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

SMP Submittal accepted March 30, 2012, Ordinance No. 12-01
Prepared by Kim Van Zwalenburg on October 5, 2012, Revised October 18, 2012

Brief Description of Proposed Amendment:

The City of Battle Ground (City) has submitted a new comprehensive Shoreline Master Program (SMP) for review and approval by the Department of Ecology (Ecology). This submittal is required to comply with the Shoreline Management Act (SMA) and the SMP Guidelines requirements (RCW 90.58 and WAC 173-26 (Part III) respectively). The new master program contains: locally tailored shoreline management policies and regulations, a shoreline designation map (Appendix A), and critical area regulations (Appendix B). Additional reports and supporting information and analyses are included in the submittal and noted below.

FINDINGS OF FACT

Need for amendment: The proposed amendment will be the City’s first SMP. The SMP is needed to comply with the statutory deadline for development of a comprehensive update, or new, local Shoreline Master Program pursuant to RCW 90.58.080 and 100. This new SMP is also needed for compliance with the planning and procedural requirements of the SMP Guidelines contained in WAC 173-26 (State master program approval/amendment procedures and master program guidelines) and WAC 173-27 (Shoreline management permit and enforcement procedures). At the time the SMP grant was issued in 2009, shorelands associated with Salmon Creek were located within the City. The planned Urban Growth Area (UGA) contained portions of both Salmon and Morgan creeks associated shorelands. Much of the UGA was annexed in 2011 and the City now has portions of both creeks within City boundaries.

Section 1.5 of the submitted SMP describes the purpose of the Program:

1. To guide the future development of shorelines in the City in a positive, effective, and equitable manner consistent with the Act;

2. To promote the public health, safety, and general welfare of the community by providing long range, comprehensive policies and effective, reasonable regulations for development and use of the City’s shorelines; and

3. To ensure, at minimum, no net loss of shoreline ecological functions and processes and to plan for restoring shorelines that have been impaired or degraded by adopting and fostering the ... policy contained in RCW 90.58.020, Legislative Findings for shorelines of the state....

Because surface waters flow irrespective of political boundaries, this SMP was developed through a coordinated planning effort by all the Clark County jurisdictions (Clark County Coalition). Among the goals identified and agreed to by Coalition members were to:

• develop consistent goals and policies and shoreline designations for shared shoreline resources
• allow the cities to pre-plan for their Urban Growth Areas (UGA)
• use a regional approach to public participation, the Inventory and Characterization and the identification of restoration opportunities

Ecology finds that the City has documented the need to adopt a shoreline master program.

Documentation of current conditions: Seven cities (Battle Ground, Camas, La Center, Ridgefield, Vancouver, Washougal and Yacolt) and Clark County collaborated as a group (Clark County Coalition) in obtaining grant funding and developing shared documents including a comprehensive Clark County Shoreline Inventory & Characterization. The information was organized around the two major watersheds: Water Resource Inventory Area (WRIA) 27 Lewis and WRIA 28 Salmon-Washougal. This is presented in two volumes, with Volume 1 addressing the county as a whole and Volume 2 containing chapters focused on the urban areas. Vol. 2, Chapter 1 contains information on the shorelines in the City of Battle Ground including those in the City’s UGA.

The Battle Ground SMP will regulate activities along two shorelines of the state: Salmon and Morgan creeks both of which are located in WRIA 28

Approximately 2 linear miles of Salmon Creek and 0.6 miles of Morgan Creek are located within the City. A large wetland complex is located at the confluence of Morgan Creek with Salmon Creek. Within the City, the dominant land use along Salmon Creek is a pre-existing private golf course which spans the creek. There are a number of golf course crossings, one road and one railroad crossing. There is little riparian vegetation and portions of the creek have been channelized. Salmon Creek, as a whole lacks large woody debris and increased development in the basin has contributed to water quantity issues.

