ATTACHMENT A: FINDINGS AND CONCLUSIONS FOR PROPOSED COMPREHENSIVE AMENDMENT TO THE CITY OF MUKILTEO SHORELINE MASTER PROGRAM

SMP Submittal accepted March 16, 2011, Resolution No. 2011-06
Prepared by Barbara Nightingale November 22, 2011

Brief Description of Proposed Amendment:

The City of Mukilteo has submitted to Ecology a comprehensive amendment to their Shoreline Master Program (SMP). This updated master program will reside as a stand-alone SMP (including appendices) codified within Title 17B of the City of Mukilteo Municipal Code. Although there are some procedural differences between the Mukilteo Critical Areas (MMC 17.52) and this SMP, this SMP, formalized with Resolution 2011-06 and finalized on March 7, 2011, embeds all applicable provisions of the critical areas ordinance regulations of Mukilteo Municipal Code (MMC) Chapter 17.52. Some embedded CAO elements contain strike-outs for those CAO provisions inconsistent with the SMA, such as reasonable use exceptions, and adds language to other provisions to achieve consistency with the SMA.

FINDINGS OF FACT

Need for amendment. This proposed amendment is needed to comply with the statutory deadline of December 1, 2011 for a comprehensive update of the City’s local Shoreline Master Program pursuant to RCW 90.58.080. This amendment is also needed for compliance with use regulations and program content requirements of RCW 90.58.100. The existing Mukilteo SMP has been in effect since 1974 and has not been substantively amended since that date. In 1991, the City of Mukilteo annexed a portion of Snohomish County commonly referred to as Harbour Pointe. As part of that annexation, Snohomish County’s SMP applies to the existing southern half of City shorelines.

SMP Provisions to be changed by the amendment as proposed: This updated Mukilteo SMP would now cover approximately 5 miles of marine shoreline in northern Puget Sound, also known as Possession Sound, located between the mainland and the boundaries of Island County. In addition to the existing 5 miles of marine shoreline, the City has an additional over 3 miles of Potential Annexation Area (PAA) extending south to just short of the City of Edmonds. These shorelines are pre-designated as Urban Conservancy. The PAA also includes 1.3 miles of shoreline around Lake Serene, presently in unincorporated Snohomish County. These Lake Serene shorelines are pre-designated as Urban Lakefront. Upon annexation, these areas double the linear extent of Mukilteo shorelines under the SMP.

In summary, this SMP update is needed to address land use changes that have occurred along the City’s shorelines over the past 40 years and bring the SMP current with the environmental protection and land use management policies and practices provided by the City’s 2005 Critical Areas Ordinance, Comprehensive Plan elements, and the 2003 SMP Guidelines (WAC 173-26). This update also brings the City into compliance with the statutory deadline of December 1, 2011 for their comprehensive SMP update (RCW 90.58.080 and 250).

SMP changes include more site and use-specific policies and regulations for this broader extent of shorelines that are based on the City’s inventory of conditions and demonstration of the potential to achieve no net loss of ecological functions as provided in their Cumulative Impacts Analysis. The existing SMP divides City shorelines into four (4) designations: Conservancy, Urban, Urban-Recreational, and Marine. In contrast, the
updated SMP regulates activities and development along City shorelines using the following seven (7) designations:

1) **Urban Waterfront** – to provide for development and redevelopment of high-intensity, water-oriented commercial and recreational activities; transportation, and essential public facilities; while protecting existing ecological functions and improving ecological functions in areas that have been previously degraded.

2) **Urban Waterfront Park** - to provide for redevelopment of an urban waterfront park (i.e. the lighthouse and former state park), including the western portion of Front Street, as a key component of community waterfront access.

3) **Urban Conservancy** - to protect and improve, wherever possible, the ecological functions of the shoreline in an urban setting, while allowing for the necessary retention and modification of the existing BNSF Railroad lines in order to optimize the freight, passenger, and commuter rail service corridor; stream, storm water, culverts, and sewer outfalls; existing residences, and a variety of water-oriented public access and recreational activities together with their related structures.

4) **Urban Railroad** – includes all BNSF railroad right-of-way or easements and BNSF tidelands within 200 feet upland and waterward of the OHWM of Puget Sound.

