

ATTACHMENT A: FINDINGS AND CONCLUSIONS FOR PROPOSED PERIODIC REVIEW OF CITY OF KENMORE SHORELINE MASTER PROGRAM

SMP Submittal accepted June 27, 2019, Ordinance No. 19-0489, 19-0490, 19-0488
Prepared by Department of Ecology on January 13, 2020

Use of this Document

Ecology's *Findings and Conclusions* (Attachment A) provides the factual basis for Ecology's decision on the City of Kenmore's (City) amendment to their Shoreline Master Program (SMP). This document is divided into three sections: **Findings of Fact**, which provides findings related to the City's proposed amendment, amendment history, and the review process, **Conclusions of Law**, and **Ecology's Decision and Effective Date** of the amendment.

Attachment B outlines Ecology's identified required and recommended changes to the SMP amendment. Ecology requested input from Kenmore on some of the required changes. Kenmore proposed revisions to the SMP amendment based on these required changes, which are shown in Attachment C.

Brief Description of Proposed Amendment

The City of Kenmore (City) has submitted Shoreline Master Program (SMP) amendments to Ecology for review to comply with periodic review requirements. Additional reports and supporting information and analyses noted below, are included in the submittal.

FINDINGS OF FACT

Need for amendment

The proposed amendments are needed to comply with the statutory deadline for a periodic review of the City's Shoreline Master Program pursuant to RCW 90.58.080(4). The City prepared a checklist that documents proposed revisions. The amendment brings the SMP into compliance with requirements of the Shoreline Management Act (Act) or state rules that have been added or changed since the last SMP amendment, ensures the SMP remains consistent with amended comprehensive plans and regulations, and incorporates revisions deemed necessary to reflect changed circumstances, new information, or improved data.

SMP provisions to be changed by the amendment as proposed

The sections of the City SMP proposed for change are described below:

1. To bring the SMP into compliance with requirements of the Act or state rules that have changed:
 - a. Amendments to the definition of development, definitions for floating residences, and procedures for filing permits (KMC 16.75.080).

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- b. New sections added to list exceptions to local review under the SMA (KMC 16.75.015), and to list relief procedures for restoration projects that shift the OHWM (KMC 16.75.055).
 2. To ensure the SMP remains consistent with amended comprehensive plans and regulations:
 - a. Updated 2019 critical areas regulations (Ordinance 19-0488) are incorporated by reference. Amended regulations include:
 - i. 18.55.090 – addition of critical aquifer recharge areas to the City’s list of critical areas.
 - ii. 18.55.140 – fencing requirements for critical areas are amended.
 - iii. 18.55.200 and 210 – amended to make clarifications on mitigation sequencing
 - iv. Article VII Wetlands. Designation and rating sections amended to require use of federal delineation manual and Ecology’s 2014 rating system. Required wetland buffers are updated to match Ecology’s recommended buffers for when minimizing measures are implemented. The amendment clarifies that if an existing wetland buffer is degraded, it shall require a 33% larger buffer to protect the wetland, unless a buffer improvement plan is implemented. Amendment to allow private and public walkways and trails in wetlands and buffers. New allowance for interrupted buffers. Allowances for use of credit/debit method and in-lieu fee programs for mitigation were also added.
 - v. Article X Streams and Lakes. Amended to include lakes. Stream typing system amended to be consistent with WAC 222-16-030. Presumption of fish use provisions added. Required stream buffers for shorelines of the state are removed. Buffers added for streams that are daylighted. Allowances for public and private trails and walkways amended. Allowances added for interrupted buffers. Allowances added for use of mitigation banks, in-lieu fee programs, and other alternative mitigation.
 - vi. Article XIII Fish and Wildlife Habitats of Importance. Criteria for designation amended. Habitat management plan requirements amended. Performance standards for endangered, threatened, and sensitive species deleted. Adjusted requirements for protection of heron rookery and bald eagle nests.
 - vii. Article XVI- XVIII Geologically Hazardous Areas. Designation criteria for landslide hazards and seismic hazards amended. Provisions for third-part review added. Performance standards are amended. Prohibition of new alterations within high landslide hazard areas added.
 - viii. Article XIX Flood Hazard Areas. Entire section deleted and new section added. This includes a number of new definitions, permitting provisions, and building code provisions.
 - ix. Article XX Groundwater Susceptibility and Critical Aquifer Recharge Areas. Entire section is new.
3. To incorporate revisions to reflect changed circumstances, new information, and improved data:
 - a. Policies. The following policies are substantively amended:
 - i. Economic Development: LU-18.1.1, LU-18.1.2, LU-18.3.1
 - ii. Public Access, Recreation and Views and Aesthetics: LU-19.3.1, LU-19.4.3, LU-19.5.7, LU-19.8.1, LU-19.8.5, LU-19.11.4.