The reaches of Morgan Creek located within the City are dominated by forested and vacant lands. Like Salmon Creek, development basin-wide has contributed to a lack of large wood in the system, loss of riparian vegetation and streambank instability (from livestock access and loss of vegetation).

Ecology finds that, as required by WAC 173-26-201(3)(c) and (d), the June 2010 Clark County Shoreline Inventory & Characterization, Volume 1 and Volume 2, Chapter 1 adequately inventory and analyze the current conditions of the shorelines located in Battle Ground. These documents synthesize existing information and were used to inform the master program update as well as provide a basis for future protection and restoration opportunities in the City’s shoreline jurisdiction.

Shoreline Use Analysis: As part of the Coalition’s development of the Shoreline Inventory and Characterization Report (ESA Adolfson, 2010), data was collected to address the SMP Guideline requirements\(^1\) to project shoreline development trends and identify potential use conflicts to ensure preference is given to uses that are unique to or dependent upon a shoreline location. The County-wide analysis is contained in Volume 1, Chapter 4. Volume 2, Chapter 1 of the Inventory & Characterization more specifically describes existing and potential uses in Battle Ground and identifies opportunities for potential restoration and public access. The inventory shows that there are no known water-oriented uses currently located along Salmon or Morgan creeks. The most likely future use will be recreational.

\(^1\) WAC 173-26-201 (3) (d) (ii) and WAC 173-26-201 (2) (d)
Ecology finds that Battle Ground has adequately considered SMA preferred uses and the potential for use conflicts consistent with WAC 173-26-201(3)(d)(ii) and WAC 173-26-201(2)(d).

**SMP provisions to be changed by the amendment as proposed:** This comprehensive SMP is the first SMP for Battle Ground and will regulate approximately 2.6 linear miles of shorelines along Salmon and Morgan creeks (currently regulated by the 1974 Clark County SMP).

**Shoreline Jurisdiction:** The City proposes to apply the minimum shoreline jurisdiction by defining shoreline jurisdiction as two hundred feet from the Ordinary High Water Mark (OHWM); the floodway plus contiguous floodplain areas two hundred feet landward from such floodways and all associated wetlands. The City is choosing not to include land necessary for buffers for critical areas as allowed per RCW 90.58.030(2)(d)(ii).

Assuming the City’s acceptance of the required changes in Attachment B to remove language extending the SMP to the Urban Growth Area, and to clarify the definition of floodway in Chapter 8, Ecology finds that the Battle Ground SMP has appropriately defined shoreline jurisdictional limits consistent with the Act.

**Shorelines of Statewide Significance (SSWS):** RCW 90.58.020 specifically calls out SSWS for special consideration declaring the “the interest of all of the people shall be paramount in the management” of these shorelines.

Battle Ground has no identified SSWS within its City limits or UGA, however they have included policies in Chapter 3 should there ever be areas identified in the future.

Ecology finds that the SMP has identified that there are currently no shorelines of statewide significance but the City has included policies for management of these shorelines in Section 3.2 should there be any identified in the future. The policies are consistent with RCW 90.58.020.

**Shoreline Master Program Goals and Policies:** The goals and policies contained in Chapter 3 of this SMP are consistent with the Coalition SMPs and address the elements outlined in RCW 90.58.100 General policy goals of the act and WAC 173-26-176 Guidelines for shorelines of the state.

Ecology finds that the City has addressed the requirement to establish policies per RCW 90.58.100(2) and WAC 173-26-201(2)(e).

**Shoreline Designations:** Assignment of shoreline environment designations is a fundamental aspect of the SMP update. Shoreline designations (the Coalition-preferred term in place of shoreline environment designations) were developed and analyzed county-wide. Designations were assigned based on ecological functions, existing and planned development patterns and on the community’s vision for the future. The process the Coalition went through is documented in the *Clark County Coalition Shoreline Designation Rationale* (ESA, June 2011).

