

Attachment B:

Ecology Required Changes

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

ITEM	SMP Submittal PROVISION (Cite)	BILL FORMAT CHANGES (<u>underline</u> = additions; strike through = deletions)	RATIONALE
1	Table of Contents	Correct page numbering as necessary.	Corrects numbering after changes are made.
2	Introduction	The Burlington Shoreline Master Program consists of environmental designations for the shoreline segments (<u>Appendix C</u>) and goals, policies, and regulations applicable to uses and development within the Shoreline Management Zone. <u>Also part of the SMP are Appendix A – “Shoreline Wetland, Fish and Wildlife Habitat, and General Critical Areas Regulations” and Appendix B – “Shoreline Restoration Plan”.</u>	The additional language is required to establish what makes up the SMP.
3	18.02.020 Applicability to Substantial Development B. Conditional Use Permits	<p>6.f. Other uses that are not classified or set forth in the Master Program may be authorized as conditional uses provided that the applicant can demonstrate, in addition to the criteria set forth in subsection a5. of this section and RCW 90.58.020, that extraordinary circumstances preclude reasonable use of the property in a manner consistent with the permitted use regulations of the Master Program.</p> <p>7.g. When reviewing conditional use permit applications, consideration shall be given to the cumulative impact of like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.</p> <p>8.h. Uses which are specifically prohibited or not allowed by the Master Program may not be authorized pursuant to either subsections a5. or b6. of this section.</p>	Corrects formatting and reference errors.

4	<p>18.02.020 Applicability to Substantial Development</p> <p>C. Variances</p>	<p>4. Variances for development that will be located waterward of the OHWM may be authorized, provided the applicant can satisfy all of the criteria specified in §subsection b 3.b. through e. of this section. The applicant must also demonstrate that the public rights of navigation and use of the shorelines will not be adversely affected by the granting of the variance, and that the strict application of the bulk, dimensional, or performance standards set forth in the Master Program precludes all reasonable use of the property.</p> <p>5. In granting of all shoreline variances, consideration shall be given to the cumulative impact of additional requests or like actions in the area.</p> <p><u>6. Variances from the use regulations of the master program are prohibited.</u></p>	<p>Corrects references and for WAC language related to variances.</p>
5	<p>18.02.020 Applicability to Substantial Development</p> <p>D. Revisions to Permits</p>	<p>4. If proposed revisions to the original permit involve a conditional use or variance, the City shall submit the proposed revision to the DOE for review. The DOE shall respond with its final decision on the proposed revision request within 15 days of the date of receipt by the DOE. WAC 173-27-100(6). <u>The City shall notify parties of record of the DOE's final decision.</u></p> <p><u>5. Revisions to permits may be authorized after original permit authorization has expired under RCW 90.58.143. The purpose of such revisions shall be limited to authorization of changes which are consistent with this section and which would not require a permit for the development or change proposed under the terms of chapter 90.58 RCW, this regulation and the local master program. If the proposed change constitutes substantial development then a new permit is required. Provided, this subsection shall not be used to extend the time requirements or to authorize substantial development beyond the time limits of the original permit.</u></p> <p><u>6. The revision approval, including the revised site plans and text consistent with the provisions of WAC 173-27-180 as necessary to clearly indicate the authorized changes, and the final ruling on consistency with this section shall be filed with the DOE. In addition, the City shall notify parties of record of their action.</u></p> <p><u>7. The revised permit is effective immediately upon final decision by the City or, when appropriate under subsection (4) of this section, upon final action by the DOE.</u></p> <p><u>8. Appeals shall be in accordance with RCW 90.58.180 and shall be filed within twenty-one days from the date of receipt of the City's action by the DOE or, when appropriate under subsection (4) of this section,</u></p>	<p>Corrects omission of WAC revision language.</p>

		<p><u>the date the DOE's final decision is transmitted to the City and the applicant. Appeals shall be based only upon contentions of noncompliance with the provisions of subsection (2) of this section. Construction undertaken pursuant to that portion of a revised permit not authorized under the original permit is at the applicant's own risk until the expiration of the appeals deadline. If an appeal is successful in proving that a revision is not within the scope and intent of the original permit, the decision shall have no bearing on the original permit.</u></p>	
6	<p>18.05.020 Policies and Regulations</p>	<p>B. Archeological, and Historical, and Cultural Resources</p> <p>1. Applicability</p> <p><u>The archaeological, historical, and cultural resources element provides for protection and restoration of buildings, structures, sites, districts, objects, and areas, hereinafter referred to as “sites”, having known or potential archaeological, historical, cultural, or scientific value or significance.</u></p> <p>The following provisions apply to archaeological and historic resources that are either recorded at the State Historic Preservation Office and/or by local jurisdictions or have been inadvertently uncovered.</p> <p>2. Policies</p> <p>a. Due to the limited and irreplaceable nature of the resource, public or private uses, activities, and development should be prevented from destroying or damaging any site having historic, cultural, scientific or educational value as identified by the appropriate authorities and deemed worthy of protection and preservation.</p> <p>b. <u>Site development activity in shoreline areas shall be subject to the policies and regulations of this section and the Burlington Comprehensive Plan policies related to such resources. The archaeological, historical, and cultural resources element provides for protection and restoration of buildings, structures, sites, districts, objects, and areas, hereinafter referred to as “sites”, having known or potential archaeological, historical, cultural, or scientific value or significance.</u></p> <p>c. <u>Shoreline features should be protected to prevent the destruction of or damage to any site having archaeological, historic, cultural, or scientific value through coordination and consultation with the</u></p>	<p>The changes were requested by the Washington State Department of Archaeology and Historic Preservation (DAHP) and agreed to by Burlington.</p>

appropriate local, state, tribal, and federal authorities.

