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MAR 1 / 2016



CITY OF SAMMAMISH

STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000

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March 15, 2016

Dear Interested Parties:

**RE: The City of Sammamish Shoreline Master Program Limited Amendment**

On March 9, 2016, The Department of Ecology (Ecology) approved, with changes, the City of Sammamish's (City) Shoreline Master Program (SMP) limited amendment. The limited amendment proposes several changes to their existing shoreline program.

During its formal review process, Ecology conducted a public comment period and determined that some changes are required for the SMP to be consistent with the Shoreline Management Act (RCW 90.58) and the SMP Guidelines (WAC 173-26).

To review Ecology's documents related to the Sammamish limited amendment, please check Ecology's website at:

<http://www.ecy.wa.gov/programs/sea/shorelines/smp/mycomments/Sammamishlimitedamendment.html>

On Ecology's Website you will find the following documents:

- Director of Ecology's March 9, 2016 letter
- Attachment A: Findings and Conclusions for Proposed Amendment
- Attachment B: Required Changes
- Attachment C: Recommended Changes

In order for the Sammamish limited amendment to go into effect, the City must send Ecology a written notice agreeing to the changes. The effective date of the amendment will be 14 days after the date of Ecology's final action. If the City does not agree with the changes or proposes alternative language, it may submit an alternative proposal for Ecology review.

Interested Parties

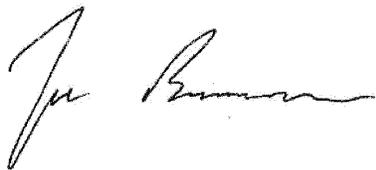
March 15, 2016

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We sent this letter to you because your name is on an “interested party” mailing list, you commented on the draft SMP amendment previously, or you indicated that you want to be notified of any actions concerning the Sammamish SMP.

If you have any questions about the SMP amendment, please contact me at [Joe.Burcar@ecy.wa.gov](mailto:Joe.Burcar@ecy.wa.gov) or (425) 649-7145. If you would like a paper copy of Ecology’s documents, please contact Jackie Chandler at (360) 407-7678, persons with hearing loss can call 711 for Washington Relay Service, and persons with speech disabilities can call 877-833-6341.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Burcar". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Joe Burcar  
Senior Shoreline Planner



Even M

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DEPARTMENT OF ECOLOGY

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March 9, 2016

MAR 14 2016

CITY OF SAMMAMISH

The Honorable Don Gerend  
City of Sammamish  
801 – 228<sup>th</sup> Avenue SE  
Sammamish, WA 98075

Re: City of Sammamish Limited Shoreline Master Program Amendment – Conditional Approval

Dear Mayor Gerend:

Thank you for submitting to Ecology the city of Sammamish (City) limited Shoreline Master Program (SMP) amendment. We have completed our review of the proposal for consistency with the Shoreline Management Act and implementing guidelines.

As we have already discussed with your staff, the Washington State Department of Ecology (Ecology) identified specific changes necessary to make the proposal approvable. These changes are detailed in Attachment B. Recommended changes are included in Attachment C. Ecology's findings and conclusions related to the City's proposed SMP amendment are contained in Attachment A.

Pursuant to RCW 90.58.090 (2)(e), at this point, the City may:

- Agree to the proposed changes, or
- Submit an alternative proposal. Ecology will then review the alternative(s) submitted for consistency with the purpose and intent of the changes originally submitted by Ecology and with the Shoreline Management Act.

Final Ecology approval will occur when the City and Ecology agree on language that meets statutory and Guidelines requirements.

Please provide your written response within 30 days to the Director's Office at the following address:

WA State Department of Ecology  
Attention: Director's Office  
PO Box 47600  
Olympia, WA 98504-6700



The Honorable Don Gerend

March 9, 2016

Page 2

Ecology appreciates the dedicated work that you, the City Council, the Planning Commission and engaged interested parties have put into this amendment.

Thank you again for your efforts. We look forward to concluding the SMP amendment review process in the near future. If you have any questions or would like to discuss the changes identified by Ecology, please contact our Regional Planner, Joe Burcar at [Joe.Burcar@ecy.wa.gov](mailto:Joe.Burcar@ecy.wa.gov) or (425) 649-7145.

Sincerely,



Maia D. Bellon

Director

Enclosures (4)

By Certified Mail [7012 1010 0003 3028 4291]

cc: Evan Maxim, City of Sammamish  
Joe Burcar, Ecology  
Tim Gates, Ecology  
Erik Stockdale, Ecology

**ATTACHMENT A: FINDINGS AND CONCLUSIONS  
FOR PROPOSED LIMITED AMENDMENT TO THE CITY OF SAMMAMISH  
SHORELINE MASTER PROGRAM**

SMP Submittal accepted January 17, 2014, Ordinance No. 02013-350  
Prepared by Joe Burcar on March 2, 2016

**Brief Description of Proposed Amendment:**

The City of Sammamish submitted to Ecology for approval, a limited amendment to their Shoreline Master Program (SMP) incorporating revised standards from their updated environmental Critical Areas Ordinance (CAO).

**FINDINGS OF FACT**

**Need for amendment.** Following the City’s 2013 review of their environmental CAO, the proposed shoreline amendment intends to incorporate changes affecting the SMP to allow implementation of the updated CAO standards city-wide. According to the City, the 2013 amendments were informed by an updated Best Available Science review, which they conclude will ensure adequate environmental protection while also providing flexibility for property owners developing sites constrained by environmental critical areas.

**SMP provisions to be changed by the amendment as proposed:** As described within the City’s Cumulative Impact Analysis (ESA, 2013; 2):

*“The new (revised) ECA regulations as adopted by the Council maintain most of the critical areas protections incorporated by reference into the SMP. Some of the proposed amendments would alter the standards for wetlands, streams, fish and wildlife habitat conservations areas, and erosion hazards – all of which play an important role in maintaining shoreline ecological functions”.*

The amendment includes a number of changes that vary in significance to the SMP. As described in Ecology’s comments to the City in April of 2013, the most significant concerns are related to the proposed wetland amendments.

The following table adapted from the City’s Cumulative Impact Analysis (ESA, 2013) provides a summary of the major revisions adopted by the City. The middle column of the table generally describes the City’s intent in making the revision and the right-hand column describes the anticipated effect of the change on shoreline ecological functions as they are described by the City’s shoreline Inventory/Characterization report.

CAO Section	Intent of Revision to CAO	Potential Effect – to Shoreline Ecologic Functions
21A.50.350 (3) Streams – Mitigation requirements	<b>Allows fee-in-lieu mitigation for impacts to streams</b>	<b>Neutral or Beneficial</b> , especially with use of mitigation” receiving” sites within City’s shoreline jurisdiction.
21A.50.327 Fish and wildlife habitat corridors.	<b>Alternative wildlife protection approach for fish and wildlife habitat corridors</b> - requires site specific analysis of wildlife habitats as opposed to reliance on outdated King County habitats map.	<b>Beneficial</b> , especially for habitat functions.
21A.50.060 Allowances for existing	<b>New allowances for addition to existing single detached dwelling units and accessory dwelling</b>	Detailed analysis of potential cumulative impacts provided in Chapter 4.