Battle Ground has no existing SMP. Under the 1974 Clark County SMP the segments of Salmon and Morgan creeks now located within Battle Ground were designated Urban. In the new SMP, there are two proposed designations: Urban Conservancy and Aquatic (Chapter 4).
As allowed by WAC 173-26-150, the City is pre-designating shorelines within its adopted Urban Growth Area. These areas will continue to be regulated by the Clark County SMP until annexation by the City. Shoreline designations in the UGAs were developed consistent with those within the City limits.

Ecology finds that the process of evaluation used to assign shoreline designations in the City and in the Urban Growth Areas was appropriately conducted. Ecology also finds that each shoreline designation in the SMP has a clearly stated purpose, designation criteria and policies. The Battle Ground Shoreline Designation Map (an unofficial copy is provided in Appendix A) adequately maps the shoreline designations. The designations and pre-designations provide a suitable framework for implementing shoreline policies and regulatory measures specific to each designation. Designation-specific regulations (see Use Table 6-1 and Chapter 6) have been developed that account for different shoreline conditions and assure implementation of the purpose of each environment designation and other policy goals of the SMA, and ensure protection of existing shoreline ecological functions.

General Master Program Provisions: Chapter 5 of the SMP includes policies and regulations that address critical areas (discussed separately below), archaeological, cultural and historic resources, public access, vegetation conservation and water quality, flood prevention and flood damage minimization and restoration. In addition, policies and regulations focused on site planning and development, and views and aesthetics are included.

Ecology finds that the City has included all the required general provisions in Chapter 5 of the proposed SMP consistent with WAC 173-26-221.

Critical Area Provisions: Battle Ground has chosen to include their critical area regulations in the SMP as Appendix B. These provisions address the following critical areas: wetlands, fish and wildlife habitat conservation areas, critical aquifer recharge areas, geologically hazardous areas and frequently flooded areas.

Elements in the critical area provisions inconsistent with the SMA and WAC 173-26 Shoreline Guidelines are identified in BGSMP Section 5.3.2. Reasonable use exceptions require a shoreline variance permit and activities identified as exempt in BGMC 18.260 may require review under the SMP.

Frequently Flooded Areas: The City recently (March 5, 2012) received their final digital Flood Insurance Rate Maps (dFIRMs) from the Federal Emergency Management Agency (FEMA). In anticipation of this effort, the Coalition used the preliminary dFIRMs for planning purposes and the information is reflected in the maps developed in the Inventory and Characterization.

In addition to the updated digital maps, FEMA directed the City to revise their ordinance in order to remain in good standing in the flood insurance program. On July 16, 2012 City Council approved Ordinance No. 12-06 revising the frequently flooded areas ordinance and adopting new FEMA floodplain maps.

The City has requested that Ecology incorporate the new dFIRMs and revised Frequently Flooded Areas Ordinance into the SMP. These proposed changes are set forth in exhibits to Attachment C (Recommended Changes): Exhibit C-1 Chapter 18.260.210 Definitions and Exhibit C-2 Chapter 18.310 Frequently Flooded Areas. The proposed changes are recommended because they are being
made in response to FEMA requirements. However, by incorporating them now, the City will ensure consistent regulations across all flood hazard areas both inside and outside shoreline jurisdiction. In addition, the City will avoid the need for a near term amendment to their SMP.

Ecology finds that the City has adequately defined and protected critical areas, including critical aquifer recharge areas, as defined in WAC 173-26-221(2), and that the level of protection is at least equal to that provided by the City’s critical area regulations (RCW 90.58.090(4)), and that no net loss of shoreline ecological functions should be assured (RCW 36.70A.480(4)).

