ATTACHMENT A: FINDINGS AND CONCLUSIONS

AMENDMENTS TO THE CITY OF ANACORTES
SHORELINE MASTER PROGRAM
SUBMITTED TO THE DEPARTMENT OF ECOLOGY AS RESOLUTION 1796

Prepared by Robert J. Fritzen on August 23, 2010

Brief Description of Proposed Amendments:

The City of Anacortes (City) is proposing a comprehensive update of its shoreline master program (SMP).

FINDINGS OF FACT

Need for Amendment: The proposed update is needed to bring the SMP into compliance with RCW 90.58.080 – Timetable for local governments to develop or amend master programs and the most recent standards for SMPs as set forth in Chapter 173-26 WAC – Part III Guidelines.

Amendment History, Review Process: The City began its SMP update in January of 2006. In September of 2009, a state grant was provided to the City through the Department of Ecology (Ecology). The record shows numerous Citizen Advisory Committee meetings and public workshops conducted by the Planning Commission and City Council between April 2006 and March 2010.

The record shows that a SEPA determination of nonsignificance was issued on December 4, 2009. City staff sent the Draft SMP to the State of Washington Department of Commerce (Commerce), other state agencies, and interested parties on December 9, 2009, for the required 60-day review period. In a letter dated December 10, 2009, Commerce indicated that it had received the document and requested that the final document be sent to Commerce following adoption.

The Anacortes Planning Commission recommended approval of the SMP at its January 20, 2010, meeting. The Anacortes City Council adopted the SMP on March 15th, 2010, through Resolution 1796 which was signed on March 17th. The Resolution states that SMP is comprised of Chapters 1 through 12, the Shoreline Environment Designation Map - Figure 5.1, the Critical Areas Regulations – Appendix A, and the Shoreline Restoration Plan – Appendix B.

The proposed SMP amendment was received by Ecology for state review and approval on March 24, 2010. The submittal was verified as complete on March 25, 2010. The submittal stated that some changes requested by Ecology were not made prior to local adoption, but would be addressed during the state process. On June 16, 2010, the City also submitted a list of minor corrections and edits for consideration.

Along with interested parties identified by the City, notice of the state comment period was distributed to state task force members and other interested parties on March 26, 2010, in
compliance with the requirements of WAC 173-26-120 – State process for approving/amending shoreline master programs. The state comment period began on March 29, 2010, and continued through April 30, 2010.

Ecology held a public hearing at the Anacortes City Hall to seek input on the proposed amendments. Notice of the hearing, including a description of the proposed amendment and the authority under which the action is proposed, the times and locations of the hearings, and the manner in which interested persons may obtain copies and present their views was provided in the March 31 and April 7, 2010, editions of the Anacortes American, the City's official newspaper of record.

Fourteen individuals or organizations submitted comments on the proposed amendments during the state comment period. Ecology sent a summary of the comments along with copies of all emails and written comments to the City on May 12, 2010. The City already had a copy of the oral testimony. The City subsequently submitted to Ecology its responses to issues raised during the state comment period on June 14, 2010. Ecology’s Responsiveness Summary is available upon request as part of the record.

Consistency with Chapter 90.58 RCW: The proposed amendments have been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4) and (5). The City has also provided evidence of its compliance with SMA procedural requirements for amending an SMP contained in RCW 90.58.090.

Consistency with “applicable guidelines” (Chapter 173-26 WAC, Part III): The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program guidelines (WAC 173-26-171 through 251 and -020 definitions). This included review of a SMP Submittal Checklist, which was completed by the City.

Consistency with SEPA Requirements: The City submitted evidence of SEPA compliance in the form of a Notice of SEPA Determination. Ecology did not comment on the Determination of Non-Significance.

Summary of Issues Raised During The Public Review Process: A variety of issues were raised during the review process including buffers, vegetation conservation, over-water uses in historical buildings, no net loss, and trails in buffers.

CONCLUSIONS OF LAW

The City of Anacortes’s updated shoreline jurisdiction does not include expanded jurisdiction necessary for buffers of critical areas within shorelines of the state (RCW 90.58.030(2)(f)). Therefore, as required by RCW 36.70A.480(6), those critical areas and their buffers shall be regulated by the City’s Critical Areas Ordinance.
The record submitted indicates that the City’s SMP proposal is not fully consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP Guidelines (WAC 173-26-171 through 251 and .020 definitions). A number of required changes will be necessary along with several suggested changes.

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

The review of the record indicates that the City has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 regarding public and agency involvement in the SMP amendment process.

The review of the record indicates that the City has complied with the purpose and intent of the local amendment process requirements contained in WAC 173-26-100, including conducting open houses and public hearings, notice, consultation with parties of interest and solicitation of comments from tribes and government agencies.

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

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

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

Ecology has determined that, as submitted by the City, the proposal is not completely consistent with the policy of the SMA and Guideline requirements. Prior to acceptance by Ecology, the City and Ecology agreed that several changes were needed. Based on the provisions of RCW 90.58.090, Ecology is required to provide specific changes necessary to make the proposal approvable. Therefore, if the following Attachment B (required changes) is accepted by the City, the proposal will be determined consistent with the policy and provisions of RCW 90.58 and the applicable Guidelines. Attachment C contains a number of “suggested” changes proposed by either the City or Ecology. In addition a number of changes are necessary that are strictly limited to spelling or grammar and are not included as required or suggested changes.

With the required changes and consistent with RCW 90.58.090(4), Ecology concludes that those SMP segments relating to critical areas within Shoreline Management Act jurisdiction provide a level of protection to assure no net loss of shoreline ecological functions. Ecology further concludes that those SMP segments relating to shorelines of statewide significance provide for the optimum implementation of Shoreline Management Act policy. The record shows that the implementing policies and regulations, as well as the shoreline environment designations, are based on the inventory, characterization and analysis.
DECISION AND EFFECTIVE DATE

Ecology has required a number changes. For example, public access trails must implement a landscaping/mitigation plan that provides equal or better environmental function, all development near the shoreline must inventory for critical saltwater habitat as part of the application process, lots cannot be created that would require future shoreline stabilization, setbacks from bluffs must ensure that stabilization is will not be required for the life of the structure, critical area reports are required to determine the buffer sizes along marine shorelines.

Based on all preceding records, Ecology has determined the proposed amendments, with required changes, are consistent with the policy of the Shoreline Management Act, the applicable Guidelines and implementing rules, once required changes set forth herein are approved by the City. Ecology approval of the proposed amendments with required changes is effective on the date on which Ecology receives written notice that the City has agreed to the required changes. This will represent the City’s and Ecology’s final action regarding the proposed SMP update.

As provided in RCW 90.58.090(2)(e)(ii) the City may choose to submit an alternative to all or part of the changes required or suggested 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 Ecology shall approve the alternative proposal and that action shall be the final action on the amendment.