CAO Section	Intent of Revision to CAO	Potential Effect – to Shoreline Ecologic Functions
urban development and other uses	<b>units within critical areas buffers</b> – allows for limited expansion of these structures within some ECA buffers which could weaken buffer protection.	
21A.50.310(4) & 21A.50.315 (2) Wetlands – Mitigation requirements / Alternative mitigation	Allows fee-in-lieu mitigation for allowed impacts to wetlands	<b>Neutral or Beneficial</b> , especially with use of mitigation “receiving” sites within City’s shoreline jurisdiction.
Wetlands – Mitigation requirements	<b>Revised wetland mitigation ratios</b> – requires mitigation ratios to be based upon different types of wetland mitigation (e.g., creation, rehabilitation, etc), and provides specific criteria for Category 1 bog and natural heritage site wetlands ensuring that mitigation is functionally appropriate and feasible for wetlands with special characteristics. Clarifies expectations for wetland mitigation and establishes consistency with state and federal regulatory guidelines.	<b>Beneficial</b> , especially for habitat and water quality functions.
21A.50.320(3) Wetlands – Development Flexibilities	<b>Allowance for Alteration of Small, Isolated Wetlands</b> – Establishes a pilot program that would allow isolated wetlands less than 4,000 SF to be filled without first avoiding the impact; must be non-riparian and score 15 or less habitat points. Allowed for a maximum of three single family home development projects.	<b>Potentially negative</b> ; detailed analysis of potential cumulative impacts provided in Chapter 4.
21A.50.320(2) Wetlands – Development Flexibilities	<b>Buffer reduction without avoidance / minimization for Category III and IV wetlands 4,000 SF or less in size</b> – mitigation as enhancement is provided within wetland, remaining buffer, or adjoining high value habitat.	<b>Potentially negative</b> ; detailed analysis of potential cumulative impacts provided in Chapter 4.
21A.50.225(3) EHNSWB Overlay, No-disturbance area development standards.	<b>New allowances for development and subdivision in the no-disturbance area of the Erosion Hazard Near Sensitive Water Bodies (EHNSWB) Overlay.</b> The update provides new allowances for single-family home construction and modification on existing lots in the EHNSWB Overlay no-disturbance area; allows for an expansion in the amount of impervious surface on a site as long as there is no increase in stormwater volume; limited areas overlap with Lake Sammamish shoreline jurisdiction.	<b>Potentially negative</b> to functions supporting Lake Sammamish water quality; detailed analysis of potential cumulative impacts provided in Chapter 4.
21A.50.225(5) EHNSWB Overlay, Pilot program	The update authorizes up to four subdivisions in the no-disturbance area of the EHNSWB Overlay subject to a pilot program; criteria are provided directing how subdivision would manage runoff (either through a direct discharge / tightline approach, or through use of LID approaches for land development and stormwater management).	<b>Potentially negative</b> to functions supporting Lake Sammamish water quality; detailed analysis of potential cumulative impacts provided in Chapter 4.

**Amendment History, Review Process:** According to the City, the proposed SMP amendment was prompted by a comprehensive review of the City’s environmental Critical Areas Ordinance that started in 2011. The record shows that the City provided multiple opportunities for the public or interested parties to comment on the proposed amendments. In fact, the City Council held a public hearing on the amendments, which was preceded by five study sessions and six public meetings dedicated to this topic. In addition, the City’s Planning Commission reportedly held over 20 public meetings throughout their time developing the proposed amendment.

With passage of Ordinance #02013-350, on July 13, 2013 the City authorized staff to forward the proposed amendments to Ecology for state review of the limited amendment to the City's existing Shoreline Master Program.

Ecology certified the amendment package as complete on January 17, 2014. In compliance with the requirements of WAC 173-26-120 (2) Notice of Ecology's comment period was distributed to over 100 state or local interested parties identified by the City in early September 2014 and was posted on Ecology's website.<sup>1</sup> The notice included a description of the proposed amendment, a description of the authority under which the action is proposed, and details of the manner in which interested persons may obtain copies and present their views. The state comment period formally started on September 12, 2014 and continued through October 13, 2014. At the close of the comment period, Ecology received written comments from three individuals, as summarized in attachment D.

### ***Finding***

*Ecology finds that the City satisfied SMP-Guideline requirements related to public process in WAC 173-26-201 (3) (b), through Planning Commission review/deliberation and City Council review/deliberation, as well as extensive staff outreach throughout their amendment process.*

**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 also provided evidence of compliance with SMA procedural requirements in amending their SMP, as 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 included review of a SMP Submittal Checklist, which was completed by the City and submitted to Ecology along with the other amendment materials.

**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 amendment on May 20, 2013. Notice of the SEPA determination was published in *The Seattle Times*.

**Other Studies or Analyses supporting the SMP update:** Ecology also reviewed the following materials submitted by the City in support of the limited SMP amendment:

These materials include:

- *City of Sammamish Best Available Science Review (AMEC, 2013);*
- *Cumulative Impacts Analysis dated October 2, 2013 (ESA, 2013);*
- *City of Sammamish Ordinance #02013-35 dated July 9, 2013*
- *Shoreline Master Program Submittal Checklist dated November 8, 2013;*
- *Department of Ecology comment letter dated October 3, 2012*

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<sup>1</sup> <http://www.ecy.wa.gov/programs/sea/shorelines/smp/mycomments/SammamishLimitedAmendment.html>

- *Department of Ecology comment letter dated April 23, 2013; and*
- *Additional materials provided by the City's limited amendment submittal accepted by Ecology as complete on January 17, 2014.*

**Summary of Issues Identified by Ecology as Relevant To Its Decision:** The scope of the City's amendments to their Shoreline Master Program (SMP) are a subset of the changes included in the City's 2013 amendments to their Critical Areas Ordinance (CAO), as not all of the CAO provisions are included in the City's SMP. As described in our October 3, 2012 and April 23, 2013 letters to the City, the adequacy of the City's wetland provisions are particularly important to Ecology, as the SMP-Guidelines require that SMP provisions protect existing functions from loss from anticipated future development (i.e., No Net Loss). Consistent with this early feedback to the City, Ecology's formal review of the amendment considered all information provided in the record in determining consistency with state requirements.

WAC 173-26-186 (8) (b) of the SMP-Guidelines requires that; *"Local master programs shall include policies and regulations designed to achieve no net loss of those ecological functions."*

Consistent with the process described in WAC 173-26-201 of the SMP Guidelines, the City submitted to Ecology a Cumulative Impact Analysis prepared by ESA dated October 2013, analyzing the likely affects of amended SMP provisions.