Shoreline Modifications: WAC 173-26-231(1) distinguishes shoreline modifications from shoreline uses by describing them as those actions “undertaken in support of or in preparation for a shoreline use.” The Guidelines further describe them as follows: “Shoreline modifications are generally related to construction of a physical element such as a dike, breakwater, dredged basin, or fill, but they can include other actions such as clearing, grading, application of chemicals, or significant vegetation removal.” As a general principle, WAC 173-26-231(2)(b) states that Master Programs shall “[r]educe the adverse effects of shoreline modifications, and, as much as possible, limit shoreline modifications in number and extent.” (WAC 173-26-231(2)(b)). This principle reinforces the mitigation sequence (WAC 173-26-201(2)(e)) and no net loss (WAC 173-26-186(8)) requirements of the SMP Guidelines.

The City’s Shoreline Inventory & Characterization Report, Volumes 1 and 2 (ESA, June 2010) documents some modifications including bridges and culverts crossing Salmon Creek. Most of the impacts are from development resulting in loss of riparian vegetation, channelization, disconnection of associated floodplains, and fish passage barriers.

The SMP requires all permits be in hand before any land altering activities take place such as clearing, grading, filling and excavation (BGSMP 5.1(4)). Fill waterward of the Ordinary High Water Mark is only allowed in limited instances by Conditional Use Permit (BGSMP 5.7.2(12)), new dredging is limited (BGSMP 6.4.2.1), and shoreline uses and developments must be located and designed to avoid the need for shoreline stabilization at the time of development and into the future (BGSMP 5.1(3)).

New shoreline stabilization for new development is prohibited unless need is shown. New, expanded or replacement structures for existing development is limited unless need can be shown. The preference, when stabilization is shown to be needed is for softer techniques and minimization of the size and extent of new structures (BGSMP 6.4.5).

While an unlikely use due to the nature of both Salmon and Morgan creeks, the SMP proposes to limit new residential piers and docks to joint-use facilities only (Table 6-1 and BGSMP 6.3.3.3). Marinas are prohibited entirely.

The City’s critical area ordinance protecting fish and wildlife habitat areas has provisions establishing a 250-foot riparian buffer along Salmon Creek and a lesser buffer on Morgan Creek. The riparian buffer can be impacted if impacts are mitigated and there is no net loss of riparian habitat functions. The BGSPM also defines setbacks which vary depending on the shoreline environment and proposed uses (Table 6-1). Vegetation conservation provisions propose the retention of existing native riparian vegetation within the 250’ buffer on Salmon Creek and within 100’ along Morgan Creek.

Assuming the adoption of required changes in Attachment B to address the inconsistency between shoreline jurisdiction and vegetation management areas, Ecology finds that the City has considered and addressed shoreline modifications as required in the WAC 173-26-231. The SMP limits clearing,
grading and fill to that necessary when in conjunction with an allowed use, requires that shoreline stabilization proposals show need and limits the amount of overwater coverage by restricting piers and docks. Provisions in the SMP are crafted to reduce the adverse effects of shoreline modifications and as much as possible to limit the number and extent. Shoreline modification policies and standards are appropriate to the environment designation in which they are proposed, and preference is given to modifications that have a lesser impacts to ecological function.

**Shoreline Uses:** WAC 173-26-241 outlines specific common uses and types of development that can occur within shoreline jurisdiction. SMPs are to establish a system of use regulations and shoreline designation provisions that give preference to water-oriented uses or to uses that are consistent with the control of pollution and prevention of damage to the natural environment (WAC 173-26-201(2)(d) and 173-26-211). SMPs should also ensure provisions implement the policies of the SMA while protecting property rights, reduce use conflicts and assure no net loss of shoreline ecological functions.

The Battle Ground SMP addresses applicable shoreline uses in Chapter 6 and Table 6-1. New industrial, commercial, mining and forestry activities are prohibited in shoreline jurisdiction. Aquaculture is permitted and restoration is allowed in all environments. Regulations are also included for recreational and residential uses, utilities, parking and transportation facilities.