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- iii. Circulation: LU-20.3.3
 - iv. Conservation and Protection: LU-21.1.2, LU-21.2.5(deleted), LU-21.2.8(now 7).
 - v. Shoreline Use: LU-23.4.4, LU-23.4.12, LU-23.6.1, LU-23.6.4-8(deleted), LU-23.9.4, LU-23.9.5(deleted), LU-23.9.10(now 9), LU-23.9.11(now 10), LU-23.10.2, LU 23.10.7-8(deleted), LU-23.10.11(deleted), LU-23.11.4, LU-23.11.5(deleted), LU-23.11.10(now 9).
 - vi. Shoreline Modification: LU-24.2.6, LU-24.2.19(deleted), LU-24.2.20(now 19), LU-24.3.7, LU-24.3.8, LU-24.6.3(deleted), LU-24.6.4(now 3).
- b. Designation system. The City has developed a new environmental designation – Swamp Creek Commercial to reflect improved information regarding an area that has existing and planned high intensity uses near Swamp Creek. The City is also amending the designation criteria and management policies for the Downtown Waterfront Environment. The City is amending the purpose, designation criteria, and management policies for the Urban Conservancy Environment.
- c. Shoreline environment map. The City is amending the map of shoreline environments in the following ways:
- i. Squire’s Landing Park, section of shorelands north of Swamp Creek where it drains into the Sammamish River - from Natural to Urban Conservancy.
 - ii. Wildcliffe Shores Native Growth Protection Area, a section of shorelands on the south side of the Sammamish River - from Shoreline Residential to Urban Conservancy.
 - iii. A section of residential shorelands on the south side of the Sammamish River at the far eastern side of the City from Urban Conservancy to Shoreline Residential.
 - iv. A section of residential area on Lake Washington at Inglewood Country Club – from Urban Conservancy to Shoreline Residential.
 - v. Finally, a section of shorelands west of Swamp Creek and just north of SR 522 is re-designated from Urban Conservancy to Swamp Creek Commercial.
 - vi. The boundaries of shoreline jurisdiction have also been adjusted to reflect improved understanding, such as the extent of associated wetlands and the latest mapping of floodways and floodplains. The result is 12.2 acres removed from shoreline jurisdiction (according to the 2019 Cumulative Impacts Analysis Addendum).
- d. KMC 16.10 Definitions.
- i. The following definitions were added: Average Grade Level, Boat launch, Boating facility, City manager, Ecosystem-wide processes, Ell, Feasible, Geotechnical report or geotechnical analysis, Ramp, Water access structure.
 - ii. The following definitions were amended: Accessory use, Applicant, Associated wetlands, Channel migration zone, Department, Development, Dock, Fish and wildlife habitats of importance, Float, Floating home, Floodplain, Height, Marina, No net loss, Ordinary high water mark, Pier, Shorelands.
 - iii. The following definitions were deleted: Backfill, Commercial development, Critical freshwater habitat, Director, Government services hatchery, Manufacturing uses, Normal protective bulkhead common to single-family

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residences, Open-space required, Park/recreation recreational/cultural uses, Port, Residential development, Riprap, Shall, Should, Significant vegetation removal, Utilities and utility facilities, Water transmission pipeline.

