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

SMP Submittal accepted January 5, 2012, Ordinance #2011-029
Prepared by Anthony Boscolo on April 30, 2012

Brief Description of Proposed Amendment:

The City of Arlington has submitted to Ecology for approval, a comprehensive update to their Shoreline Master Program (SMP) to comply with Shoreline Management Act (SMA) and SMP Guidelines requirements. The updated master program submittal contains locally tailored shoreline management policies, regulations, environment designation maps, and administrative provisions which have been adopted by reference within local ordinance #2011-029. Additionally, local ordinance #2011-029 updated the City’s critical areas regulations within the shoreline jurisdiction. Additional reports and supporting information and analyses noted below, are included in the submittal.

FINDINGS OF FACT

Need for amendment. The proposed amendment is needed 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. This amendment is also needed for compliance with the planning and procedural requirements contained in WAC 173-26 and 27. The original City SMP was approved by Ecology in 1974 and has never been comprehensively updated. This SMP update is needed to address land use changes that have occurred along the City’s shorelines over the past 38 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 Critical Areas Ordinance, Comprehensive Plan and Flood Management Plan.

Sixteen years after the City of Arlington adopted their SMP, the 1990 Growth Management Act was passed, which required the City of Arlington establish an Urban Growth Area (UGA). Although the UGA enables the City to plan for future urban development in the expansion areas, these areas are not covered by the existing SMP as it predated the existence of the UGA. Again, the City’s SMP Grant Application identifies the “need to define where shoreline areas are located and develop a plan for the proper management of those areas.” The SMP update has been expanded to plan for lands beyond the City limits, located within the UGA, to ensure that future development of those lands is consistent with the City Comprehensive Plan, and the SMA.

Following the adoption of the 1974 SMP, the City annexed lands located in the FEMA designated floodplain of the Stillaguamish River. As indicated in the City’s SMP Grant Application, this action, among others, has brought about the “need to define where shoreline areas are located and develop a plan for the proper management of those areas.” To satisfy this need, the City harmonized the SMP and FEMA floodplain regulations through concurrent development. Additionally, SMP Jurisdiction is in part based on FEMA FIRM’s. On December 5, 2011 the City adopted new floodplain/floodway management regulations by Ordinance No. 2011-030.

The current SMP remains largely unchanged from its original 1974 version created by Snohomish County and has not been updated since that time. The existing SMP does not reflect current science regarding protection of shoreline resources.
**SMP provisions to be changed by the amendment as proposed:** This comprehensive SMP update is intended to entirely replace the City’s existing SMP. This updated SMP increases, by over 200%, the linear extent of shorelines planned for and regulated by the City, as it includes newly annexed shoreline areas, and plans for lands located in the City’s Urban Growth Area. As a result, this SMP will now regulate approximately 1.86 miles of river shorelines along the Stillaguamish River and its tributaries.

The comprehensive SMP update incorporates critical area regulations which have been specifically designed to align with the SMA and Guidelines, balancing water dependent uses while achieving no net loss of ecological function.

Under the existing SMP, there are two environment designations; Rural, and Conservancy. In contrast, the updated SMP regulates activities and development along the City’s shorelines using the following five (5) new designations, each containing purpose statements, designation criteria, and management policies. The new designations and their purposes statements are listed below:

1) **Natural** – to protect wetlands associated with shoreline areas by applying newly drafted critical areas regulations. (certain isolated wetlands)
2) **Historic Shoreline Business District** – to protect historic resources, provide for continued commercial uses that are consistent with the historic character of the area, while protecting existing ecological functions, restoring ecological functions in areas that have been previously degraded, and enhancing public access to the shoreline. (generally the area between the Centennial Trail and Highway 530)
3) **Urban Conservancy – Low Intensity** – to protect and restore ecological functions in low intensity settings, while allowing a variety of low-impact uses. (park or protected areas which have lower intensity uses such as Portage Creek and County Charm)
4) **Urban Conservancy – Open Space** – to protect and restore ecological functions in urban and developed settings, while providing public access and a variety of park and recreation uses. (more heavily used park areas such as Haller Park and Centennial Trail)
5) **Aquatic** – to protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high water mark.