WAC 173-26-221 (2) of the SMP-Guidelines requires that Shoreline Master Programs manage critical areas located within shoreline jurisdiction in a manner that adequately protects shoreline ecological functions. Subsection (c) (i) provide minimum standards specific to managing wetlands. Related to the City's "isolated wetland" amendment, WAC 173-26-221 (2) (c) (i) (C) states: ***"Alterations to wetlands. Master program provisions addressing alterations to wetlands shall be consistent with the policy of no net loss of wetland area and functions, wetland rating, scientific and technical information, and the mitigation priority sequence defined in WAC 173-26-201 (2) (e)."***

Based on our review of the amended provisions for consistency with applicable SMP-Guideline requirements, and consideration of information/comments provided during Ecology's comment period (attachment D), the following topics remain relevant to Ecology's decision on this amendment:

**Isolated Wetland Provisions** – The City's amendment adds a definition for "wetlands isolated" in section 21A.15.1410 and authorizes alteration (filling) of some "isolated wetlands," without first demonstrating avoidance of impacts through new provisions in section 21A.50.320. The amendments appear to authorize wetland alteration under three of the following scenarios:

- Provision 21A.50.320 (1) modifies the definition of "isolated wetlands" provided in section 21A.15.1410 by deferring to a "qualified professional" in designating "isolated wetlands" that are less than 1000-sq' in total area;
- Provision 21A.50.320 (2) provides a 15-foot buffer reduction for Category III and IV wetlands less than 4,000-sq' in size and with a habitat score of "4"<sup>2</sup> or less;
- Provision 21A.50.320 (3) creates a pilot program, authorizing alteration of up to three Category III and IV "isolated wetlands" over a two year period. The pilot program would be

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<sup>2</sup> Note the 2014 Wetland Rating System provide an updated scoring system, for which a score of "15" under the previous rating system is equivalent to a score of "4 or less" under the updated system.

limited to “isolated wetlands” that are less than 4,000-sq’ in size and are characterized as “non riparian” and have a habitat score of “4”<sup>3</sup> or less.

**Issue #1: By definition it is unlikely that “isolated wetlands” exist within shoreline jurisdiction, raising questions related to the need or appropriateness for the City’s amendment.**

As detailed in *attachment B* and *attachment C*, Ecology noted a number of inconsistencies with the City’s amendment related to definitions and authorities associated with managing “isolated wetlands.”

Provision 21A.50.320 (1) authorizes alteration of wetlands less than 1,000-sq’ and inappropriately defers federal authority to a “qualified professional” to designate these features as “isolated wetlands.” Under the Clean Water Act (CWA), the federal government (not the City or Ecology) has authority to make a jurisdictional determination on whether a particular wetland is regulated under the CWA or not. The U.S. Army Corps of Engineers regulates wetlands as waters of the United States, except for isolated wetlands which the Corps generally considers to be those wetlands without sufficient hydrologic connection with, or location next to, navigable water (such as a river, lake, or marine water). This federal authority was reaffirmed through a United States Supreme Court ruling in 2001 (*Solid Waste Agency of Northern Cook County vs. United States Army Corps of Engineers et al.*, 531 U.S. 159). In this case, the Court determined that jurisdictional waters of the United States should be regulated under the Clean Water Act and that non-jurisdictional water called “isolated wetlands” would not be subject to federal oversight. The case clearly confirmed the federal government’s authority to determine Clean Water Act jurisdiction, including designation of wetlands as connected or isolated from waters of the United States. Even though a qualified professional can assess the wetland and offer a written opinion of jurisdiction, they do not have the authority to determine if a wetland is in or out of Clean Water Act jurisdiction. As noted in the City’s *Cumulative Impact Analysis*, the approach being proposed would likely generate ongoing disputes or debate between City staff, private consultants and Ecology when the ultimate decision lies with the federal government to determine jurisdiction relative to the Clean Water Act.

In addition, associated wetlands as defined in the City’s SMP<sup>4</sup> and under state statute could not be considered to be an “isolated wetlands,” as any influence to the wetland from the adjacent lake or stream is evidence of a connection and thus not “isolated.”

Based on consideration of applicable SMP-Guideline requirements and the issues described above, Ecology cannot approve provision 21A.50.320 (1) to be included in the SMP as proposed. The proposed standards create inconsistencies related to the SMP’s definition of “isolated wetlands” provided in 21A.15.1410 and inappropriately defers to a “qualified professional” to designate “isolated wetlands” as opposed to relying upon the federal authority (confirmed by the Supreme Court in 2001) under the CWA. Further, the underlying need to allow the amendment (within shoreline jurisdiction), is not adequately described in the record, nor are any “isolated wetlands”

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<sup>3</sup> Note the 2014 Wetland Rating System provide an updated scoring system, for which a score of “15” under the previous rating system is equivalent to a score of “4 or less” under the updated system.

<sup>4</sup> (97) **Wetland, Associated.** Associated Wetland means wetlands that are in proximity to lakes, rivers or streams that are subject to the Shoreline Management Act and either influence or are influenced by such waters. Factors used to determine proximity and influence include but are not limited to: location contiguous to a shoreline waterbody, presence of a surface connection including through a culvert or similar device, location in part or whole within the 100 year floodplain of a shoreline, periodic inundation, and/or hydraulic continuity.

identified or anticipated to be found in shoreline jurisdiction according to the City's *Cumulative Impact Analysis*. Therefore, Ecology has no information or analysis to support a conclusion that the amendment would be consistent with applicable SMP-Guideline requirements such as maintaining no net loss of shoreline ecological functions (WAC 173-26-186) or consistency with applicable Critical Area standards in WAC 173-26-221.

**Issue #2: Potential impacts associated with the amendment cannot be determined, as it is not clear if "isolated wetlands" exist in shoreline jurisdiction.**

Ecology is not aware of any technical information or scientific literature that would support exempting the alteration of small wetlands. As suggested in comments provided to the City on April 23, 2013, if exemptions are proposed as a matter of regulatory flexibility, then the regulations should clearly state that the exemptions would only apply to "isolated" Category III and Category IV wetlands that meet the specific criteria.<sup>5</sup> In addition, Ecology recommended that a critical areas study would need to be required to demonstrate that the wetland to be altered satisfies the applicable criteria and to assure that all impacts are fully mitigated.

Section 21A.50.320 (1) of the amended ordinance does not limit alteration of wetlands based on criteria recommended by Ecology. Section 21A.50.320 (1) make no mention of wetland type (i.e., Category I – IV), characterization of riparian areas, buffers, wetland mosaics or local populations of priority species, as potential factors to consider before authorizing alteration of the wetland.

Ecology notes that the City did adopt language consistent with the Washington Department of Fish and Wildlife for "riparian area"<sup>6</sup> in the definitions section, but have not included the term "riparian" in 21.A50.320 (1) with regards to alteration of small isolated wetlands less than 1,000-sq' in size. As described in Ecology's October 3, 2012 letter to the City, it is not possible to conclude from size alone what functions and values a particular wetland is providing. Ecology's *Wetlands in Washington State, Volume 1: A Synthesis of the Science*<sup>7</sup> emphasizes that small wetlands and isolated wetlands provide many important functions. Many of these small and/or isolated wetlands are biologically unique systems that are critically important to amphibians. The loss of small wetlands could result in increased fragmentation of habitat and greater distances between wetland patches (See Chapter 4 of Volume 1). These impacts could have a significant effect on the ability of a landscape to support viable populations of wetland-dependent wildlife, including amphibians.

Consistent with the City's *Cumulative Impact Analysis* (CIA) prepared by ESA dated October 2013, Ecology believes that by definition it is very unlikely that "isolated wetlands" exist within shoreline jurisdiction. In fact, section 4.5.2. of the CIA acknowledges that while unlikely, it might be possible

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<sup>5</sup> See *Wetlands & CAO Updates: Guidance for Small Cities (Western Washington Version)*, Ecology Publication #10-06-002, January 2010

<sup>6</sup> As described in Ecology's comment letter to the City, WDFW defines riparian areas as the area adjacent to flowing or standing freshwater aquatic systems. Riparian habitat encompasses the area beginning at the ordinary high water mark and extends to that portion of the terrestrial landscape that is influenced by, or that directly influences, the aquatic ecosystem. In riparian systems, the vegetation, water tables, soils, microclimate, and wildlife inhabitants of terrestrial ecosystems are often influenced by perennial or intermittent water. Simultaneously, adjacent vegetation, nutrient and sediment loading, terrestrial wildlife, as well as organic and inorganic debris, influence the biological and physical properties of the aquatic ecosystem. Riparian habitat includes the entire extent of the floodplain and riparian areas of wetlands that are directly connected to stream courses or other freshwater.