- e. KMC 16.45 General Shoreline Development Standards.
 - i. 16.45.010: Amended to allow use of herbicides in aquatic weed control.
- f. KMC 16.50 Shoreline Uses.
 - i. 16.50.030: Shoreline use table is amended. The Swamp Creek Commercial Environment is added and allowed uses mirror those of the Downtown Waterfront Environment, except for some regional land uses. The use table in the current SMP contains broad categories of uses; these have been disaggregated into the full list of uses from the City’s zoning code. For the most part, the amendments do not change what is permitted versus prohibited. The table below shows the few changes to what is allowed or prohibited. The substantive changes to the table’s footnotes are: to allow non-water-dependent/related uses when the site is physically separated from the shoreline by another property or public right of way or if the navigability at the location is severely limited; allow non-water-oriented indoor recreational facilities; and add an allowance for existing manufactured housing communities.

	Downtown Waterfront	Shoreline Residential	Urban Conservancy	Natural	Aquatic
Group residences			P	€	
Community residential facility			X	X	
Support living facility			X	X	
Government services-Fire or police facility			<u>C3</u> P3	<u>X</u> -P3	<u>U</u> -C3
Manufacturing uses, light	X P2				
Manufacturing uses, heavy	X				
Wastewater treatment facility and municipal water production, except for in-water uses	C8 , 12	C8 , 12			X
Regional stormwater management facilities	P13	P13	P13	P13	X
Regional land use, except for airport, ferry terminal, and highway and street	<u>C7</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>C3</u>

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Utility Facility, except for in-water uses					XP3,11
In-water utility facilities	X	C13	C13	C13	C13

- ii. 16.50.030.D. An allowance for outdoor storage that complies with certain standards has been added in the Downtown Waterfront environment.
- iii. 16.50.050 Boating Facilities. Public boat launching facilities and marinas have been replaced with the term “boating facilities.”
- iv. 16.50.060 Public Access. Clarification on which documents constitute the City’s public access plan is added. The requirement that new public access should be consistent with the public access plan is added. An allowance for substituting-physical public access with visual public access or other approaches is added.
- v. 16.50.075 Commercial and light manufacturing uses. New section.
- vi. 16.50.085 Transportation uses and facilities. New provisions for expansion of existing highways and streets.
- vii. 16.50.087 Parking. New section
- viii. 16.50.090 Residential uses. A requirement that shore access paths be no wider than 5 feet is added.
- g. KMC 16.55 Shoreline Modifications.
 - i. 16.55.030. The Shoreline Modifications Table is modified to include the Swamp Creek Commercial environment. Existing modifications listed in the table have been disaggregated to provide a row for each possible variation in the modification. The term “water access structures” is now used to refer to piers, docks, buoys, launches, and other moorage.
 - ii. 16.55.040 Shoreline stabilization. Clarification that additions to and expansions of existing shoreline stabilization must comply with regulations for new stabilization. A description of the geotechnical report requirement is added. The height limit for stabilization is removed.
 - iii. 16.55.050 Water access structures. This section on water access structures has been reorganized to provide standards in a table format. Standards for water access structures on the Sammamish River have been added. More specific mitigation requirements have been added. Standards for boat launches have been added.
- h. KMC 16.60 Vegetation conservation. Clarification has been added that certain activities do not require retention of native vegetation, but that clearing shall be minimized. 16.60.020 (Vegetation management within critical areas) has been removed and instead a reference to the CAO is added.
- i. KMC 16.65 Shoreline density and dimensions. The amendment consolidates the existing table into 5 categories of uses/modifications: Residential development, water-oriented parks and outdoor recreational facilities, non-water oriented parks and outdoor recreational facilities, other water-oriented uses, all other non-water-oriented uses. Required buffers have been reduced for water-oriented parks and outdoor recreational facilities. Required buffers for uses and modifications on the Sammamish River and Swamp Creek have been added (the current SMP uses the CAO buffers of 150 feet for

these shorelines). The new buffer standards result in reduced required buffers in many cases. Building setbacks from the shoreline buffer have been reduced from 25 feet for residential uses in Shoreline Residential to 15 feet. Footnotes to the table have been amended to include new provisions for water-oriented park and outdoor facilities that allow development and redevelopment within buffers if certain standards are met.