Ecology finds that the Battle Ground SMP adequately identifies uses common along the City’s shoreline, establishes a clear preference for water-oriented uses, accommodates water dependent uses, and clearly shows by shoreline designation, where certain uses are allowed, conditionally allowed and prohibited (see BGSMP Table 6-1). However, there are a number of inconsistencies between the SMP text and Table 6-1. Required and recommended changes and related rationale addressing these are set forth in Attachments B and C.

**Cumulative Impacts Analysis:** Listed as a Governing Principle of the SMP Guidelines, WAC 173-26-186 (8)(d) states “Local master programs shall evaluate and consider cumulative impacts of reasonably foreseeable future development on shoreline ecological functions and other shoreline functions fostered by the policy goals of the Act.” To ensure this, SMPs shall contain policies, programs and regulations that address adverse cumulative impacts, including those resulting from exempt development, and fairly allocate the burden of addressing cumulative impacts among development opportunities.

An initial Cumulative Impacts Analysis (CIA) report was developed to assess the March 2011 Coalition Draft SMP. This report took a county-wide look at possible cumulative impacts of “reasonably foreseeable future development” under the policies and regulations of the draft SMP by assessing existing conditions of Clark County shorelines, as documented in the Inventory & Characterization report as well as accounting for beneficial effects of other established regulatory programs. At the time, critical area provisions were not included in the Coalition draft SMP, and the report made clear that “a few issues must be addressed before finding that the Coalition Draft SMP will maintain existing shoreline functions: 1) the functional relationship between critical areas buffers and setbacks in shoreline jurisdiction; 2) consistency between proposed shoreline designations and the findings of the Inventory & Characterization Report in a few instances; and (3) refinement of shoreline use and modification standards in a few instances.” (ESA, May 2011)

In June 2011, a complete draft SMP was issued for Battle Ground. This was accompanied by a Coalition Draft CIA (ESA, June 2011), a Battle Ground-specific Draft CIA (ESA, June 2011) and a No
Net Loss Summary memorandum (ESA, June 2011). These documents note revisions made in response to the draft CIA completed on the March 2011 Coalition draft SMP. Changes made at that early stage included changing the shoreline designations along Morgan and Salmon creeks from Medium Intensity to Urban Conservancy and increasing building and accessory parking setbacks from 50’ to 100’.

The June 2011 draft No Net Loss Summary found it likely that there would be no cumulative impacts anticipated under the City’s proposed program but also included additional recommendations to ensure this was achieved.

The locally adopted SMP includes the following changes in response to these recommendations:

- Shoreline actions including exemptions will be tracked over time (BGSMP 7.2.1)
- the setback for water-related and water-enjoyment recreational uses in the Urban Conservancy were increased from 20’ to 50’

Ecology finds that Battle Ground has evaluated the cumulative impacts of reasonably foreseeable future development over the next 20 years. To assure no net loss, the City has adjusted the policies and regulations of the SMP in response to recommendations in the draft CIA and NNL reports. The locally adopted SMP appears to fairly allocate the burden of addressing cumulative impacts among development opportunities. Ecology finds that the City’s SMP and supporting Cumulative Impact Analysis are consistent with the SMP Guidelines governing principle (WAC 173-26-186(8)) as well as the legislative intent of the Shoreline Management Act under RCW 90.58.

**Restoration Plan:** Local SMPs are required to include goals, policies and actions for restoration of impaired shoreline ecological functions (WAC 173-26-201(2)(f); WAC 173-26-186(8)(c)). Over time, the goal is for these provisions, when implemented, is to improve the overall condition of habitat and resources within the shoreline area of each city and county (WAC 173-26-201(2)(c)).

Battle Ground, in coordination with the other members of the Clark County Coalition, developed a restoration plan based on the information gathered in the Inventory and Characterization (ESA, 2010). The Final Shoreline Restoration Plan (ESA, June 2011) identifies specific and programmatic restoration opportunities and actions for each watershed and waterbody. Table 2-1 of the Plan identifies suggested restoration goals, objectives, actions and success measures and Chapter 4 focuses on restoration priorities and Chapter 5, along with Appendices C and D identify restoration actions. Existing programs, partners, general timelines and benchmarks and monitoring and adaptive management strategies are also discussed in the document.