5) **Urban Lakefront** – includes all lands 200 feet upland and waterward of OHWM around the entire perimeter of Lake Serene. Upon annexation, the lake will become subject to the City SMP.

6) **Aquatic Urban** – to protect, restore, and manage the unique characteristics and resources of the areas waterward of the OHWM between the City’s most eastern boundary with the City of Everett to the southern end of the Lighthouse Park.

7) **Aquatic Urban Conservancy** – to protect, restore, and manage the unique characteristics and resources of the areas waterward of the OHWM in areas from the southern boundary of the Lighthouse Park to the southern city limits, including the Potential Annexation Area.

SMP changes include more site and use-specific policies and regulations to protect for no net loss of ecological function with future potential development, as reflected in the following table.
<table>
<thead>
<tr>
<th>Updated SMP Changes</th>
<th>1974 SMP</th>
<th>New Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dock specifications, including materials and size requirements for all types of docks or boating facilities existing on city shorelines.</td>
<td>No specific regulations on sizes and materials, with the exception of piling materials not allowing creosote. Refers to marinas on city shorelines, when the city has no expectation of having marinas on city shorelines.</td>
<td>SMP closely prescribes docks and boating facilities provided in the Urban waterfront, waterfront park and Lake Serene areas with standards reflecting federal and state regulatory agency requirements. The only SFR docks allowed are on Lake Serene. The standards for these docks mirror the ACOE standards with mitigation for docks to include rebuilding a riparian area. Adopts size and material standards of 2010 NMFS Biological Evaluation for docks in Washington lakes. Adds riparian as upland mitigation measure for new docks consistent with NMFS lakes biological evaluation. Specific &amp; prescriptive to capture the size of existing and envisioned community boating facilities in the City’s downtown waterfront designations.</td>
</tr>
<tr>
<td>CAO embedded into SMP</td>
<td>No buffers or setbacks identified in the SMP.</td>
<td>Embed CAO provisions with strike-out of CAO provisions inconsistent with the SMA and addition of shoreline provisions consistent with the SMA. Lake Serene setback is 75 feet with tree protection regulations and vegetation conservation mitigation required for new or redeveloped docks. Urban Waterfront setback 35 to 50 feet to allow for future redevelopment of abandoned tank farm and 1350-foot pier, reconfiguration of existing WSDOT ferry terminal, and other Essential Public Facilities in the downtown waterfront. Urban Conservancy setback from Top of Slope + 25 feet from OHWM, with vegetation required to be conserved over the entire slope. Given the steep slope topography, this effectively results in a buffer extending over 150 feet from OHWM. Setback of 200 ft from OHWM for Heavy Industrial Uses, which effectively places such uses outside shoreline jurisdiction.</td>
</tr>
<tr>
<td>Railroad and multi-model planning</td>
<td>No specificity on railroad rights-of-way and ferry terminal repair, replacement and operations.</td>
<td>Provisions specific to multi-modal plan for ferry and passenger rail service areas in Urban Waterfront area include security, parking passenger loading, and transportation provisions for multi-modal site. Urban Railroad called out as a special designation with Railroad defined as an Essential Public Facility with associated regulations providing for multi-modal planning and permitting. Provisions for parking, transportation, and accessory railroad structures (lighted signs, etc.) to optimize freight, passenger, commuter rail service and security, and deposition of materials from landslide debris on BNSF tracks identified and encouraged. Mitigation to protect and restore ecological functions are also consistently included.</td>
</tr>
<tr>
<td>WSDOT Ferry Terminal</td>
<td>No mention of ferry terminal</td>
<td>Includes regulations specific to the ferry terminal and inclusion of ferry terminal as Essential Public facility with special permit process for Essential Public facilities. SMP calls out exceptions in design for security, fuel distribution, transportation, and parking for ferry terminal provisions. Note: City has a programmatic agreement for ferry terminal maintenance and repair work.</td>
</tr>
</tbody>
</table>
### Stabilization