- j. KMC 16.68 Signs. A new section with provisions for signs has been added.
- k. KMC 16.65 Procedures. A section on interpretation of the SMP has been added. A section on public agency and utility maintenance plans has been added. Some enforcement provisions regarding charges of gross misdemeanor have been removed. A provision for hearing examiner review of a site-specific redesignation has been removed.
- l. Global: “Director” replaced with “City manager”

Amendment History, Review Process

The City prepared a public participation program in accordance with WAC 173-26-090(3)(a) to inform, involve and encourage participation of interested persons and private entities, tribes, and applicable agencies having interests and responsibilities relating to shorelines. The City held a focus group with state agencies (including Ecology), the US Army Corps of Engineers, utility providers, and developers to gather input on appropriate standards for the Sammamish River on September 25, 2019. The City held an open house on October 2, 2018 to inform the public and gather additional input.

The City used Ecology’s checklist of legislative and rule amendments to review amendments to Chapter 90.58 RCW and department guidelines that have occurred since the master program was last amended, and determine if local amendments were needed to maintain compliance in accordance with WAC 173-26-090(3)(b)(i).

The City reviewed changes to the comprehensive plan and development regulations to determine if the shoreline master program policies and regulations remain consistent with them in accordance with WAC 173-26-090(3)(b)(ii).

The City considered whether to incorporate any amendments needed to reflect changed circumstances, new information or improved data in accordance with WAC 173-26-090(3)(b)(iii).

The City consulted with Ecology and solicited comments throughout the review process. Ecology wetland specialists provided input on aspects of the proposed wetland regulations that were inconsistent with the most recent and accurate scientific and technical information. Kenmore revised the amendment to align buffer requirements to those recommended in Ecology’s CAO Guidance. In general, this resulted in increased buffer widths for wetlands.

Ecology also provided input on the revised Flood Hazard Areas regulations, as did the Federal Emergency Management Administration (FEMA). The City’s response to comments matrix indicates that City staff worked with agency staff to incorporate necessary changes to these regulations.

The City opted to follow the standard adoption process in WAC 173-26-100. The record shows that the City held a public hearing before the Planning Commission on March 26, 2019. Affidavits of publication provided by the City indicate notice of the hearing was published on March 12, 2019. A second public

hearing was held before the City Council on June 10, 2019 and affidavits of publication indicate notice of the hearing was published on May 31, 2019 in the Seattle Times.

During the Planning Commission public hearing, the City received one (1) oral comment and three (3) written comments. During the City Council public hearing, the City received one (1) comment. Issues raised included concerns about the City's commitment to environmental stewardship and the importance of Kenmore's shoreline for the environment and public use. One commenter requested that trails in the Natural environment be allowed for any non-motorized uses, and not just pedestrian access. The City chose not to make this change.

With the passage of Ordinance #19-0490 on June 17, 2019, the City authorized staff to forward the proposed amendments to Ecology for approval.

The proposed SMP amendments were received by Ecology for state review and verified as complete on July 1, 2019. Notice of the state comment period was distributed to state task force members and interested parties identified by the City on July 19, 2019, in compliance with the requirements of WAC 173-26-120. The state comment period began on July 22, 2019 and continued through August 23, 2019.

One (1) individual submitted written comments on the proposed amendments. Issues raised were regarding the Public Agency and Utility Exception in the City's Critical Areas Ordinance. The commenter was concerned that even though this is not part of the SMP, environmental impacts that may result from this outside of shoreline jurisdiction could reach shorelines. Ecology sent all comments it received to the City on August 26, 2019. On September 25, 2019, the City submitted to Ecology its responses to issues raised during the state comment period. The City did not make any changes to the amendment based on comments received.

During its review, Ecology requested a meeting with Kenmore to discuss issues identified in the SMP amendment. Ecology staff met with Kenmore staff on November 20, 2019 and shared draft required changes. Ecology also requested input from the City on two of the required changes. On December 31, 2019, Kenmore shared with Ecology draft proposed revisions to the SMP amendment to address issues identified in these two required changes (Attachment C).

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(1) and (2).

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 173-26-020 definitions). This includes review for compliance with the SMP amendment criteria found in WAC 173-26-201(1)(c) along with review of the SMP Periodic Review Checklist completed by the City.