- d. Sites should be protected in collaboration with appropriate tribal, state, federal, and local governments. Cooperation among public and private parties is to be encouraged in the identification, protection, and management of cultural resources.
- e. When or where appropriate, access to such sites should be made available to parties of interest. Access to such sites must be designed and managed in a manner that gives maximum protection to the resource.
- f. Opportunities for education related to archaeological, historical, and cultural features should be provided when or where appropriate and incorporated into public and private management efforts, programs, and development.

3. Regulations

- a. All applications for a shoreline development permit, a building permit, a clearing and grading permit, a demolition permit, or a statement of exemption for shoreline development within the jurisdiction of the Burlington SMP shall be reviewed for a determination of whether the site(s) in question:
 - i. Is on property within 500 feet of a site known to contain historic, cultural, or archaeological resource(s); or
 - ii. Is in an area mapped as having the potential for the presence of archaeological, historic, or cultural resources to be present.

All applications meeting these criteria shall require a cultural resource site survey or assessment, unless this requirement is waived or modified by the Washington State Department of Archaeology and Historic Preservation (DAHP). Any required site assessment shall be conducted by a professional archaeologist or historic preservation professional, as applicable, to determine the presence of historic archaeological resources. Buildings or structures over 40 years in age shall be inventoried in a DAHP Historic Property Inventory Database entry and archaeological sites shall be recorded on DAHP Archaeological Site Inventory Forms. The fee for the services of the professional archaeologist or historic preservationist shall be paid by the applicant.

- b. If the cultural resource site assessment identifies the presence of archaeological, historic, or cultural resources, appropriate recommendations shall be prepared by a professional archaeologist or

historic preservation professional, as part of the survey or assessment. The fee for the services of the professional archaeologist or historic preservation professional shall be paid by the applicant. In the preparation of such plans, the professional archaeologist or historic preservation professional shall solicit comments from the Washington State Department of Archaeology and Historic Preservation, and the affected Tribe(s). Comments received from these reviewers shall be incorporated into the conclusions and recommended conditions of the survey or assessment to the maximum extent practicable.

- c. A Cultural Resources survey or site assessment shall be prepared in accordance with guidance for such studies approved or promulgated by the DAHP. DAHP shall determine whether the research design or study is adequate
- d. The administrator shall consult with the Washington State Department of Archaeology and Historic Preservation and affected Tribe(s) prior to approval and acceptance of the survey or assessment.
- e. Based upon consultation with DAHP and affected Tribe(s), the administrator may reject or request revision of the conclusions reached in a survey or assessment when the administrator can demonstrate that the assessment is inaccurate or does not fully address the historic or archaeological resource management concerns involved.
- f. In the event a Cultural Resources survey or site assessment is submitted directly to Skagit County, the professional archaeologist or historic preservation professional will be advised to submit the materials directly to DAHP.
- g. In granting shoreline permits or statements of exemption for such development, Skagit County may attach conditions of approval to require consultation with the Washington State Department of Archaeology and Historic Preservation, affected Tribe(s), and any local historic preservation authority, to assure that historic or archaeological resources are properly protected, or for appropriate agencies to contact property owners regarding purchase or other long-term arrangements. Provisions for the protection and preservation of historic or archaeological sites, structures, buildings, districts, objects, or areas shall be incorporated to the maximum extent practicable.

Inadvertent Discovery

- h. Whenever historic, cultural, or archaeological sites or artifacts are discovered in the process of

development on shorelines, work on that portion of the development site shall be stopped immediately and the find reported as soon as possible to the Administrator or DAHP.

- i. The Administrator shall then notify the Washington State Department of Archaeology and Historic Preservation, affected Tribe(s), any local historic preservation authority, and any other appropriate agencies and upon consultation with DAHP, shall require that an immediate site assessment be conducted by a professional archaeologist or historic preservation professional, as applicable, pursuant to this section to determine the extent of damage to the resource. The site assessment shall be distributed to the Washington State Department of Archaeology and Historic Preservation, the affected Tribe(s), and local historic preservation authority for a 15-day review period. If the above listed agencies or governments have failed to respond within the applicable review period following receipt of the site assessment, such stopped work may resume.
- j. If human remains are encountered, all activity must cease and the area must be protected and the find reported to local law enforcement and the County coroner or medical examiner.