The table below is a summarization of the changes in the updated SMP along with a comparison to the existing 1974 SMP.

<table>
<thead>
<tr>
<th>Proposed Change Topic</th>
<th>Existing 1974 SMP Requirement</th>
<th>Proposed Requirement</th>
</tr>
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<tbody>
<tr>
<td>Shoreline Stabilization</td>
<td>Precautions to avoid adverse effects. However, no prescriptions for avoiding/minimizing impacts described.</td>
<td>Consistent with Guideline requirements of WAC 173-26. New Stabilization restricted to the minimum size necessary and allowed only with a demonstrated need for protection and proof of infeasibility of softer alternatives through a geotechnical analysis requiring a CUP for hard measures.</td>
</tr>
<tr>
<td>Critical Area Regulations</td>
<td>No critical area regulations are identified</td>
<td>Incorporated CAO provisions which have been modified for consistency with the SMA and include protections for fish and</td>
</tr>
</tbody>
</table>

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wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, streams, wetlands, and aquifer recharge areas. Stream buffer widths range 50 – 150 feet. Wetland buffers widths range 40 – 225 feet.

<table>
<thead>
<tr>
<th>Channel Migration Zone</th>
<th>Jurisdiction moved with channel</th>
<th>Development can require site-specific channel migration zone study. Limitations placed on specific uses.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allowed/Prohibited Uses</td>
<td>Use and modification table had been tailored to a more rural atmosphere and did not align with the uses and development within a city.</td>
<td>A use and modification matrix is embedded in the SMP which was created to align with the City of Arlington’s anticipated future land use. The new matrix specifically addresses types of modifications anticipated and their appropriateness in a riverine environment.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Environment designations</th>
<th>RURAL, CONSERVANCY</th>
<th>NATURAL, HISTORIC SHORELINE BUSINESS DISTRICT, URBAN CONSERVANCY – LOW INTENSITY, URBAN CONSERVANCY – OPEN SPACE, AQUATIC</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>SMP SETBACKS</th>
<th>10-100 Feet</th>
<th>30, 150 Feet</th>
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<table>
<thead>
<tr>
<th>BREAKWATERS, JETTIES, GROINS, WEIRS</th>
<th>Conservancy: Allowed for beach creation Natural: Prohibited</th>
<th>Prohibited in all shoreline designations</th>
</tr>
</thead>
</table>

| Moorage Facilities | Allowed | Prohibited |

<table>
<thead>
<tr>
<th>Mining</th>
<th>Conservancy: Allowed Natural: Prohibited</th>
<th>Prohibited</th>
</tr>
</thead>
</table>

| Piers, docks | Permitted | Prohibited |

<table>
<thead>
<tr>
<th>Ecological protection</th>
<th>Requirements to avoid and minimize impacts of some projects.</th>
<th>Implementation of the concepts of no net loss of shoreline ecological function and mitigation sequencing.</th>
</tr>
</thead>
</table>

The SMP changes include more site and use-specific policies and regulations designed to achieve no net loss of ecological function such as:

- Hard structural shoreline stabilization requires conditional use permit process within the Aquatic, UC-LI, and UC-OS environmental designations.
- Stabilization preference hierarchy from non-structural, to soft, to hard being the least preferred option.
- Geotechnical reports required as specified in WAC 173-26 for shoreline stabilization and the placement of structural flood hazard reduction measures.
• Channel Migration Report can be required for permitted development conducted in areas where the river has migrated over the past 100-years, and may be expected to migrate over the next 100-years.
• Fill within floodways, channel migration zones, or waterward of ordinary high water mark prohibited except water dependent uses, public access, alteration of facilities of statewide significance, ecological restoration, or maintenance of lawfully established developments that are otherwise consistent with the SMP and approved by WDFW and USACOE.
• Dredging requires the use of the conditional use permit process. Dredging is prohibited except for essential public facilities, water-dependent industries of regional economic importance, maintenance dredging, and restoration activities and only when authorization has been received by state and federal agencies.
• Mitigation sequencing is applied to all development regulated by the SMP within the shoreline jurisdiction.
• Vegetation conservation is applied through SMP buffers from 30 feet in the Historic Shoreline Business District to 150 feet in the remaining shoreline designations. Vegetation conservation is also applied through the critical area regulations with buffers ranging from 40 to 225 feet.

