ATTACHMENT A: FINDINGS AND CONCLUSIONS
FOR PROPOSED COMPREHENSIVE UPDATE TO THE CITY OF MERCER ISLAND
SHORELINE MASTER PROGRAM

SMP Submittal accepted April 3, 2012, Ordinance No.1440
Prepared by Barbara Nightingale & Joe Burcar on December 16, 2014

Brief Description of Proposed Amendment:

The City of Mercer Island (City) submitted to Ecology for approval, a comprehensive update to their Shoreline Master Program (SMP) that is intended to comply with the Shoreline Management Act (SMA) and SMP Guideline requirements. The updated master program contains locally tailored shoreline management policies, regulations, environment designation maps, and administrative provisions. In support of the updated master program, the City also prepared a number of reports and local analyses, as noted throughout this document.

The City of Mercer Island is located in King County and is completely surrounded by the waters of Lake Washington, which is classified as a Shoreline of Statewide Significance (RCW 90.58.030). Mercer Island is located between the cities of Seattle to the west, Bellevue, Beaux Arts and Newcastle to the east, and Renton and King County to the southeast. The island encompasses an area of approximately 6.2 square miles and has over 467 acres of parks and open spaces. The master program applies to the island’s entire 14.7 linear miles of Lake Washington shoreline and associated wetlands.

Existing uses along Mercer Island shorelines consist primarily of single-family residential development with limited segments of multi-family residential, water dependent recreation, and parks and open space. There are no industrial or commercial uses located or planned within the City’s shoreline area.

The updated SMP is intended to become an integrated element of the City’s Comprehensive Plan and Unified Development Code (Title 19). The City’s Unified Development Code includes other applicable, such as the storm water management regulations in Title 15 and the building/construction regulations in Title 17. Applicable provisions from the City’s Critical Areas Ordinance (19.07.010 through and including 19.07.090 as in effect on January 1, 2011) are incorporated into the updated SMP. The City’s SMP notes that to the extent standards in the SMP conflict with any other section of the Mercer Island Municipal Code, the provisions of the master program are intended to govern projects located within the shorelands area.

FINDINGS OF FACT

Need for amendment. The proposed amendment is intended to comply with the statutory deadline for a comprehensive update of the City’s local Shoreline Master Program pursuant to RCW 90.58.080 and 100. The City’s original SMP was approved by Ecology in June 1974 and was last amended in 1996. According to the City, the 1974 SMP has never been comprehensively updated. Therefore, this SMP update is also needed to address land use changes that have occurred along the City’s shorelines over the past 40 years and to provide consistency between the updated SMP and the environmental protection and land use management policies and practices provided by the City’s Comprehensive Plan, Critical Areas Ordinance, Flood Management Plan, and Stormwater Plan.
The updated SMP will completely replace the existing SMP, regulating future development along Mercer Island’s approximately 15 miles of fresh water shoreline. In addition to addressing land use changes that have occurred along the City’s shorelines over the past 40 years, the updated SMP is intended to manage future uses that are expected to occur over the next 20 years. This updated SMP will bring the City’s shoreline regulations consistent with the environmental protection and land use management policies and practices provided by the City’s 2005 Critical Areas Ordinance, Comprehensive Plan elements, the 2003 SMP Guidelines (WAC 173-26) and the objective to meet no net loss of ecological functions.

The following table summarizes the proposed SMP changes to achieve consistency with the goals and objectives of the state SMA (RCW 90.58) and the SMP Guidelines (WAC 173-26).

<table>
<thead>
<tr>
<th>Updated SMP Changes</th>
<th>1974 SMP</th>
<th>New Requirements</th>
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</thead>
<tbody>
<tr>
<td>New Dock Standards</td>
<td>General standards that allowed for a variety of docks inconsistent with present protection goals.</td>
<td>Dock standards based on the ACOE Lake Washington Biological Evaluation.</td>
</tr>
<tr>
<td>New Vegetation Conservation Standards</td>
<td>No vegetation conservation requirements</td>
<td>Requires plant coverage standards of native plants necessary to mitigate future development.</td>
</tr>
<tr>
<td>2008 Shoreline Inventory and characterization</td>
<td>No shoreline inventory of existing conditions</td>
<td>Provides information on existing ecological functions, uses within the City.</td>
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<tr>
<td>2012 Cumulative Impacts Analysis</td>
<td>No cumulative impacts analysis describing future development</td>
<td>Provides understanding of future development potential and anticipated impacts.</td>
</tr>
<tr>
<td>2012 Restoration Plan</td>
<td>No restoration plan to guide future restoration efforts</td>
<td>Provides a regional tool to support restoration planning.</td>
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**Amendment History, Local Development:** This local update process began in early 2008. This process included the City’s development of a Shoreline Inventory and Characterization Report that included input provided during and following a public information meeting held by the City early in 2009.