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 (DNS) for the proposed SMP amendments on May 23, 2019. Ecology

did not comment on the DNS. The City received comments on the DNS from the Muckleshoot Indian Tribe Fisheries Division. The comments raised concerns about the reduced buffers in the Urban Conservancy Environment on the Sammamish River with regard to impacts on water temperature and dissolved oxygen. The comments requested information on the number of acres and the lineal length of shoreline that would be affected by the reduction, and what amount of that is on the south side of the river. The City responded that “The standard shoreline buffer remains at 150 feet, only changing to 100 feet for water-oriented uses and parks/outdoor recreation facilities.” The City calculated 22.31 acres of the 200 acres in Urban Conservancy environment to be on the south side of the Sammamish River and found that much of the shoreline buffer in this environment contains wetlands. The City concluded that “Reductions in width of existing riparian forest are not anticipated based on the limited list of uses allowed in the Urban Conservancy environment; the protection provided by existing wetlands and their buffers and dedicated critical areas tracts; and the type of existing developments in the Urban Conservancy environment.”

Other Studies or Analyses supporting the SMP amendment

Ecology also reviewed supporting documents prepared for the City in support of the SMP amendment. These documents include a public participation plan, periodic review checklist, a Cumulative Impacts Analysis Addendum, an updated SMP Checklist, a Gap Analysis, a summary of the agency meeting on Sammamish River standards, and Ecology’s “Wetland Guidance for CAO Updates: Western Washington Version” (2016).

Summary of Issues Identified by Ecology as Relevant to Its Decision

Ecology has identified several issues relevant to its decision, which are outlined below and in Attachment B. Attachment B also contains recommended changes to the amendment. Some of these issues were complicated enough that Ecology staff requested input from Kenmore on the City’s preference for addressing the issue.

Critical Areas Incorporation

Concurrent with the SMP periodic review, the City has updated its Critical Areas Ordinance (CAO). The current SMP incorporates specific sections of the critical area regulations in KMC 18.55. The amendment changes this by incorporating the entire Chapter 18.55 with a list of exclusions. Three issues with the incorporation have been identified:

- WAC 173-26-191(2)(c) authorizes the incorporation of other regulations into the SMP by referring to a specific, dated edition. The amendment does not reference the critical area ordinance number or date that is being incorporated. Ecology has identified one required change for consistency with WAC 173-26-191(2)(c) (Attachment B, Req-1).
- The critical areas regulations contain a limited exemption for certain wetlands in KMC 18.55.300.D. This provision exempts some wetlands from the requirement to avoid impacts or from buffer requirements. These allowances are inconsistent with the requirement in WAC 173-26-186(8)(b) that SMP regulations achieve no net loss of ecological function of the shoreline and the requirement in WAC 173-26-221(2)(a) that SMPs contain critical area regulations that “[p]rovide a level of protection to critical areas within the shoreline area that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources.” Ecology has

identified a required change necessary for consistency with WAC 173-26-186(8)(b) and WAC 173-26-221(2)(a) (Attachment B, Req-2).

Shoreline Use Table and Standards

The SMP contains a Shoreline Use table in KMC 16.50.030.A that lists uses and whether they are allowed, conditionally allowed, or prohibited. The table contains footnotes with clarifications and some use standards. The table also refers to KMC 16.50 for additional use standards. There are several internal inconsistencies between the use table, its footnotes, and the use standards in KMC 16.50:

- A. Indoor recreational facilities in Urban Conservancy. The table says these are an allowed use, but Footnote 5 states that only parks, trails, and boating facilities are allowed in Urban Conservancy and that all other recreational uses are prohibited.
- B. Regional Land Uses. According to KMC 18.20, “Regional land use” means an airport, ferry terminal, park and ride lot, transfer station, racetrack, stadium/arena, or other land use of a regional nature that may be difficult to site. Regional land use includes essential public facilities, as defined in RCW 36.70A.200, if not otherwise defined in this title.” With the exceptions listed in this row, this row would then only apply to park and ride lot, transfer station, racetrack, stadium/arena, or other land use of a regional nature that may be difficult to site. Park and ride lots are covered by standalone parking in another row. The other uses are not preferred uses in the shoreline. The reference to KMC 16.50.085 for additional information takes the reader to use standards for “transportation and facilities,” which is not applicable for these uses.
- C. “Highway and street” versus “Transportation.” The definition of “transportation” in KMC 18.20 implies that this is a commercial use that involves selling/providing transportation services (e.g. a taxi service). However, the reference to KMC 16.50.085 brings the reader to a section with standards for circulation systems, namely roads and bridges. This is confusing considering there is another use called “Highway and street” in the table. Further, “transportation” is prohibited in the Aquatic environment, which would seem to prohibit bridges over the Sammamish River, however, it’s not clear this was the intent.
- D. Highway and street. The use matrix lists “Highway and street” as a conditional use in all shoreline environments. KMC 16.50.085.F implies that this use may be permitted outright if it meets the criteria in (F). This creates an internal inconsistency.
- E. Standalone parking. Footnote 13 mentions commuter parking, while KMC Section 16.50.087 clarifies that parking is only allowed as necessary to support an authorized use. This creates an internal inconsistency if this table claims that stand alone parking (which, by definition, is not supporting another authorized use) is allowed with a conditional use permit.
- F. Uses without regulations. The amendment adds many new uses to the table but there are no use regulations for them (as needed for consistency with WAC 173-26-241(1) and (2)). It appears that many of these new uses may be commercial and light manufacturing. One way to address this issue may be to categorize the uses in the use table so that it’s clear which use regulations apply to them.