The City’s SMP includes policies in Chapter 3 and regulations in both Chapters 5 and 6 that permit and promote restoration efforts along all City shorelines and explicitly link restoration actions to the Clark County Coalition Shoreline Restoration Plan (ESA, June 2011).

Ecology finds that the Shoreline Restoration Plan is based on appropriate technical information available to the City (and the Coalition) during the SMP update. The Restoration Plan can serve as an effective tool for the City, non-profit organizations and the public to collectively improve shoreline conditions over time. Such restoration efforts are understood to help achieve the no-net-loss standard of the SMP Guidelines (WAC 173-26-186; WAC 173-26-201)).
Amendment History and Review Process:

**Amendment History:** Battle Ground initiated a comprehensive update to their SMP as part of a collective effort with Clark County and the six (6) other municipalities (the cities of Camas, La Center, Ridgefield, Vancouver, Washougal, and the Town of Yacolt). The eight jurisdictions (Coalition) began coordinating through an Interlocal Agreement signed in May 2009. The County and cities pooled their grant resources (approximately $1.17 million) and work began in September 2009 consistent with a scope of work described in SMA Grant No. G1000058. The grant was managed on behalf of the entire Coalition by the City of Vancouver.

As a group, the Coalition agreed to be as consistent as possible in goals and policies across all updated SMPs, formed a Project Management Team (PMT) to guide the process consisting of representatives of all the jurisdictions, and hired a single consultant (ESA, formerly ESA Adolfson). The Coalition worked closely through June 2011 developing documents and implementing a public outreach effort on a county-wide basis. Two committees were formed: a Shoreline Stakeholders Advisory Committee (SSAC) and a Technical Advisory Committee (TAC). In addition, an Independent Science Review Panel (ISRP) was used to review the application of scientific information throughout the process. A County-wide draft Shoreline Inventory and Characterization was issued in April 2010. Ecology provided written comments in a brief memo and via comment matrices in April and May 2010. A revised Shoreline Inventory and Characterization, Volumes 1 & 2 was issued June 2010.

Other documents produced as a Coalition include: Shoreline Management Strategy, Public Participation Plan, Clark County Shoreline Restoration Plan and a Shoreline Designation Rationale. The Coalition also produced an early draft master program in March 2011 which received extensive public comment and review including comments from Ecology. Subsequent drafts for each jurisdiction were produced in June 2011 for individual local adoption processes.

**Public Participation:** The Public Participation Plan updated quarterly, documents all public participation efforts proposed and carried out. As a Coalition, the initial three phases of the update process included workshops for all elected officials and planning commissions. These workshops were held in October 2009, April-May 2010 and October-November 2010. The Battle Ground Planning Commission and/or City Council participated in 4 public workshops through May 2011. Coalition open houses were held in October 2009, March 2011 and August 2011. Visioning meetings were held March 2010.

**Shoreline Stakeholders Advisory Committee (SSAC):** This committee included representatives with interests in ports, commercial and industrial businesses, residential development, environmental issues and shoreline property owners. A representative of the Cowlitz Tribe was also named. The SSAC held 22 meetings from October 2009 to June 2011 and focused on reviewing goals, policies, and regulations and shoreline designation maps. They met jointly with the TAC on a number of occasions and were invited to review the technical documents.

**Technical Advisory Committee (TAC):** This committee included representatives from local, state and federal resource agencies and included citizens with expertise. A representative of the Cowlitz Tribe was named on the committee. The TAC met 12 times from October 2009 to June 2011 and was tasked with reviewing the technical documents including the inventory and characterization, the restoration plan and the cumulative impacts analysis and no net loss report.
All workshops, open houses and meetings of the advisory committees were open to the public and advertised in the local papers. Mailings to shoreline property owners (>5000) and interested parties were sent out during each of five phases. Additional presentations were provided to interest groups and a Shorelines Forum was co-sponsored by the Building Industry Association of Clark County and the Clark County Association of Realtors.