The record shows that a workshop open to the public was held on May 19, 2009 and two public hearings before the Planning Commission were held on May 5, 2010 and March 16, 2011. Affidavits of publication provided by the City indicate notices of the hearings were published on April 21, 2010 and March 2, 2011. The City Council also held a public hearing on May 2, 2011, for which an affidavit of publication was submitted verifying publication on April 20, 2011 and April 27, 2011, in the Mercer Island Reporter.

On April 6, 2011, the Planning Commission prepared their findings and conclusions and recommendations for the Mercer Island City Council for the 2011 adoption of the SMP. Following 29 public meetings and two previous public hearings, the City Council held a final hearing on the draft SMP on August 1, 2011 during which they adopted Resolution #1440 consisting of a updated SMP.
With passage of Resolution #1440, the City Council authorized City staff to forward the proposed amendments to Ecology for approval. The proposed SMP update was received by Ecology for state review and verified as complete on April 3, 2012. However, due to staffing turnover and workload issues, the City requested that Ecology delay starting their public comment period. Ecology agreed to the City’s request and waited until the fall of 2012 before moving forward with Ecology’s review.

Amendment History, Ecology’s Review: On October 18, 2012, Ecology provided notice to the general public and identified interested parties, of Ecology’s comment period and upcoming public hearing on the City’s updated SMP. Such notice was distributed to over 1600 parties, including state task force members and all interested parties identified by the City in compliance with the requirements of WAC 173-26-120. Ecology’s comment period began on October 22, 2012 and continued through November 26, 2012.

On November 8, 2012, Ecology held a public hearing at the Mercer Island Community and Event Center to seek additional input on the proposed update. Notice of the hearing was provided in post cards and emails to over 1600 individuals and was published in the Mercer Island Reporter, the City's official newspaper of record, on October 24, 2012. The notice provided: a description of the proposed amendment, a description of Ecology’s review authority, notice of the time and location of the hearing, instructions on how to view the amendment materials, and options describing how interested persons may present their views to Ecology.

On December 12, 2012, after completion of the public comment period and public hearing, Ecology (as required by WAC 173-26-120 (6)) summarized and then sent all oral and written comments received on the updated SMP to the City for their response. The SMP-Guidelines then provide the City with 45-days to prepare a response to issues raised in the comment, which would have been due to Ecology on January 26, 2013. However, upon review of the comment summary, the City requested additional time to prepare their response, which was provided to Ecology on March 15, 2013.

After completing a substantive review of the proposed SMP and consideration of public comments and the City’s response, Ecology identified draft required and recommended changes to the SMP, which were shared with the City in July of 2013. Many of these issues revolved around dock standards and vegetation management provisions as explained below under the section titled “Summary of Issues Identified by Ecology as Relevant To Its Decision”. In response to this initial feedback, the City developed a number of alternative SMP provisions that were shared with Ecology through discussions, written communications and Council work sessions that occurred between December 2013 and November 2014. Ecology and the City came to a conceptual agreement during a June 2014 meeting on necessary amendments to the master program. Following this meeting, Ecology and City staff worked collaboratively in developing specific amendments to the master program that were shared with the City Council in November of 2014. Following some minor amendments from the City Council during their November 17, 2014 meeting, the Council endorsed the changes, requesting that Ecology proceed with issuance of a conditional approval incorporating the amendments to the original locally adopted SMP as either “required” or “recommended” changes. Therefore, this document along with attachment B (required changes) and attachment C (recommended changes) will serve as Ecology’s conditional approval of the City’s updated SMP, which upon acceptance of the required changes by the City, will complete approval of the updated SMP.
Consistency with Chapter 90.58 RCW: The proposed amendment has been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090 (3), (4) and (5). The City has also provided evidence of its compliance with SMA procedural requirements for amending their SMP contained in RCW 90.58.090 (1) and (2).

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

Consistency with SEPA Requirements: The City submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance (DNS) for the proposed SMP amendments on February 22, 2012. Notice of the SEPA determination was published in the Mercer Island Reporter on February 24, 2010. Ecology did not comment on the DNS.

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

These supporting documents include:

- a 2009 Shoreline Analysis Report,
- a 2012 Shoreline Cumulative Impacts Analysis, and
- a 2011 Shoreline Restoration Plan.

In addition to these documents, the City held a public open house on May 19, 2009 to introduce island residents to the SMP update, the 2003 guidelines requirements and the SMA. According to the City, the objectives in the open-house meeting were two-fold: (1) to collect information from the public on shoreline uses and anticipated issues, and (2) to share with the public background information on the state shoreline management act, the 2003 guidelines, and the role of the City in the SMP process. As noted earlier, over the next 3 years, the City’s Planning Commission held 28 public meetings and two public hearings (May 5, 2010 and March 16, 2011).