<sup>7</sup> Ecology Publication #05-06-006, March 2005, sections 5.3.3 and 5.3.4

for an isolated wetland to exist, they state: *“it could be argued that any wetland within the shoreline jurisdiction is still within or adjacent to the riparian area...”*

In addition, Section 4.5.2 of the *Cumulative Impacts Analysis* cautions that: *“The allowance may create a tendency for applicants to claim that some wetlands are isolated and non-riparian, which could put an administrative burden on City staff to determine if wetlands in question are in fact isolated and not adjacent to a riparian area.”*

The SMP-Guidelines at WAC 173-26-191 (2) (a) (ii) requires that master program regulations *“be sufficient in scope and detail to ensure the implementation of the Shoreline Management Act, statewide shoreline management policies of this chapter, and the local master program policies.”*

Therefore, Ecology cannot approve the incorporation of provision 21A.50.320 (1) into the updated SMP, as the standards do not provide sufficient detail related to anticipated effects and/or potential cumulative impacts resulting from implementation of the amended provisions within the City’s shoreline areas.

***Finding***

*Ecology finds that the proposed SMP amendments as approved by the City under Ordinance 02013-350 cannot be approved as submitted, but can be modified to be consistent with applicable SMP-Guideline requirements as identified by Ecology’s required changes listed in attachment B. Ecology also finds the proposed SMP amendments would be improved through adoption of recommended changes listed in attachment C.*

## CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the City's proposal, subject to and including Ecology's required changes (**attachment B**), could 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 SMP amendment, subject to the required changes in attachment B, can satisfy the intent of the provision for no net loss of shoreline ecological functions provided in WAC 173-26-201 (2) (c).

Ecology concludes that recommended changes in attachment C will further clarify and improve the proposed SMP amendment.

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 of Sammamish complied with the purpose and intent of local amendment requirements contained in WAC 173-26-100, including conducting public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

Ecology concludes that the City of Sammamish 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 of Sammamish complied with requirements of Chapter 43.21 (C) RCW, the State Environmental Policy Act.

Ecology concludes that the City of Sammamish's limited 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) and as demonstrated through the SMP Submittal Checklist submitted by the City.

Ecology concludes that procedural requirements for state review and approval of shoreline master program amendments have been followed, as set forth in WAC 173-26-120.

## 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 changes set forth in **attachment B** are accepted by the City.

As provided in RCW 90.58.090 (2) (e) (ii) the City may choose to submit an alternative to all or part of 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.

As provided in RCW 90.58.090 (7) Ecology's final approval of the proposed amendment will become effective fourteen days from the date of Ecology's written notice of final action.

The following changes are necessary to comply with the SMA (RCW 90.58) and the SMP Guidelines (WAC 173-26, Part III);

ITEM	PROVISION	TOPIC	BILL FORMAT CHANGES [ <u>underline-additions</u> ; <del>strikethrough-deletions</del> ]	ECOLOGY - DISCUSSION/RATIONALE
1	25.01.060	Incorporation by reference	<p>25.01.060 <i>Relationship to Plans, Policies and Regulations</i></p> <p>(5) The following provisions of the Sammamish Municipal Code are adopted as part of this SMP, and attached herein: SMC 13 (Surface Water Management, adopted by Ord 2011-304, on May 16, 2011), SMC 21.10.120 (Historic Resources, adopted by Ord 2008-240, on Dec 16, 2008) and sections of the City’s Critical Areas Ordinance as described within this program 25.01.070 (adopted by Ord 2005-193, on December 20, 2005 and revised by Ord 2009-264 on October 6, 2009, and Ord 2009-274 on December 1, 2009, <u>and Ord 02013-350 on July 9, 2013</u>).</p>	<p><i>Ecology’s guidelines at WAC 173-26- 191(2) (a) require that documents incorporated by reference must indicate the specific ordinance that will apply. This change is the mechanism for formally acknowledging the critical area ordinance amendments adopted July 9, 2013 that will apply within shoreline areas.</i></p>
2	25.01.070	Exceptions to critical areas regulations	<p>25.01.070 <i>Critical Areas Regulations Incorporated by Reference</i></p> <p>Provisions of the Sammamish Critical Areas Ordinance codified in SMC 21A.50 exclusive of SMC 21A.50.050 (Complete exemptions), SMC 21A.50.060 (Partial Exemptions), SMC 21A.50.070 (Exceptions), and SMC 21A.50.400 (Sunset provisions) are considered part of this SMP.</p> <p><u>In shoreline jurisdiction, the critical area shall be implemented consistent with the following:</u></p> <ul style="list-style-type: none"> <li>• <u>Under 21A.50.320 (1) and 21A.15.1410, isolated wetlands shall be determined by the United States Army Corps of Engineers.</u></li> <li>• <u>Pilot projects under 21A.50.320 (3) shall require approval of a shoreline conditional use permit if located within shoreline jurisdiction. The applicant shall obtain all necessary state and federal authorizations for isolated wetland impacts prior to beginning any ground disturbing activities or timber harvest.</u></li> </ul>	<p><b>Regulations addressing isolated wetlands:</b> <i>This change is required because under the City’s Critical Areas Code 21A.50.320 (1) and 21A.15.1410, federal authority in determining Clean Water Act (CWA) jurisdiction is deferred to a “qualified professional.” This change would be inconsistent with a 2001 US Supreme Court decision” (<u>Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers et al., 531 U.S. 159</u>). As established by the Court in 2001, the United States Army Corps of Engineers (USACOE) has authority to determine CWA jurisdiction, including the authority to designate a wetland as “isolated” or not a jurisdictional water of the United States. Further, as described in previous communication to the City (letters dated October 3, 2012 and April 23, 2013), the wetland rating system is not an appropriate tool for determining hydrological isolation or regulatory authority of isolated wetlands. A qualified professional can assess the likelihood of jurisdiction, but lacks the authority to make a regulatory decision affecting the jurisdiction of the CWA. Therefore, the identified change is necessary to assure consistency with SMP-Guidelines requirements at WAC 173-26-186 (8) (b) and WAC 173-26-221 related to designing SMP provisions to achieve no net loss of shoreline ecological functions and consistency with wetland development standards, Further confirmation of “isolated” wetland determination from state and/or federal agencies is recommended in the City’s Cumulative Impact Analysis (ESA, 2013; 22).</i></p> <p><b>Requirement for a CUP for pilot projects:</b> <i>As described in the City’s Cumulative Impact Analysis (ESA, 2013) and in Ecology’s Findings &amp; Conclusions (attachment A), “isolated wetlands” are not expected to be found within shoreline jurisdiction. Despite this conclusion, the City has adopted a Pilot Program as defined under section 21A.50.320 (3). Therefore, to accommodate the City’s request, Ecology has incorporated this requirement for a shoreline Conditional Use Permit (CUP) that would be required for review of any isolated wetland alterations within shoreline jurisdiction. A shoreline CUP requires that a unique or unanticipated proposal demonstrate consistency with the local master program and shoreline management act goals through evaluation of CUP approval criteria listed in WAC 173-27-160. This criteria includes consideration of “cumulative impacts”, which would be appropriate in this case, as the City’s CIA (ESA, 2013) did not anticipate the occurrence of isolated wetlands within shoreline jurisdiction and therefore did not attempt to characterize potential cumulative impacts resulting from this provision.</i></p>