<table>
<thead>
<tr>
<th>Stabilization restricted to minimum necessary and only with geotechnical analysis demonstrating need and infeasibility of softer alternatives. Bulkhead replacement requires mitigation for unavoidable impacts.</th>
<th>Precautions to avoid adverse beach effects. However, no prescriptions or preferences for avoiding/minimizing impacts described.</th>
<th>New bulkheads prohibited in all designations except Urban Railroad. Enlarged structural shoreline stabilization restricted to minimum necessary and allowed only with a demonstrated need for protection and proof of infeasibility of softer alternatives through a geotechnical analysis with revetments requiring a CUP in Urban Conservancy and Urban Railroad designations. Exception is called out for EPF as long as they meet state and federal standards.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Groins and Weirs</td>
<td>Groins allowed but limited.</td>
<td>Prohibited in all designations</td>
</tr>
<tr>
<td>Revetments</td>
<td>Not mentioned</td>
<td>Permitted only through a Master Plan and only permitted in Urban Waterfront and Urban Waterfront Park. Requires a CUP in Urban Conservancy designation.</td>
</tr>
<tr>
<td>Breakwaters/Rock</td>
<td>Not mentioned</td>
<td>Permitted only in Urban Waterfront with a Master Plan.</td>
</tr>
<tr>
<td>Commercial Parking or Garages</td>
<td>Not mentioned</td>
<td>Only allowed at multi-modal site.</td>
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### SMP changes include more site and use-specific policies and regulations to protect for no net loss of ecological function such as:

Other measures that also serve towards avoiding net loss of ecological functions include:

- New revetment structures are only permitted for sites with a Master Plan located in the Urban Waterfront and Urban Waterfront Park. Otherwise, new revetments are prohibited in both Aquatic designations and the Urban Lakefront and require a CUP in the Urban Conservancy and Railroad designations.
- Shoreline stabilization must be constructed and maintained in a manner that does not degrade the quality of affected waters. Shoreline stabilization to be the minimum necessary. Vegetation conservation measures are a condition for all new bulkheads. Stabilization preference hierarchy: most preferred, being natural or soft bank protection to least preferred, being hard armoring. Replacement of an existing bulkhead requires mitigation for unavoidable impacts.
- Geotechnical Report requirements strengthened to include geotechnical engineering expertise in local shoreline geology and process with the report making recommendation on design of both soft or hard stabilization, with hard stabilization only if threat cannot be controlled with soft measures, can hard structures be used.
- Fill waterward of the OHWM is prohibited except for water dependent uses, public access, recreational uses, and beach restoration projects that are otherwise consistent with the SMP and approved by WDFW and USACOE. The use of bridge or pier alternatives must be determined to be unfeasible if fill is to be allowed. Non-water oriented uses are prohibited from filling below the OHWM. Fill below the OHWM may be allowed for the above uses after approval of the
USACE and consultation with WDFW, demonstrating that the proposed development/fill will not create a significant environmental impact. Mitigation may be required and the fill shall be restricted to the minimum necessary for the use and linked to a specific development proposal permitted by the SMP.

- Dredge deposition below OHWM (not including landslide materials impacting BNSF railroad operations) that adversely affect fish and shellfish resources is prohibited except where materials are being used for restoration and is approved by USACOE and appropriate state agencies, such as WDFW and WDOE.
- Clearing and grading activities must have a clearing and grading plan that employs BMPs to minimize potential erosion and sedimentation impacts.
- Dredging allowed in all designations, requires a CUP.
- Working with the Port of Everett, City of Everett, Snohomish County, BNSF, Sound Transit and other entities to develop direct linkages to the waterfront for recreational opportunities and ecological restoration.
- Mitigation is required for developments that create unavoidable impacts adverse to shoreline vegetation. Mitigation shall insure that no net loss in the amount of vegetated area or the ecological functions performed by the disturbed vegetation.
- Construction of transportation facilities must protect shorelands against erosion and uncontrolled or polluting drainage.
- Buffers when required by re-development activities, must be maintained and managed as vegetation conservation areas. A portion of the buffer may be cleared and used to provide shoreline access. There can be no net loss in the amount of ecological function of vegetated area within shoreline jurisdiction and non-native vegetation must be replaced with native vegetation.