Summary of Issues Identified During The Public Review Process:

The Planning Commission heard hours of testimony and received volumes of written documents and studies during the review process. Many of the comments received during the Planning Commission process were conflicting, frequently exhibiting opposing views between environmental and property rights interests. The City’s SMP public review process was at times contentious, with considerable debate centered on the topics of dock and vegetation conservation requirements. Public testimony included arguments that the City should not change their existing dock requirements, that the citizens’ interpretation of the science did not warrant it, versus opposing arguments that the science of today warrants improved standards to protect endangered species in Lake Washington. Similarly, public testimony included arguments over the City’s proposed 25% vegetation coverage. With arguments that the 25-foot setback with 25% vegetation coverage was not enough to protect aquatic habitat, while others claimed that the proposed vegetation conservation standards would be adequate to meet no net loss requirements.
As described in attachment D, Ecology held a public hearing and a comment period soliciting feedback on the City’s updates to their SMP. Comments submitted by Mercer Island citizen Rita Moore, Futurewise (Tim Trohmovich), and Karen Walter with the Muckleshoot Tribe, expressed concern over, among other issues: dock sizes being too large; and claims that the City’s vegetation conservation standards were inadequate to meet the state requirement of no net loss.

Other comments included: Sound Transit (Ellie Ziegler) commenting on the City’s balanced and collaborative coordination striking a balance between light rail and environmental protection. Citizen Liz Blaszczak expressed concern over repairing her existing dock and understanding the SMP. Others, such as David Douglas, Dwight Schaeffer, and Robert Thorpe identified various other SMP issues that the City clarified in their responsiveness summary.

**Summary of Issues Identified by Ecology as Relevant To Its Decision:**

Issues identified by Ecology pertained to dock standards in the SMP that initially were inconsistent with the Army Corps of Engineers (ACOE) Regional General Permit (RGP) standards for Lake Washington and concerns with the vegetation conservation measures applicable to new or expanded development. In June 2013, Ecology staff met with City staff and reviewed Ecology draft required and recommended changes for docks, vegetation requirements, and technical changes pertaining to wetlands and OHWM delineations. The City Council then deliberated on the issues described by Ecology as draft required or recommended changes. On July 1, 2013, the Mayor sent a letter to Ecology identifying a number of amendments to the SMP that the City Council voted on, in response to Ecology’s draft required and recommended changes. Ecology agreed with many of the alternatives proposed by the City, with the exception of a change that would allow for a five (5) foot wide dock within the first 30 feet from OHWM, in conflict with the ACOE-RGP standards restricting the width of docks to 4-feet within the nearshore area.

**Vegetation Conservation for New and Expanded Development:** Ecology has also raised the issue that the vegetation conservation requirements for new or expanded development, setting a threshold of 500 square feet did not meet the requirement of environmental impact mitigation pursuant to WAC 173-26-201(2) (e). The alternative language proposed by the City Council on July 1, 2013 takes the form of a 2-tiered threshold approach to address nexus and proportionality and more clearly mitigates for expanded impervious surfaces within the 20-foot conservation area. Under this regulation, mitigation for adding over 500 sq-feet of new impervious surface waterward from an existing structure would require 50% of vegetation in the 20-foot vegetation area. Similarly, mitigation for adding over 1000 square feet of additional impervious surface would require 75% of vegetation area in the 20-foot conservation area.

Therefore Ecology finds that the agreed upon Vegetation Conservation revisions are consistent with nexus and proportionality limits related to mitigation required to offset anticipated impacts from foreseeable development within the City’s shoreline areas.

**Dock Standards:** As described above, the City’s SMP as originally submitted to Ecology limited dock width to 4-feet within the first 30-feet, consistent with regional standards. However, after consideration of the limited potential for new docks1, in July of 2013 the City Council proposed a universal 5-foot dock width standard, which they anticipated would satisfy the SMP-guideline requirement for no net

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1 The City only anticipate the potential for 10 new docks over the next 20-years, as there are currently 676 existing docks adjacent to most of the shoreline parcels within the City.
loss of shoreline ecological functions. The City’s perspective was based on anticipated reduction in overwater coverage as existing (larger) docks were rebuilt to the 5-foot standard. Even though the Councils alternative would likely result in a reduction of overwater coverage as existing structures are replaced over time, the increase from 4-feet to 5-feet of the maximum width standard (within the first 30-feet) would be inconsistent with SMP standards adopted by other neighboring jurisdiction with shorelines on Lake Washington, and ACOE- RGP standards for the lake. The ACOE RGP#3 standards were specifically developed to protect aquatic habitat in Lake Washington, limits dock width for new or replacement structures to 4 feet for the first 30 feet from OHWM. Therefore, it is anticipated that the ACOE could require an individual Endangered Species Act (ESA) consultation with the National Marine Fisheries Services for all dock proposal with a 5-foot wide dock, as the wider dock would exceed the dimensional requirements listed in the ACOE’s 2010 programmatic Biological Evaluation.