ITEM	PROVISION	TOPIC	BILL FORMAT CHANGES [ <u>underline-additions</u> ; <del>strikethrough-deletions</del> ]	ECOLOGY - DISCUSSION/RATIONALE
3	25.01.080	Effective Date	<p>25.01.080 <i>Effective Date</i></p> <p>This Program and all amendments thereto shall become effective <del>immediately upon</del> <u>fourteen</u> days from the date of the Department of Ecology's written notice of final approval <del>by the</del> Department of Ecology.</p>	<p><i>Required for consistency with RCW 90.58.090 (7).</i></p>

The following changes are recommended to the City pursuant to WAC 173-26-120 (7)

ITEM	PROVISION	TOPIC	BILL FORMAT CHANGES [ <u>underline-additions</u> ; <del>strike-through-deletions</del> ]	ECOLOGY - DISCUSSION/RATIONALE																														
A	21A.50.290 (1) & (2)	Revised Wetland Rating System	<p>(1) Wetlands shall be rated according to the Washington State Wetland Rating System for Western Washington (Department of Ecology, <del>2004</del> <u>2014</u>, or as may be amended or revised by the Department from time to time). This document contains the definitions, methods and a rating form for determining the categorization of wetlands described below:</p> <p>(a) Category 1. Category 1 wetlands include those that receive a score of greater than or equal to <del>70</del> <u>23-27</u> based on functions, or those that are rated Category 1 based on special characteristics as defined in the rating form.</p> <p>(b) Category 2. Category 2 wetlands include those that receive a score of <del>51 through 69</del> <u>20-22</u> based on functions, or those that are rated Category 2 based on special characteristics as defined in the rating form.</p> <p>(c) Category 3. Category 3 wetlands include those that receive a score of <del>30 through 50</del> <u>16-19</u> based on functions.</p> <p>(d) Category 4. Category 4 wetlands score less than <del>30</del> <u>9-15</u> points based on functions.</p> <p>(2) The following standard buffers shall be established from the wetland edge</p> <table border="1" data-bbox="612 678 1634 1182"> <thead> <tr> <th colspan="2">Wetland Category</th> <th>Standard Buffer Width (ft)</th> </tr> </thead> <tbody> <tr> <td rowspan="4">Category I:</td> <td>Natural Heritage or bog wetland</td> <td>215</td> </tr> <tr> <td>Habitat score <del>29-36</del> <u>8-9</u></td> <td>200</td> </tr> <tr> <td>Habitat score <del>20-28</del> <u>5-7</u></td> <td>150</td> </tr> <tr> <td>Not meeting above criteria</td> <td>125</td> </tr> <tr> <td rowspan="3">Category II:</td> <td>Habitat score <del>29-36</del> <u>8-9</u></td> <td>150</td> </tr> <tr> <td>Habitat score <del>20-28</del> <u>5-7</u></td> <td>100</td> </tr> <tr> <td>Not meeting above criteria</td> <td>75</td> </tr> <tr> <td rowspan="2">Category III:</td> <td>Habitat score <del>20-28</del> <u>5-7</u></td> <td>75</td> </tr> <tr> <td>Not meeting above criteria</td> <td>50</td> </tr> <tr> <td>Category IV:</td> <td>Habitat score <del>20-28</del> <u>5-7</u></td> <td>All Land Use Types - 50</td> </tr> <tr> <td>Category III and IV:</td> <td colspan="2">Subject to SMC 21A.50.320</td> </tr> </tbody> </table>	Wetland Category		Standard Buffer Width (ft)	Category I:	Natural Heritage or bog wetland	215	Habitat score <del>29-36</del> <u>8-9</u>	200	Habitat score <del>20-28</del> <u>5-7</u>	150	Not meeting above criteria	125	Category II:	Habitat score <del>29-36</del> <u>8-9</u>	150	Habitat score <del>20-28</del> <u>5-7</u>	100	Not meeting above criteria	75	Category III:	Habitat score <del>20-28</del> <u>5-7</u>	75	Not meeting above criteria	50	Category IV:	Habitat score <del>20-28</del> <u>5-7</u>	All Land Use Types - 50	Category III and IV:	Subject to SMC 21A.50.320		<p><i>The recommended changes reflect the new scoring system used in the revised 2014 Wetland Rating System. The City has already adopted an automatic update provision and is using the latest manual – these changes clarify areas where the code will be implemented consistent with the latest version of the manual and will ensure consistency with SMP-Guideline requirements under WAC 173-26-221 (2) (c) (i) (B).</i></p>
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B	21A.50.290 (7) (c)	Buffer averaging	(c) The buffer width is not reduced to less than <del>50</del> <u>75</u> percent of the standard buffer width at any location;	<p><i>The identified change reducing administrative buffer reductions to less than 25-percent is intended to ensure consistency with scientific documentation related to protection of shoreline ecological functions.</i></p>																														
C	21A.50.290 (7) (f)	Buffer averaging	(e)f) Buffer averaging may be used in conjunction with buffer reduction options in this section, provided the total combined reduction does not reduce the buffer to less than <del>50</del> <u>75</u> percent of the standard buffer width at any location;	<p><i>Same rationale as item "B" above.</i></p>																														
D	21A.50.290 (8) (a)	Increased buffers	(a) When a Category 1 or 2 wetland with a habitat score of greater than <del>29</del> <u>8-9</u> points [...]	<p><i>Same rationale as item "A" above.</i></p>																														

