to monitor the impact of compensation projects and take appropriate corrective action, if necessary.

Buffers for the Urban Conservancy Environment

The shoreline density and dimensions table at KMC 16.65.020 does not have buffer dimensions for commercial development in the Urban conservancy environment. This was an oversight. The intended buffers are 115 feet for water-dependent related commercial development and 150 feet for nonwater-dependent and nonwater-related commercial development.

Endangered, Threatened, and Sensitive species

The City proposed modified language to one section of the incorporated Critical Areas Ordinance (CAO) in KMC 18.55.530. The old section could be interpreted to prohibit all development in areas where a listed or sensitive species has a primary association. The modification would allow development if it meets the requirements of the CAO and SMP.

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 B), 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 will result from implementation of the new master program amendments (WAC 173-26-201(2)(c)).

Ecology also concludes that a separate set of recommended changes to the submittal (identified during the review process and itemized in Attachment C) would be consistent with SMA policy and the guidelines and would be beneficial to SMP implementation. These changes are not required, but can, if accepted by the City, be included in Ecology’s approved SMP amendments.
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 submittal to Ecology 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.

The City of Kenmore and the Department of Ecology are in agreement on the required changes, including alternative language proposed by the city. The City of Kenmore has acceptably revised required changes 6 and 9 and accepted all other required changes. The City has accepted 8 of the
11 suggested changes, including suggested changes 1, 2, 5, 6, 7, 8, 9, and 11. The City of Kenmore has rejected suggested changes 3 and 4. The City of Kenmore has acceptably revised suggested change 10.

The Kenmore SMP can be approved by Ecology after the city formally adopts the changes discussed herein.

This SMP can become effective 14 days after approval by Ecology.