Further, Ecology was concerned that the City’s alternative (5-foot width) dock standard was not consistent with SMP-Guideline requirements. The SMP-Guidelines at WAC 173-26-231 (3) (b) provide Shoreline Modifications requirements that are to be followed in the development of updated SMP standards. Specific to Pier or Dock forms of Shoreline Modifications, the SMP-Guidelines require that updated SMP’s limit the size and extent of modification by first avoiding ecological impacts. Where avoidance is not possible, SMP standards are required to then minimize and mitigate potential impacts resulting from authorized development. In considering the City’s alternative to increase the allowed width of docks to 5-feet, Ecology concerns were related to inconsistency with Environmental Mitigation (Mitigation Sequencing) standards from the SMP-Guidelines at WAC 173-26-201 (2) (e) and inconsistency with Shoreline Modification requirements intended to limit the width (size) of docks to the minimum necessary to support the water-dependent (moorage) use of a private residential dock pursuant to the general principles in WAC 173-26-231 (2) and specific Pier/Dock requirements in WAC 173-26-231 (3) (b).

As described above, Ecology and the City reached a general agreement on acceptable dock standards for the updated SMP, after meeting in June of 2014. The agreed upon concept distinguishes between “minor repair”, “replacement” and “new” dock proposals. It was agreed that these three activities represent different levels of potential impact to shoreline ecological functions and therefore deserve a unique set of development standards that could be applied by the City to the different types of shoreline development. As described in attachment B (required changes) the updated SMP will include the 4-foot width limit (within the first 30-feet) applicable to both new and replacement dock proposals. In addition, the SMP will allow for consideration of a wider 5-foot wide dock (within the first 30-feet), but will be limited to one of the following three scenarios:

1. Where water depth exceeds 4.85-feet; or
2. When necessary to accommodate ADA requirements; or
3. When an applicant can incorporate certain mitigation options, as defined in the SMP, and only when a replacement action results in a net reduction in overwater coverage.

In evaluating the effect of the agreed upon standards, the defined instances where the City’s SMP would allow a 5-foot wide dock all fit within SMP-Guideline requirements to avoid or minimize impacts, or in the case of option 2 to accommodate ADA requirements, would be considered the minimum width necessary to support the water dependent use.

Therefore Ecology finds that the agreed upon dock standards are consistent with SMP-Guideline requirements related to mitigation sequencing and shoreline modification standards.

CONCLUSIONS OF LAW
After review by Ecology of the complete record, including alternative language, and all comments received, Ecology concludes that the City’s proposed comprehensive SMP update, subject to and including Ecology’s required changes (itemized in attachment B) and the recommended change (itemized in attachment C) brings the City’s document into compliance with state law and addresses the above-cited needs, to be 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 those SMP segments relating to shorelines of statewide significance provide for the optimum implementation of Shoreline Management Act policy (RCW 90.58.090 (5) with the Required Changes.

Ecology concludes that the City has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the City has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 regarding public and agency involvement in the SMP update and amendment process.

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

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

Ecology concludes that the City comprehensive SMP update submittal to Ecology was complete pursuant to the requirements of WAC 173-26-110 and WAC 173-26-201(3) (a) and (h) requiring a SMP Submittal Checklist.

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

Ecology concludes that the City has chosen not to exercise its option pursuant to RCW 90.58.030 (2) (d) (ii) to increase shoreline jurisdiction to include buffer areas of critical areas of the state. Therefore, as required by RCW 36.70A.480 (6), for those designated critical areas with buffers that extend beyond SMA jurisdiction, the critical area and its associated buffer shall continue to be regulated by the City’s critical areas ordinance. In such cases, the updated SMP shall also continue to apply to the designated critical area, but not the portion of the buffer area that lies outside of SMA jurisdiction. All remaining designated critical areas (with buffers NOT extending beyond SMA jurisdiction) and their buffer areas shall be regulated solely by the SMP.
DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendments, comprehensively updating the SMP, are consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules, once required changes and the recommended change, as set forth in attachments B and C, are approved by the City. Ecology approval of the proposed amendments with required and recommended changes is effective 14 days from Ecology’s final action approving the amendment.

As provided in RCW 90.58.090 (2) (e) (ii), the City may choose to submit an alternative to 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. Approval of the updated SMP and proposed alternatives is effective 14 days from Ecology’s final action approving the alternatives.