**Amendment History, Review Process:** (Summary) In 2003, the City initiated the comprehensive SMP update under the Shoreline Management Act (SMA). In October 2003, Anchor Environmental completed a shoreline inventory for the City. After considerable time, including the state passing the legislation establishing the present 173-26 SMP Guidelines, the City completed their SMP update resulting in the locally adopted SMP before you. This finishing work was completed under SMA grant G1000032 provided by the Department of Ecology Shorelands & Environmental Assistance Program. The City has used these funds to supplement the 2003 inventory data to include changes, the City’s expanded jurisdiction and potential annexation areas of the future.

On July 23, 2010, in accordance with the Mukilteo Municipal Code (MMC) 17.72, the Draft SMP was circulated for review over a 60-day public comment period to the Dept of Commerce and all parties and agencies of record. On October 22, 2010, a SEPA DNS notice. On October 22, 2010 the City issued a SEPA Determination of Non-Significance (DNS) for comments by November 5, 2010. This went out to all parties of record and parties of interest, numbering over 200 citizens, businesses, non-governmental organizations, government agencies, and tribes. No appeals were filed and the DNS is considered final. The Planning Commission held SMP public hearings on November 18, 2010 and January 20, 2011. A SEPA Addendum was issued on January 4, 2011. During this public process, the City received comments from a number of agencies and community members including: Department of Ecology, Washington State Ferries, Snohomish county Storm surface Water division, Marine Resources Committee Representative, Futurewise, and residents from Lake Serene, Naketa Beach, Shipwreck Point and Smugglers Gulch.

The City made a number of changes to the SMP documents and associated development regulations in response to these public comments. Futurewise requested that the City adopt a uniform 150-foot shoreline buffer along
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the Urban Conservancy Environment instead of the “top of bank plus 25-foot setback”. In response, the City prepared an analysis of the shoreline to determine the number of lots which would not be able to meet a 150-foot buffer. The City found there were about a dozen lots that would not be able to meet the 150 foot buffer and that after applying the “top of slope + 25 foot” setback, due to the angle and height of the slopes, the 150 foot setback would not be as large a setback as the “top of slope + 25 foot” setback area for the majority of lots. It was found that lots that could not provide a 150-foot setback, due to lot sizes and location included lots located around 2nd/3rd streets in the downtown area and the Naketa Beach and Smugglers Gulch area, located west of the railroad tracks. Additionally, all of these lots are already built on and most would require some type of variance in order to expand. Furthermore, no lots could be subdivided. Upon sharing this bluff analysis findings with Futurewise and explaining that the stream buffers and side slopes of the ravines are covered by buffers pursuant to the CAO, Futurewise was satisfied that the City’s regulations being adequate to protect the shoreline environment.

On March 16, 2011, the proposed SMP amendment was verified as complete by Ecology and Ecology then established a 30-day public comment period from April 25, 2011 to May 25, 2011. Ecology used both email and US mail to notify those who had expressed prior interest, over 200 parties). Ecology also issued a news release and a legal ad to encourage public participation and comment. Due to the City’s lengthy involvement with the public and organizations, there were no comments received during the local adoption City Council meeting on March 7, 2011 and during the state 30-day public comment period only two (2) agencies, the Mukilteo Wastewater District and the Washington State Department of Transportation (Ferries Division), provided comments on issues relative to those agencies’ interests and no members of the public commented.

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 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 of a SMP Submittal Checklist, which was completed by Ecology.

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 October 22, 2010 with notice of the SEPA determination, published in the Everett Herald. Ecology did not comment on the DNS.

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

These supporting documents include:

- February 2011 Shoreline Inventory & Analysis Report
- February 2011 Cumulative Impacts Analysis, including a No Net Loss Report
- February 2011 Restoration Plan
Summary of Issues Raised During The Public Review Process:
Two parties submitted letters during the 30-day state public comment period and one letter was received during the SEPA review process. The following two parties submitted written comments during the 30-day state public comment period:

Kojo Fordjour, Washington Department of Transportation, comment received May 24, 2011
Daniel Hammer, Mukilteo Water & Wastewater district comment received May 25, 2011

Washington State Department of Transportation, Ferries Division
The WSDOT Ferries Division provided proposed nineteen (19) language changes to the SMP on topics of navigation, filling, dredging and revetments, beach softening and enhancement, grating, piling, parking, public access, and project monitoring requirements in the SMP. The City responded to each of these language changes. The changes the City agreed to are included in Attachment C as Recommended Changes.