Ecology identified that a change is necessary, but did not identify specific language in order to allow for the City to provide input on how to resolve these inconsistencies (Attachment B, Req-3). Ecology staff met with City staff to discuss these issues and the City proposed revisions to amendment in response (Attachment C). Ecology reviewed these proposed revisions and found that they address Ecology’s required change to address internal inconsistencies (See Attachment B for review). If the City adopts the language as proposed in Attachment C, Ecology’s concerns in Req-3 will be addressed.

Internal Consistency

Ecology has identified changes necessary for internal consistency of SMP regulations:

- In KMC 16.50.030.B.2, the City has struck one of the criteria for allowing non-water-related uses in shoreline jurisdiction, but has not updated references to this sub-section. Ecology has identified a required change necessary for internal consistency (Attachment B, Req-4).
- In sub-section [a(2)] of the same section, the amendment refers to KMC Chapter 18.55, the critical area regulations, for shoreline buffer requirements. However, the SMP amendment is establishing shoreline buffers in the KMC Chapter 16. This reference creates an inconsistency with new shoreline buffer requirements. Ecology has identified a required change that is necessary for internal consistency (Attachment B, Req-5).

Alternative Designs for Water Access Structures

The amendment contains allowances in KMC 16.55.050.B General and in KMC 16.55.050.D for alternative water access structure designs that do not meet the dimensional standards set forth in the SMP. The SMP allows alternative designs to be permitted as long as they are approved by other state and federal agencies and the applicant demonstrates that the proposed deviation is the minimum necessary and offers a greater degree of protection of ecological functions.

The effect of this provision is to remove any standards for water access structures and instead rely on outside agencies to review these structures. This is inconsistent with RCW 90.58 as it displaces SMA/SMP authority to agencies not charged with implementing the SMA or SMP. By transferring that authority, the SMP no longer contains standards for piers/docks. This is inconsistent with WAC 173-26-191(2)(a)(ii)(A), which requires SMPs to contain regulations that are “sufficient in scope and detail to ensure that the implementation of the Shoreline Management Act, statewide shoreline management policies of this chapter, and local master program policies.”

Ecology has identified two required changes that are necessary for consistency with RCW 90.58 and WAC 173-26-191(2)(a)(ii)(A) (Attachment B, Req-6 and Req-7).

Vegetation Conservation

The SMP amendment adds exceptions to the requirement to retain existing native vegetation in shoreline buffers (vegetation conservation areas). Conservation of vegetation within shoreline buffers is necessary to protect the shoreline environment and maintain no net loss of ecological functions. The City has added certain exceptions for water-dependent and water-enjoyment uses. These exceptions are aimed at the SMA goals of fostering appropriate uses and public access to the shorelines. To ensure this provision will not result in a loss of shoreline ecological function, applicants should first demonstrate avoidance and minimization through mitigation sequencing. Ecology has identified a required change necessary for consistency with WAC 173-26-186(8)(b) and WAC 173-26-221(5) (Attachment B, Req-8).