~~All shoreline permits shall contain provisions which require developers to immediately stop work and notify the City if any phenomena of possible archaeological value are uncovered during excavations. In such cases, the developer shall be required to provide for a site inspection and evaluation by a professional archaeologist to ensure that all possible valuable archaeological data are properly salvaged or mapped.~~

- ~~b. Permits issued in areas known to contain archaeological artifacts and data shall include a requirement that the developer provide for a site inspection and evaluation by a professional archaeologist in coordination with affected tribes. The permit shall require approval by the City before work can begin on a project following inspection. Significant archaeological data or artifacts shall be recovered before work begins or resumes on a project.~~
- ~~c. Significant archaeological and historic resources shall be permanently preserved for scientific study, education and public observation. When the City determines that a site has significant archaeological, natural, scientific or historical value, a Substantial Development Permit shall not be issued which would pose a threat to the site. The City may require that development be postponed in such areas to allow investigation of public acquisition potential and/or retrieval and preservation of significant artifacts.~~
- ~~d. In the event that unforeseen factors constituting an emergency as defined in RCW 90.58.030 necessitate rapid action to retrieve or preserve artifacts or data identified above, the project may be exempted from the permit requirement of these regulations. The City shall notify the State~~

		<p>Department of Ecology, the State Attorney General's Office and the State Historic Preservation Office of such a waiver in a timely manner.</p> <p>e. Archaeological sites located both in and outside the shoreline jurisdiction are subject to RCW 27.44 (Indian Graves and Records) and RCW 27.53 (Archaeological Sites and Records) and shall comply with WAC 25-48 (Archeological Excavation and Removal Permit) as well as the provisions of this master program.</p> <p>f. Archaeological excavations may be permitted subject to the provisions of this program.</p> <p>g. Identified historical or archaeological resources shall be considered in park, open space, public access and site planning, with access to such areas designed and managed so as to give maximum protection to the resource and surrounding environment.</p> <p>h. Clear interpretation of historical and archaeological features and natural areas shall be provided when appropriate.</p> <p>i. The City will work with affected tribes and other agencies to protect Native American artifacts and sites of significance and other archaeological and cultural resources as mandated by Chapter 27.53 RCW.</p>					
7	<p>18.07.040 Shorelines Area Designations</p> <p>A. Urban Conservancy Environment</p>	<p>3. Location of Environment</p> <p>b. Gages Slough delineated wetland corridor extending from the east City Limits to, <u>and including,</u> the Goldenrod Bridge <u>corridor</u> west of Interstate 5.</p>	The Guidelines require a clear demarcation of shoreline environment designations.				
8	<p>18.07.040 Shorelines Area Designations</p> <p>B. Natural Environment</p>	<p>3. Location of Environment</p> <p>The Natural Environment applies to the following location - Gages Slough wetland area west of Goldenrod Bridge <u>corridor</u>, extending to the City Limits.</p>	The Guidelines require a clear demarcation of shoreline environment designations.				
9	TABLE 1 - SHORELINE USE	<table border="1"> <tr> <td><u>Recreation – 9</u></td> <td><u>P</u></td> <td><u>P</u></td> <td><u>P</u></td> </tr> </table>	<u>Recreation – 9</u>	<u>P</u>	<u>P</u>	<u>P</u>	The listing of “recreation in the table is needed for consistency with the other named uses.
<u>Recreation – 9</u>	<u>P</u>	<u>P</u>	<u>P</u>				
10	<p>18.08.110 Utilities including Wastewater Treatment Plant and Accessory Utilities</p>	<p>18.08.110 Utilities including Wastewater Treatment Plant and Accessory Utilities</p> <p>A. Implementation Policies</p> <p><u>These facilities include utility production and processing as well as large transmission facilities. It does not</u></p>	The change is needed since “accessory utilities” has its own section as noted.				

		<p><u>include accessory utilities found in section 18.05.020 H.</u></p>	
<p>11</p>	<p>CHAPTER 18.13 – DEFINITIONS</p>	<p><u>Archaeological Object means an object that comprises the physical evidence of an indigenous and subsequent culture including material remains of past human life including monuments, symbols, tools, facilities, graves, skeletal remains and technological by-products.</u></p> <p><u>Archaeological Resource/Site means a geographic locality in Washington, including, but not limited to, submerged and submersible lands and the bed of the sea within the state’s jurisdiction, that contains archaeological objects.</u></p> <p><u><i>Historic Preservation Professional means those individuals who hold a graduate degree in architectural history, art history, historic preservation, or closely related field, with coursework in American architectural history, or a bachelor's degree in architectural history, art history, historic preservation or closely related field plus one of the following:</i></u></p> <ul style="list-style-type: none"> <u>a. At least two years of full-time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or</u> <u>b. Substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.</u> <p><u>Professional archaeologist means a person with qualifications meeting the federal secretary of the interior's standards for a professional archaeologist. Archaeologists not meeting this standard may be conditionally employed by working under the supervision of a professional archaeologist for a period of four years provided the employee is pursuing qualifications necessary to meet the federal secretary of the interior's standards for a professional archaeologist. During this four-year period, the professional archaeologist is responsible for all findings. The four-year period is not subject to renewal.</u></p>	<p>The additional definitions were requested by the Washington State Department of Archaeology and Historic Preservation (DAHP) and agreed to by Burlington.</p>