ITEM	PROVISION	TOPIC	BILL FORMAT CHANGES [ <u>underline-additions</u> ; <del>strike-through-deletions</del> ]	ECOLOGY - DISCUSSION/RATIONALE
E	21A.50.290 (9)	Buffer reduction	(89) Buffer Reduction. Buffers may be reduced when buffer reduction impacts are mitigated and result in equal or greater protection of the wetland functions. Prior to considering buffer reductions, the applicant shall demonstrate application of mitigation sequencing as required in SMC <u>21A.50.135</u> . A plan for mitigating buffer-reduction impacts must be prepared using selected incentive-based mitigation options from the list below. The following incentive options for reducing standard buffer widths shall be considered cumulative up to a maximum reduction of <u>50%</u> percent of the standard buffer width. In all circumstances where a substantial portion of the remaining buffer is degraded, the buffer reduction plan shall include replanting with native vegetation in the degraded portions of the remaining buffer area and shall include a five-year monitoring and maintenance plan.	Same rationale as item "B" above.
F	21A.50.290 (9) (i)	Buffer reduction	(hi) Percentages listed above may be added together to create a total buffer reduction; provided, that the total reduction does not exceed <u>50%</u> percent of the standard buffer width; <u>the remaining buffer shall be no less than 75% of the standard buffer.</u>	Same rationale as item "B" above.
G	21A.50.320 (1)	Isolated wetlands	(1) Isolated wetlands, <del>as designated by a qualified professional using the adopted Washington State Wetland Rating System for Western Washington as defined consistent with SMC 21A.15.1410, and evaluated in a written and approved critical areas study meeting the requirements of SMC 21A.0.130, with a total area of up to 1,000 square feet may be exempted from the avoidance sequencing provisions of SMC 21A.50.135 (1) (a) and the provisions of SMC 21A.50.290 and may be altered.</del>	<p><i>Ecology recommends that the city amend this critical area code provision, which authorizes a qualified professional to "designate" isolated wetlands, which is a jurisdictional determination affecting implementation of the Clean Water Act (CWA). This appears to be inconsistent with a 2001 US Supreme Court decision (<u>Solid Waste Agency of Northern Cook County v. United States Army Corps of Engineers et al., 531 U.S. 159</u>). As established by the Court, the United States Army Corps of Engineers (USACOE) are provided authority to determine CWA jurisdiction, including the authority to designate a wetland as "isolated" or not a jurisdictional water of the United States.</i></p> <p><i>Further, as described in previous communication to the City (letters dated October 3, 2012 and April 23, 2013), the wetland rating system is not an appropriate tool for determining hydrological isolation or regulatory authority of isolated wetlands. A qualified professional can assess the likelihood of jurisdiction, but lacks the authority to make a regulatory decision affecting the jurisdiction of the CWA.</i></p> <p><i>Further confirmation of "isolated" wetland determination from state and/or federal agencies is a listed recommendation in the City's Cumulative Impact Analysis (ESA, 2013; 22).</i></p> <p><i>Note: See required changes to SMP Section 25.01.070 in Attachment B. Ecology has required changes to clarify that isolated wetlands within shoreline jurisdiction shall be determined by the USACOE.</i></p>
H	21A.50.320 (2) (a)	Small Cat. III & IV wetlands	(a) The wetland does not score <del>15</del> <u>4</u> points or <del>greater</del> <u>less</u> for habitat in the adopted Western Washington Rating System; and .... [...]	Same rationale as item "A" above.

ITEM	PROVISION	TOPIC	BILL FORMAT CHANGES [ <u>underline-additions</u> ; <del>strikethrough-deletions</del> ]	ECOLOGY - DISCUSSION/RATIONALE
I	21A.50.320 (3)	Isolated Category III & IV wetland Pilot Program	<p>(3) Pilot Program.</p> <p>(a) Establishment of Pilot Program. A Pilot Program is hereby established to allow isolated category III and IV wetlands to be exempted from the avoidance sequencing provisions of SMC 21A.50.135(1)(a) and the provisions of SMC 21A.50.290, subject to <u>approval of a shoreline conditional use permit if located within shoreline jurisdiction and</u> the provisions of this section.</p> <p>(b) Purpose. The purpose of this Pilot Program is to allow for limited alterations of low habitat value isolated category III and IV wetlands with an area of 4,000 square feet or less, to evaluate the effects of such alterations on hydrologic, habitat, and water quality functions and values.</p> <p>(c) Application. Applications for eligible projects meeting the provisions of subsections (d) through (g) below must be submitted within two calendar years from the effective date of the revision to the Sammamish Shoreline Master Program.</p> <p>(d) Pilot Program Administration.</p> <p>(i) Three (3) projects associated with the construction of a single family home are authorized by this pilot project, subject to the provisions of this section.</p> <p>(i) Eligible projects shall be accepted in the order received. To qualify for submittal, an applicant must have a complete application as described in the city's application material and SMC 20.05, and completed any necessary preliminary steps prior to application as set forth in SMC 20.05.</p> <p>(ii) In the event that an application for a project accepted into the Pilot Program is withdrawn by the applicant or cancelled by the director prior to the expiration of the Pilot Program, the next submitted application shall be accepted into the Pilot Program.</p> <p>(iii) The director shall use the authority under SMC 20.05.100 to ensure expeditious processing of applications. In particular, the director shall set a reasonable deadline for the submittal of corrections, studies, or other information when requested; an extension may be provided based upon a reasonable request. Failure by the applicant to meet a deadline shall be cause for the department to cancel/deny the application.</p> <p>(e) Eligible Projects. Subject to the limitation in the total number of projects in subsection (d) above, wetlands that meet the following criteria, may be exempted from the avoidance sequencing provisions of SMC 21A.50.135(1)(a) and the provisions of SMC 21A.50.290 and may be altered. To be eligible, a critical areas study prepared by a qualified professional shall be approved by the director and shall document the following:</p> <p>(i) The wetland is a category III or IV wetland that is hydrologically isolated from other aquatic resources; and</p> <p>(ii) The total area of the isolated wetland is 4,000 square feet or less; and</p> <p>(iii) The wetland is not adjacent to a riparian area; and</p> <p>(iv) The wetland has a score of <del>15</del> <u>4</u> points or less for habitat in the adopted Western Washington Rating System; and</p> <p>(v) The wetland does not contain habitat identified as essential for local populations of priority species identified by Washington Department of Fish and Wildlife; <u>and</u></p> <p>(vi) <u>The applicant shall obtain all necessary state and federal authorizations for isolated wetland impacts prior to</u></p>	<p><i>See required changes to SMP Section 25.01.070 in Attachment B. Ecology has required a CUP for pilot program projects within shoreline jurisdiction. The cross-reference to that requirement is intended to prevent confusion over permit requirements under the Pilot Program.</i></p> <p><i>In addition, Ecology recommends the following amendment to the city's critical area code to improve clarity and reduce potential for confusion.</i></p> <p><i>Recommended changes to provision (3) (e) (iv) will ensure consistency with the revised 2014 Wetland Rating System, similar to item "A" above.</i></p> <p><i>As Ecology commented during the SMP Update Review Process, riparian wetlands within the City's shorelands cannot be considered to be isolated wetlands, because they are considered associated wetlands (October 3, 2012). This change would provide clarity in the city's Critical Areas code.</i></p> <p><i>The change to provision (3) (e) (vi) reflects a recommendation from the City's CIA (ESA, 2013;22) and will help to ensure consistency with the changes in item #3 (above) and item #7 (below) in defining "isolated wetlands" and reliance on the appropriate authority in determining regulatory jurisdiction.</i></p>