Independent Science Review Panel: The ISRP consisted of five scientists with expertise in hydrology, hydrogeology, habitat, ecosystem function and stream ecology. This panel focused on reviewing the science used in the technical documents.

Coalition Website: A website hosted by the City of Vancouver was created that included the project schedule, draft documents and maps, meeting notices, contact information and an e-mail link to submit comments throughout the process.

City Website: The City established an SMP webpage on their Long Range Planning website: Battle Ground, WA - Official Website - Battle Ground Shoreline Master Program

Local Review Process: Beginning July 1, 2011 each jurisdiction began working independently on their local adoption process. The Project Management Team continued to meet on an as-needed basis but most jurisdictions focused on their own internal decision processes.

The City indicates the proposed comprehensive SMP amendment originated from a local planning process (as part of the Clark County Coalition) that began in July 2009.

The record shows that the Battle Ground Planning Commission held public workshops April 13 and August 10, 2011. Planning Commission held a public hearing on August 24, 2011, continued to October 12, 2011. Notice of this hearing was published in the Reflector on August 10, 2011. The record indicates City Council held one hearing on February 21, 2012. The affidavit of publication provided in the record indicates notice of this hearing was published in the Reflector on February 8 and February 15, 2012.

With passage of Ordinance # 12-01, on February 21, 2012, the City Council authorized staff to forward the locally adopted SMP to Ecology for approval.

Ecology finds the record submitted adequately documents compliance with WAC 173-26-100 and 110.

State Review Process: The proposed SMP amendments were received by Ecology for state review on March 20, 2012 and verified as complete March 30, 2012. Notice of the state comment period was distributed to state task force members, potentially interested tribes, and interested parties identified by the Coalition and the City on May 21, 2012 by mail and May 23, 2012 by email, in compliance with the requirements of WAC 173-26-120. The state comment period began on May 25, 2012 and continued through June 25, 2012. Notice was posted on the Ecology website for shoreline master programs: http://www.ecy.wa.gov/programs/sea/shorelines/smp/mycomments/battleground.html and on Ecology’s Public Involvement Calendar. Ecology staff determined a public hearing was not necessary.

A total of one state agency (Washington Department of Fish and Wildlife) submitted comments on the proposed SMP during the state comment period. Ecology sent all written comments it received to the
City on July 2, 2012. On July 13, 2012, the City submitted its responses to issues raised during the state comment period to Ecology.

**Summary of Issues Raised during the Ecology Public Review Process:** The comment submitted by Washington Department of Fish and Wildlife (WDFW) asks that the SMP be clear that the Priority Habitats and Species (PHS) List describes critical areas that will be protected under the SMP and suggests moving it into the section listing applicable critical areas (BGSMP 5.3.1. This section simply lists the critical area ordinances being adopted by reference into the SMP (these ordinances are also found in Appendix B). Section 5.3.2 addresses specific changes to these ordinances when implementing under the SMP to ensure consistency with the SMA (e.g. identifying that reasonable use provisions don’t apply and a shoreline variance is needed). The City provided revised language for this provision in response to the WDFW comment.

Ecology concurs with the City that Section 5.3.2 is the appropriate location for this provision. However, additional clarity could be added that indicates PHS will be protected under the Fish and Wildlife Habitat Conservation provisions. Attachment C includes recommended language to address this comment.

**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).

**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 the SMP Submittal Checklist, which was completed by the City and provided with the submittal of the locally adopted SMP.