Amendment History, Review Process: Pursuant to WAC 173-26-110 (6), WAC 173-26-100 and the City of Arlington Public Participation Plan, the Draft SMP was circulated on September 16, 2011 to the Department of Commerce for 60-day State agency notification. City held 17 public meetings, sent individualized mailings, maintained a SMP website and has solicited comments from federal, state, regional, local agencies, and other interested parties including Ecology, and the tribes. The City indicates the proposed SMP amendments originated from a local planning process that began on July 1, 2009. The record shows that workshops and meetings open to the public were held on May 4, 2010, November 2, 2010, November 16, 2010, December 10, 2010, June 21, 2011, August 16, 2011, October 4, 2011, October 24, 2011, November 7, 2011, November 15, 2011, November 21, 2011, December 5, 2011, and a public hearing before the Planning Commission was held on October 4, 2011 and before the City Council on November 7, 2011. Affidavits of publication provided by the City indicate notices of the hearings were published on September 21, 2011 and October 24, 2011 respectively.

Pursuant to WAC 173-26-110, as indicated below, the City of Arlington has satisfied the submittal requirements for a comprehensive SMP update:

• Pursuant to WAC 173-26-110(1), a signed ordinance was provided to the department which indicated that the SMP had been locally approved by Ordinance #2011-029, on December 5, 2011.

• As a comprehensive update, Ordinance #2011-029 is consistent with WAC 173-26-100(2).

• Pursuant to WAC 173-26-110(3), amended environment designation maps were submitted to the department.

• Pursuant to WAC 173-26-110(4), materials, minutes, and process summary were provided to the department.

• Pursuant to WAC 173-26-110(5), SEPA was noticed on October 28, 2011. On October 28, 2011, the City issued a SEPA Determination of Non-Significance (DNS) with a comment period ending November 14, 2011. No appeals were filed.

• Pursuant to WAC 173-26-110(7), copies of all public, tribal, and agency comments were submitted to the department.
Pursuant to WAC 173-26-110(8), a completed SMP checklist was submitted to the department.

Pursuant to WAC 173-26-110(9), copies of the use analysis, inventory and characterization, cumulative impacts analysis, and restoration plan were submitted to the department.

With passage of Ordinance #2011-029, on December 5, 2011, the City authorized staff to forward the proposed amendments to Ecology for approval.

The proposed SMP amendments were received by Ecology for state review and verified as complete on January 5, 2012. Notice of the state comment period was distributed to state task force members and interested parties identified by the City on February 24, 2012, in compliance with the requirements of WAC 173-26-120 and as follows: The state comment period began on March 5, 2012 and continued through April 4, 2012. No public comments were received.

**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 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 SEPA checklist and issued a Determination of Non-Significance (DNS) for the proposed SMP amendments on October 28, 2011. Notice of the SEPA determination was published in The Herald on October 28, 2011. 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 January 2010 public participation plan,
- a January 2011 shoreline use analysis, inventory, and characterization,
- a September 2011 cumulative impacts analysis,
- a October 2011 No Net Loss Report, and
- a October 2011 restoration plan

**CONCLUSIONS OF LAW**

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the City’s proposed comprehensive SMP update is 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). This includes a conclusion that approval of the proposed SMP, subject to required changes, contains sufficient policies and regulations to assure that no net loss of shoreline ecological functions will result from implementation of the new updated master program (WAC 173-26-201(2)(c).
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 at least equal to that provided by the City's existing critical areas ordinance.

Consistent with RCW 36.70A.480(4), Ecology concludes that those SMP segments relating to critical areas within Shoreline Management Act jurisdiction provide a level of protection to critical areas located within shorelines of the state that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources.

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 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's 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)(f)(ii) to increase shoreline jurisdiction to include buffer areas of critical areas within shorelines 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. Ecology approval of the proposed amendments is effective 14 days from Ecology's final action approving the amendment.