ITEM	PROVISION	TOPIC	BILL FORMAT CHANGES [ <u>underline-additions</u> ; <del>strikethrough-deletions</del> ]	ECOLOGY - DISCUSSION/RATIONALE
			<p><u>beginning any ground disturbing activities or timber harvest. Isolated wetlands are those wetlands as defined consistent with SMC 21A.15.1410</u></p> <p>(f) Mitigation: Mitigation to replace lost wetland functions and values, consistent with SMC 21A.50.310 shall be prepared for review and approval by the director; and,</p>	
J	21A.50.330 (4) (c)	Stream buffer averaging	(c) The buffer is not reduced to less than <del>50</del> <u>75</u> percent of the standard buffer; <del>and</del>	Same rationale as item "B" above.
K	21A.50.330 (4) (e)	Stream buffer averaging	<del>(e)</del> Buffer averaging may be used in conjunction with buffer reduction options in this section, provided the total combined reduction does not reduce the buffer to less than <del>50</del> <u>75</u> percent of the standard buffer width at any location.	Same rationale as item "B" above.
L	21A.50.330 (6)	Stream buffer reduction	<p>(6) Buffer Reduction. Buffers may be reduced when buffer-reduction impacts are mitigated and result in equal or great protection of the <u>ecological</u> stream functions.</p> <p>Prior to considering buffer reductions, the applicant shall demonstrate application of mitigation sequencing as required in SMC <u>21A.50.135</u>. A plan for mitigating buffer-reduction impacts must be prepared using selected incentive-based mitigation options from the list below, and is subject to approval by the City. The following incentive options for reducing standard buffer widths shall be considered cumulative up to a maximum reduction of <del>50</del><u>25</u> percent of the standard buffer width. In all circumstances where a substantial portion of the remaining buffer is degraded, the buffer reduction plan shall include replanting with native vegetation in the degraded portions of the remaining buffer area and shall include a five-year monitoring and maintenance plan.</p>	Same rationale as item "B" above.
M	21A.50.330 (6) (e) (ii)	Stream buffer reduction	<p><del>(e)</del> In-stream habitat enhancement:</p> <p>(i) Up to 20 percent reduction in standard buffer width for log structure placement, bioengineered bank stabilization, or culvert removal; or</p> <p>(ii) Up to <del>30</del><u>25</u> percent reduction in standard buffer width for improving fish passage and/or creation of side channel or backwater areas.</p>	Same rationale as item "B" above.
N	21A.50.13[...]	New validity of wetland delineation standard	<p><u>A wetland delineation completed over five years ago needs to be revisited. Revisiting a wetland delineation that is five or more years old does not necessarily mean that a new wetland delineation needs to be completed. It means that a field verification may need to be performed to determine whether the delineation is still accurate or whether it needs to be redone based on existing conditions.</u></p>	<p>Wetlands can change significantly in a five-year period, due to changes in hydrology, adjacent land uses, and plant species composition. Approved jurisdictional determinations by the U.S. Army Corps of Engineers expire after five years. The 1987 wetland delineation manual by the U.S. Army Corps of Engineers has a requirement for comprehensive determinations to "quantitatively describe the vegetation in the past 5 years" (page 41, step 5).</p>

The City of Sammamish (City) adopted Ordinance #02013-350 on July 9, 2014 authorizing submittal of the updated Shoreline Master Program (SMP) to the Department of Ecology (Ecology) for review. Ecology notified the City of a complete submittal in a letter dated January 17, 2014, initiating formal review of the updated SMP. The Department of Ecology accepted public comments on the City’s updated SMP between September 12, 2014 and October 13, 2014. Notice of the comment period was provided to over 100 individuals listed as regional or local interested parties. Ecology received written comments from three individuals as summarized below.

Please note, the statements below are not the opinions or comments of Ecology, but rather summary of issues raised in comments submitted to Ecology.

Item No.	Comment Topic	Name of Commenter	Comment (Ecology Summary)	Local Government Response (City of Sammamish Response)
W-1	Revisions to ECA Wetland and other critical area buffers	Save Lake Sammamish (SLS) prepared by Erica Tiliacos	The commenter suggests that the proposed amendments would “roll back important protections from the 2005 code...” and result in increased encroachments into wetland (and critical area) buffers, clearing without the need for a permit and piping of stormwater directly to Lake Sammamish.	<p><b>City of Sammamish Response:</b></p> <p>The City Council, in adopting the amendments to the Environmentally Critical Areas regulations, adopted regulations that were informed by the Best Available Science. The regulations, as amended, ensure environmental protection and provide flexibility for property owners on sites constrained by environmentally critical areas.</p> <p>Clearing is allowed only (SMC 21A.50.060) for the limited removal of non-native or invasive noxious weeds in limited circumstances with appropriate controls to avoid impacts to critical areas or buffers.</p> <p>The amendments to the Environmentally Critical Areas regulations also reflect an update in the terminology used to reference the current wetland delineation and categorization methodology recommended by the Department of Ecology. The City recognizes that this change may appear to be a “roll back” by the commenter; however the proposed change is supported by Best Available Science and is consistent with past Ecology guidance.</p> <p>The proposed allowance for direct discharge of stormwater from subdivisions located in the Erosion Hazard Near Sensitive Water Bodies (EHNSWB) overlay (SMC 21A.50.225(5)) mischaracterizes the amendment. Under the adopted amendment, direct discharge of treated stormwater to a receiving water body, in this case Lake Sammamish, may only be authorized under the Ecology compliant King County Surface Water Design Manual (SWDM), which the City of Sammamish has adopted. The proposed pilot program within the EHNSWB overlay allows for direct discharge of clean water, fully compliant with the adopted SWDM. The substantive change is the authorization of subdivision in the no-disturbance area, where subdivision has previously been prohibited. However, the proposed pilot program allowing subdivision would require a significant increase in water quality control and</p>

Attachment D

Responsiveness Summary to Public Comments

Item No.	Comment Topic	Name of Commenter	Comment (Ecology Summary)	Local Government Response (City of Sammamish Response)
W-2	Revisions to ECA Exemptions	Save Lake Sammamish (SLS)	The commenter suggests that the proposed amendments would allow for one time exemptions that are excessive and would be allowed for accessory dwelling units as well as primary structures.	<p>construction monitoring than would be otherwise required by the SWDM.</p> <p><b>City of Sammamish Response:</b>                      The City Council, in adopting the amendments to the Environmentally Critical Areas regulations, adopted regulations that were informed by the Best Available Science. The regulations, as amended, ensure environmental protection and provide flexibility for property owners on sites constrained by environmentally critical areas. Accessory dwelling units are encouraged by the City and must meet all applicable environmental regulations.</p>
W-3	Revisions to ECA Variance	Save Lake Sammamish (SLS)	The commenter argues that the SMP amendment will allow the City to consider shoreline variance requests to further reduce critical area protections below minimum standards provided in the 2005 CAO. Citing the result of shoreline variance requests since 2005, comments suggest that the proposed amendment will result in reduction of resource protection and will enable more inappropriate development along the City's shoreline.	<p><b>City of Sammamish Response:</b>                      In 2009, with the adoption of the Sammamish Shoreline Master Program, the Department of Ecology affirmed that the appropriate approach in requesting a "modification" to the ECA regulations within the shoreline jurisdiction is through a shoreline variance. The proposed amendments to the ECA regulations do not reflect a change to this requirement.</p> <p>The approach used for considering such modifications outside of the shoreline jurisdiction is the Reasonable Use Exception process – which is considered under a similar set of criteria.</p> <p>Shoreline Variances allow the City (and other jurisdictions) to evaluate, on a case-by-case basis, the appropriate balance of environmental protection and property rights, in those cases where ECA regulations would otherwise prevent reasonable use of a property.</p> <p>Generally, the City has issued more decisions approving shoreline variances than denying shoreline variances. The approvals are a result of the City's collaborative approach to land use review with an applicant before a decision is made, and often before an application is submitted. The City is able to illustrate the challenges in a shoreline variance such that un-approvable shoreline variances are not normally received. Shoreline variance proposals that move forward to submittal reflect efforts by the City to guide the applicant in their application to minimize and mitigate impacts to the maximum extent feasible.</p>