Mukilteo Water & Wastewater District
The District recommended five (5) changes on the topics of City jurisdiction, Big Gulch Creek Outfall restoration and enhancement, scale of restoration and public access to be provided by the District, Big Gulch Creek trail feasibility of moving treatment plant. The changes the City agreed to are listed in Attachment C as Recommended Changes.

CONCLUSIONS OF LAW
Based on the preceding, Ecology has determined the proposed comprehensive amendment is consistent with the policy of the Shoreline Management Act, the applicable guidelines and implementing rules, once the required and recommended changes are accepted as specified in Attachments B and C. Ecology approval of the proposed amendment with the above are required and recommended changes is effective fourteen days after Ecology’s final action on the SMP update.

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the City’s SMP proposal is consistent with the policy and standards of RCW 90.58.020, RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and 173-26-020 definitions). This includes a conclusion that the proposed SMP, subject to the required and recommended changes in Attachments B and C, contains sufficient policies and regulations to assure that no net loss of shoreline ecological functions will result from implementation of the new master program amendments (WAC 173-26-201(2)(c).

Consistent with WAC173-26-241(3)(j) and WAC 173-26-221 (5), new setbacks and vegetation conservation measures for marine and freshwater shorelines have been set for all designations.

Consistent with WAC 173-26-231, new bulkheads are prohibited in all environments except the Urban Railroad designation, wherein a CUP is required. Repair to an existing shoreline stabilization structure is restricted to the minimum necessary and only with geotechnical analysis demonstrating need and infeasibility of softer alternatives. Bulkhead replacement requires mitigation for unavoidable impacts. Nonstructural methods are preferred to structural shoreline stabilization. “Soft” structural shoreline stabilization is preferred to “hard” shoreline stabilization. New development is required to be located and designed to eliminate the need for concurrent or future shoreline stabilization. New structures are required to result in no net loss of shoreline ecological functions. Setbacks on steep slopes must ensure no need for shoreline stabilization, as demonstrated by a geotechnical analysis by a licensed Engineering Geologist or Civil Engineer.
Consistent with RCW 90.58.090(4), Ecology concludes that those SMP segments relating to critical areas within Shoreline Management Act jurisdiction provides a level of protection equal to that provided by the City’s existing critical areas ordinance and can be reasonably assured that these standards in the SMP can result in no net loss of ecological function.

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 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 amendment process. In addition to extensive public outreach in 2003, under their present Ecology grant, the City held the following meetings, workshops, and open houses to invite public and agency involvement and comment on the SMP.

- Two Joint Workshops with the City Council and Planning Commission held on June 14, 2010 and June 26, 2010.
- Three Open houses for public education on SMP elements October 21, November 3, and November 18, 2010.
- Planning Commission hearings on November 18, 2010 and January 20, 2011
- City Council public hearings on February 22, 2010 and March 7, 2011

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, as the City submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance for the proposed SMP amendment on October 22, 2010. Ecology did not comment on the DNS and there was no appeal of that DNS, which stands as issued.

Ecology concludes that the City’s 2011 SMP amendment submittal to Ecology was complete pursuant to the requirements of WAC 173-26-110 and WAC 173-26-201(3) (a) through (h).

Ecology concludes that the City 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 concludes that the City has chosen not to exercise its option pursuant to RCW 90.58.030(2) (f) (ii) to increase shoreline jurisdiction to include buffer areas of all critical areas within shorelines of the state. In addition, 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, which is embedded in the SMP.

This Program incorporates the substantive requirements in MMC 17.52 CAO directly into the SMP as MMC 17B.52 and in so doing excludes procedural differences between the CAO and the SMP.
DECISION AND EFFECTIVE DATE

Based on the above, Ecology has determined the proposed SMP comprehensive amendment, incorporating the changes identified in Attachments B and C are consistent with the policy of the Shoreline Management Act, and the applicable guidelines and implementing rules. Based on the preceding, Ecology has determined the proposed amendment is consistent with the policy of the Shoreline Management Act. Ecology’s approval of the proposed amendment will become effective fourteen days after the City notifies Ecology that it agrees to the changes identified in the approval letter to the City from Department of Ecology Director, Ted Sturdevant.