Shoreline Buffers for Non-Water-Oriented Parks and Recreational Facilities

The SMP amendment establishes shoreline buffers along the Sammamish River and Swamp Creek, where there currently is a 150-foot critical area buffer. In most cases, the shoreline buffer is smaller than the critical area buffer. The Cumulative Impacts Analysis (CIA) addendum provides analysis to support this tied to existing conditions and anticipated development. Parts of the proposed amendment appear inconsistent with the recommendation of this addendum, which states in section 2.2.2 that “On the Sammamish River and Swamp Creek, a protective 150-foot buffer was retained for ... residential and

non-water-oriented uses in the Urban Conservancy environment.” Also, the proposed buffer for non-water-oriented parks and outdoor recreational facilities is smaller than for residential uses in certain cases. This is inconsistent with the use preferences of the RCW 90.58.020, which identifies single-family residential as a preferred use when it’s consistent with control of pollution and prevention of damage to the natural environment. Non-water-oriented uses are not a preferred use and should be located further from the shoreline than preferred uses.

Ecology has identified a required change that is necessary for consistency with RCW 90.58 and the Cumulative Impacts Analysis Addendum (Attachment B, Req-9).

Shoreline Buffers for Residential Development

The Shoreline Density and Dimensions table in KMC 16.65.020 states that in reach B4 of the Sammamish River, shoreline buffers are 15 feet, with a footnote. The footnote states that the 15-foot buffer only applies to the existing manufactured housing community and that for all other development, the buffer is 75 feet. This generates confusion as to what the required buffer is for proposed redevelopment, which is actually 75 feet, as the 15-foot buffer only applies to the existing housing community. To ensure the proper implementation of this development standard, the 75-foot buffer should be listed in the table and the 15-foot buffer should be listed in the footnote.

Ecology has identified a required change that is necessary for consistency with WAC 173-26-191(2)(a)(ii)(A), which requires that SMP regulations “be sufficient in scope and detail to ensure the implementation of the Shoreline Management Act, statewide shoreline management policies of this chapter, and local master program policies” (Attachment B, Req-10).

Building Setback from the Shoreline Buffer

The amendment reduces the setback for single family residential on Lake Washington from 25 feet to 15 feet. The current SMP requires single family structures to be located at least 50 feet from the OHWM (25 foot buffer + 25 foot setback), but the proposed amendment would allow this to be reduced to 35 feet (25 foot buffer + 15 foot setback). Further, the current SMP allows the 25 foot setback to be reduced to 5 feet if an equivalent area of buffer is revegetated. The proposed amendments keep this, but an “equivalent area” is now smaller (10 feet wide under proposed amendment versus 20 feet under current SMP). The cumulative impacts of this proposed amendment have not been analyzed.

Ecology has identified a required change that is necessary for consistency with the no net loss requirements in WAC 173-26-186(8)(b) and WAC 173-26-241(3)(j) (Attachment B, Req-11).

Shoreline Buffers for Recreational Facilities

KMC 16.65.020.A contains the Shoreline Density and Dimensions Table, which provides required shoreline buffers. The buffer widths for “water-oriented parks and outdoor recreational facilities” have a footnote (#3). This footnote contains use standards for parks and recreational facilities, as well as allowances for water-oriented facilities in the shoreline buffer. It is unclear what the shoreline buffer for water-oriented uses is for, if in fact water-oriented uses are allowed in the buffer. Further this footnote creates internal inconsistencies with KMC 16.50.070 (Parks and Recreation). A change to the wording and structure of this footnote is necessary for internal consistency and to ensure the SMP regulations are able to be implemented.

The allowances in this footnote may be used by both public and private recreational facilities. Allowing private recreational development in shoreline buffers is inconsistent with the use preferences of the SMA, which prioritizes “development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state” [RCW 90.58.020].

The footnote also contains allowances for development that is not water-oriented in the buffer, such as “play and exercise equipment” and “visual and auditory art installations,” which is inconsistent with the use preferences of the SMA.

Sub-section (c) of the footnote requires non-water-oriented park and outdoor recreational uses and modifications be upland of water-oriented uses and modifications to the extent feasible. However, this is within a footnote to a buffer, and for consistency with the use preferences of the SMA, non-water-oriented park and recreations uses and modification should be outside of the buffer altogether. A change is necessary for consistency with RCW 90.58.020.