Item No.	Comment Topic	Name of Commenter	Comment (Ecology Summary)	Local Government Response (City of Sammamish Response)
W-4	Revisions to ECA Small Cities Guidance inappropriate	Save Lake Sammamish (SLS)	<p>The commenter notes that the 2005 ECA was based on Best Available Science (BAS). However, they argue that the proposed changes disregard the previous BAS as they only draw from the Small Cities Guidance and do not consider other relevant sources. Therefore, they conclude that the amendment is inconsistent in that the City has not considered all the scientific data/resources available.</p>	<p><b>City of Sammamish Response:</b></p> <p>The City considered other Best Available Science sources in crafting the proposed revisions. The record reflects that the City Council and Planning Commission reviewed the East Sammamish Basin and Non Point Action Plan, along with other Best Available Science material prepared by the City’s consultant AMEC Environment &amp; Infrastructure. A copy of the Best Available Science material considered was submitted to Ecology for review along with the Shoreline Master Program amendment.</p>
W-5	Revisions to ECA Procedural concerns in review and adoption	Save Lake Sammamish (SLS)	<p>Comments state that the review conducted by the Planning Commission was “flawed procedurally” as they focused too heavily on property rights and ease of administering new codes elements.</p> <p>SLS suggest that the Planning Commission did not adequately consider the City’s updated Best Available Science review as a part of their recommendation on the SMP amendment.</p> <p>In addition, SLS suggests that individual property owners had excessive influence in the development of the amendment outside of the public’s view.</p>	<p><b>City of Sammamish Response:</b></p> <p>The review and recommendation by the Planning Commission to the City Council was procedurally consistent with the requirements of WAC 365-195 and 365-196.</p> <p>The record does not support the commenter’s assertions. The Planning Commission’s recommendation was widely informed by the Best Available Science material and public comment. As potential amendments were evaluated, additional Best Available Science documents were generated by the consultant, AMEC, to further inform the Planning Commission’s recommendation process. The Planning Commission held over 25 public meetings, several open houses and roundtable discussions, and received 280 written comments and more than 165 verbal comments. All public comments were accepted and reviewed by the Planning Commission.</p> <p>To aid in deliberations, the Planning Commission developed an evaluation form, which considered the effects of a given amendment in the context of the amendments effects on the environment, on the property owner, and in “administrative” terms. These effects were evaluated as to their qualitative positive or negative result – any amendment that resulted in a qualitatively significant environmental impact was generally not supported. The City Council thoroughly reviewed the Planning Commission recommended amendments over 5 study sessions, held a public hearing on 3 different dates, and deliberated for 4 City Council meetings thereafter.</p>
W-6	Revisions to ECA Mitigation banking	Save Lake Sammamish (SLS)	<p>SLS argues that the City does not currently have a mitigation bank and therefore using King County’s In-</p>	<p><b>City of Sammamish Response:</b></p> <p>The use of wetland mitigation banking is generally supported by Best Available</p>

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			Lieu-Fee Program would likely not replace lost resources within City limits and thus would not satisfy the no-net loss criteria.	<p>Science. However, off-site wetland mitigation banking is generally the least preferred mitigation approach (ref. SMC 21A.50.310(4) and SMC 21A.50.315) under the City's mitigation sequencing approach. Therefore, it is expected that a qualifying use of mitigation bank credits will be very infrequent.</p> <p>The proposed ECA amendments require that any wetland mitigation bank used, be certified pursuant to WAC 173-700, and would be subject to specific City review and approval on a case-by-case basis to ensure that appropriate mitigation for unavoidable impacts is provided.</p>
W-7	<b>Revisions to ECA</b> Increased impacts to critical area buffers	Save Lake Sammamish (SLS)	SLS argue that more encroachments into buffers will be allowed through exemptions allowed by the SMP amendment, which will produce negative cumulative impacts within the shoreline jurisdiction. They note that this will be especially true on small lots in the City.	<p><b>City of Sammamish Response:</b></p> <p>The Sammamish October 2013 Cumulative Impact Analysis (CIA) prepared by ESA, addresses the concerns over negative cumulative impacts in general (section 4), and as specifically related to this comment. The City understands that this comment is intended to address the provisions for "Existing Urban Development", which is specifically discussed in sections 4.3 of the CIA document.</p> <p>The proposed amendments require the mitigation, consistent with Best Available Science, of lost functions and values resulting from the expanded exemptions.</p>
W-8	<b>Revisions to ECA</b> Exemptions to small isolated wetlands	Save Lake Sammamish (SLS)	SLS does not support increasing the exemption of isolated wetlands to greater than 1,000 sq. ft., as they argue the change would have a detrimental effect upon amphibians and storm flow attenuation.	<p><b>City of Sammamish Response:</b></p> <p>The Sammamish October 2013 Cumulative Impact Analysis (CIA) prepared by ESA, addresses the concerns over negative cumulative impacts in general (section 4), and as specifically related to this comment. The City understands that this comment related to the provisions for "Small Isolated Wetlands", which is specifically addressed under sections 4.5 of the CIA document.</p> <p>The proposed amendments that allow for impacts to small isolated wetlands do require mitigation consistent with Best Available Science.</p>
W-9	<b>Revisions to ECA</b> Proposed use of 1987 Army Corps Delineation Manual	Save Lake Sammamish (SLS) and Ilene Stahl for Friends of Pine Lake	Commenter's suggest that the City continue to use the 1997 Ecology Wetland Delineation Manual and not switch to the 1987 Army Corps Manual.	<p><b>City of Sammamish Response:</b></p> <p>This comment appears to be inconsistent with the Best Available Science recommendations provided by AMEC Environment and Infrastructure and relevant state guidance and law. The 1987 Army Corps Manual and the United States Army Corps of Engineers (USACE) Interim Regional Supplement for Western Mountains,</p>

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				<p>Valleys, and Coast Region (USACE, 2010) is used to conduct wetland delineation; the Washington State Wetland Rating System for Western Washington (Department of Ecology, 2004, or as may be amended or revised by the Department from time to time) is used for wetland categorizations. The City understands that this approach is effectively required by the Department of Ecology.</p>
W-10	<p><b>Revisions to ECA</b> Pilot programs in Erosion and LHA near Lake Sammamish</p>	<p>Save Lake Sammamish (SLS)</p>	<p>SLS opposes exemptions and/or a pilot program that would allow new development within areas delineated as "Special Overlay Zones". As a part of their opposition, they argue that the pilot program would be inappropriate since existing studies show that allowing development in these sensitive areas will increase erosion, phosphorous loading and potential landslides.</p> <p>Further they state that pipes and associated infrastructure to service development will destabilize slopes and potentially impact downslope properties and the lake.</p> <p>In conclusion they are concerned that piping storm water directly into Lake Sammamish will lead to water quality degradation and create flashier lake levels. The comments also reference findings from a related Shoreline Hearings Board Case (SHB no. 93-40), supporting many of their water quality concerns.</p>	<p><b>City of Sammamish Response:</b></p> <p>This comment appears to focus primarily on the pilot program created for the Erosion Hazard Near Sensitive Water Body (EHNSWB) overlay. As noted above, the regulations adopted by the City Council ensure environmental protection and provide flexibility for property owners on sites constrained by environmentally critical areas.</p> <p>The BAS documentation generally supports allowing for limited development, subject to increased erosion and sediment control. Concerns over impacts to Lake Sammamish were prominent in the City Council review – consequently the City Council determined that a pilot program to "try out" the proposed amendments to the EHNSWB overlay would be appropriate.</p> <p>The pilot program requires full compliance with the adopted SWDM and the NPDES permits issued by Ecology. In addition, the pilot program incorporates a number of different Low Impact Development techniques that are intended to further reduce the risk of erosion and sediment into Lake Sammamish. In particular, the pilot program requires the removal of 80% of all new total phosphorous using all known and reasonable techniques, a requirement for 50% open space, and a limit in overall site impervious surface of 30%.</p>