**Consistency with SEPA Requirements:** The City submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Likely Determination of Non-Significance (DNS) for the proposed SMP on August 9, 2011. Notice of the SEPA determination was published in the *Reflector* on August 9, 2011. Comments were accepted until August 23, 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 and the Coalition in support of the SMP amendment:

These supporting documents include:

- *Clark County Coalition Shoreline Management Strategy, June 2010*
- *Clark County Coalition Public Participation Plan, June 2011*
- *Clark County Shoreline Inventory and Characterization (draft) April 2010; June 2010*
- *Assessment of Water-dependent Commercial, Industrial, and Recreational Uses, May 2010*
- *Clark County Coalition Cumulative Impacts Analysis (draft) June 2011, February 2012*
- *Battle Ground Cumulative Impacts Analysis (draft) June 2011; (Final) March 2012*
- *Battle Ground No Net Loss Summary Memo (draft) June 2011; (Final) March 2012*
- *Clark County Coalition Restoration Plan, (draft) October 2010, (Final) June 2011*
• Clark County Coalition Shoreline Designation Rationale, June 2011

Summary of Issues identified by Ecology as Relevant to its Decision:

Shoreline jurisdiction: Shoreline jurisdiction is defined in the statute. The locally adopted SMP is limiting shoreline jurisdiction to the minimum: floodway plus contiguous floodplain landward 200’ and all associated wetlands. However, the definition for “floodway” in Chapter 8 does not identify which method the city will use to determine the floodway. In addition, the City has opted to not extend shoreline jurisdiction to include buffers necessary to protect critical areas, however vegetation conservation provisions which extend across the entire 250’ critical area buffer appear to conflict with this intent.

Attachment B specifies required changes to the definition for floodway in Chapter 8 to clarify how Battle Ground will apply the FEMA floodway to determine shoreline jurisdiction and modifies the vegetation conservation language consistent with the City’s intent to limit shoreline jurisdiction.

Allowed and Prohibited Uses: The SMP must be clear which uses are allowed, allowed by conditional use and prohibited. As written, there are conflicts between Table 6-1 Shoreline Use, Modification and Development Standards and the text particularly related to commercial and industrial uses.

Attachment B identifies required changes and rationale to resolve these inconsistencies.

Shoreline designations map: There have been minor changes to the floodplain boundaries due to updated floodplain maps.

Attachment B (Required Changes) specifies that the City adopt an updated map.

Therefore, Ecology finds that the proposed SMP as approved by Battle Ground under Ordinance No. 12-01 is not consistent with the applicable SMP Guideline requirements, as specifically identified in Attachment B (Required Changes). However, Ecology also finds that the SMP can be amended to ensure compliance with the SMP Guidelines through the City’s acceptance of Required Changes listed in Attachment B.

Pursuant to WAC 173-26-120 Ecology has also identified Recommended Changes (Attachment C) to the SMP for consideration by the City.

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, subject to and including Ecology’s required changes (itemized in Attachment B), 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)).
Ecology also concludes that a separate set of recommended changes to the submittal (identified during the review process and itemized in Attachment C) would be consistent with SMA policy and the guidelines and would be beneficial to SMP implementation. These changes are not required but can, if accepted by the City, be included in Ecology’s approved SMP amendments.

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 provisions relating to critical areas within Shoreline Management Act jurisdiction 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 new comprehensive SMP 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 Battle Ground has chosen not to exercise its option pursuant to RCW 90.58.030(2)(f)(ii) to increase shoreline jurisdiction to include land necessary for buffers for critical areas located 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 and their buffer areas (that don’t extend beyond SMA jurisdiction) shall be regulated solely by the SMP.

**DECISION AND EFFECTIVE DATE**
Based on the preceding, Ecology has determined the proposed amendments comprehensively updating the Battle Ground shoreline master program are consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules, once required changes set forth in Attachment B are approved by the City. Ecology approval of the proposed amendments with required changes is effective fourteen (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 the 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 action. Approval of the updated SMP and proposed alternative/s is effective fourteen (14) days from Ecology’s final action approving the alternative/s.