Sub-section (d) of the footnote allows for parking improvements that support water-oriented parks and recreation in the shoreline buffer if no other feasible location exists. Parking is not a preferred use in shoreline jurisdiction and for consistency with RCW 90.58.020, should not be allowed in shoreline buffers without a variance. A change is necessary for consistency with RCW 90.58.020.

Ecology has identified five (5) required changes to this footnote that are necessary for consistency with the use preferences of RCW 90.58.020, and for internal consistency with the use standards for parks and recreations in KMC 16.60.070 (Attachment B, Req-12 – Req-16). For Req-12, which addresses broader organizational issues, Ecology has not proposed replacement language. Instead, Ecology met with City staff to discuss these issues and the City proposed revisions to the amendment in response (Attachment C). Ecology reviewed these proposed revisions and found that they address Ecology’s required change to address internal inconsistencies (See Attachment B for review). If the City adopts the language as proposed in Attachment C, Ecology’s concerns in Req-12 will be addressed.

Recreation Policies

The Kenmore SMP contains a policy in LU-23.9.11 that directs the City to restore shorelines in areas for public recreation. The City proposes to change the text of the policy to direct the City to only consider restoring shorelines. During the comprehensive update, the City’s Restoration Plan identified several opportunities for improving ecological function at City parks and recommended this policy. The City has not identified a reason for softening this policy.

Ecology has identified a required change that is necessary for consistency with WAC 173-26-186(8)(b), which requires the SMP to achieve no net loss of ecological function.

Additional Items Identified as Recommended Changes

In addition to the issues identified above as required changes to ensure consistency with the SMA and its implementing guidelines, Ecology has identified recommended changes to provide clarity and improve implementation. These items can be found in Attachment B (Items Rec 1-2).

City Proposed Revisions to Address Issues Identified by Ecology within Attachment B

Ecology staff met with Kenmore staff on November 20, 2019 and Kenmore subsequently submitted proposed revisions to the amendment to address Ecology’s identified issues. These proposed revisions are shown in Attachment C. Ecology has reviewed these proposed revisions for consistency with Chapter

90.58 RCW and the applicable guidelines and found them to be consistent. The issues identified by Ecology, above, will be adequately resolved if the City takes formal action to adopt the revisions proposed in Attachment C.

CONCLUSIONS OF LAW

After review of the complete record submitted and all comments received, Ecology concludes that the City proposed amendments with incorporation of Ecology's required changes as shown in Attachment C, can be considered 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).

Ecology concludes that the proposed amendment and acceptance of Ecology's required changes satisfies the criteria for approval of amendments found in WAC 173-26-201(1)(c). This includes the conclusion that approval of the SMP amendment will not foster uncoordinated and piecemeal development of the state's shorelines (WAC 173-26-201(1)(c)(i) and will assure no net loss of shoreline ecological functions will result from implementation of the amended master program (WAC 173-26-201(1)(c)(iv)).

Ecology concludes that the City has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 and WAC 173-26-100 regarding public and agency involvement in the SMP review and amendment process, 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 SMP submittal to Ecology was complete pursuant to the requirements of WAC 173-26-090, WAC 173-26-100, and WAC 173-26-110.

Ecology concludes that it has complied with the procedural requirements for review and approval of shoreline master program amendments as set forth in RCW 90.58.090 and WAC 173-26-100, WAC 173-26-110, and WAC 173-26-120.

Ecology concludes that with this action the City has completed the required process for periodic review in accordance with RCW 90.58.080(4) and applicable state guidelines (WAC 173-26).

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendments will be consistent with the policy of the Shoreline Management Act, the applicable guidelines and implementing rules, once the changes set forth in Attachment B and Attachment C are accepted by the City. The City may choose to adopt the recommended changes in Attachment B.

The City has already proposed revisions, in Attachment C, that have been determined this alternative language is consistent with the purpose and intent of Ecology's original changes and with RCW 90.58. As provided in RCW 90.58.090(2)(e)(ii) the City may choose to submit additional alternatives to all or part of the changes required by Ecology. If Ecology determines that the alternative proposal is consistent

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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.

Ecology approval of the proposed amendments, with required changes, will be effective 14 days from Ecology’s final action approving the amendment. Ecology’s final action will be a letter verifying the receipt of written notice that the City has agreed to the required changes identified in Attachment C.