ATTACHMENT A: FINDINGS AND CONCLUSIONS
FOR PROPOSED AMENDMENTS TO THE CITY OF BELLINGHAM
SHORELINE MASTER PROGRAM

Brief Description of Proposed Amendments:

The City is proposing a comprehensive update of the entire Shoreline Master Program.

FINDINGS OF FACT

Need for Amendment: The proposed amendments are needed to comply with the statutory deadline for a comprehensive update of the SMP, originally a “first adopter” due December 2005. The SMP amendment deadline was extended several times to accommodate the change of ownership of approximately 3 miles of downtown waterfront from Georgia-Pacific Mill private holdings to Port of Bellingham public ownership. A comprehensive Port/City effort public planning process was initiated to address toxic clean-up activities and future potential land uses consistent and compatible with existing downtown neighborhoods and Port plans. The proposed amendments will also remedy inconsistencies among the SMP, zoning ordinance and comprehensive plan, including the current critical areas ordinance, for the purposes of shorelines and growth management integration. It has been 22 years since the city completed a thorough review and update of its shoreline protection measures. During that period, better scientific studies have been developed on the subjects of critical areas, wetland and riparian functions, nearshore processes, salmonid and forage fish biology, and landscape/ecosystem analyses. The city determined that better scientific information required a new inventory and analysis of its shoreline resources as well as meeting the SMP Guidelines requirements. The submitted proposed amendment reflects the result of completing the new comprehensive inventory and analysis.

SMP Provisions To Be Changed By The Amendment As Proposed: The submittal is a comprehensive SMP update designed to satisfy the SMP guidelines requirements and replace the existing SMP in its entirety.

Amendment History, Review Process: The city indicates the proposed SMP amendments originated from a local planning process that began in early 2004 and built upon work done by the city in conjunction with updating its Critical Area Ordinance. The city established a website to provide regular updates and products of its subcommittees: a Waterfront Advisory Group, Citizen Shoreline Committee, and a Technical Advisory Committee (TAC). The citizen committees represented a broad spectrum of interest groups and they worked diligently to address crucial issues during the many meetings they held from 2004 to November 2009. The 10-member TAC provided a diverse scientific perspective and likewise was steadfast in its dedication to addressing a broad range of issues during its multiple meetings held from June 2005 to November 2005. The city hosted initial SMP public workshops and expert panel discussions early in the process. The record shows that 14 additional SMP workshops (including
5 public hearings) at the Planning Commission and open to the public were held from November 3, 2005 and April 26, 2007. An initial public hearing before the City Council was held on July 16, 2007 and considered all testimony. Five additional public work sessions were held by the City Council from July 2007 to September 2008. The city council held a second public hearing on July 27, 2009 to solicit comment on the latest draft SMP. This resulted in four additional public work sessions followed by the final public hearing held on November 23, 2009.

With passage of Ordinance #2009-12-078, on December 14, 2009, by the City Council and the Mayor, 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 August 19, 2010. Notice of the state comment period was distributed to state task force members and interested parties identified by the City on May 5, 2011 and May 18, 2011 respectively, in compliance with the requirements of WAC 173-26-120, and as follows: The state comment period began on May 16, 2011 and continued through June 24, 2011. On May 25, 2011 at 7 pm, Ecology held a public hearing in Bellingham, Washington to seek input on the proposed amendments. Notice of the hearing, including a description of the proposed amendment and the authority under which the action is proposed, the times and locations of the hearing and the manner in which interested persons could obtain copies and present their views was provided in the May 11, 2011 edition of the Bellingham Herald, the City's official newspaper of record. A media advisory was sent to five local papers, the local radio station, and broadly covered in many local organizations electronic and traditional outreach mechanisms. Direct notice of the hearing was sent to about 175 interested people of record. Of the twenty-five citizens attending the hearing, nine provided oral testimony. Generally, the comments were favorable to the document and consisted of recommendations for relatively minor improvements and clarity of language. Several people were critical of the local-state process particularly the final revisions phase by the state which is not open to the public. Ten individuals or organizations submitted written comments on the proposed amendments. Ecology sent all oral and written comments it received to the City. The City submitted to Ecology its responses to issues raised during the state comment period. Ecology’s own responses to issues raised during the comment period are available as part of the SMP amendment process record.

Consistency with Chapter 90.58 RCW (SMA): The proposed amendments have been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3),(4) and (5).

The City has also provided evidence of its compliance with SMA procedural requirements for amending an SMP contained in RCW 90.58.090 and WAC 173-26-090, 100, 110.
Consideration of “applicable guidelines” (Chapter 173-26 WAC, Part III) (Guidelines):
The proposed amendment has been reviewed for compliance with the requirements of the
applicable Shoreline Master Program Guidelines (WAC 173-26-171 through 251 and -020
definitions). This included review of a SMP Submittal Checklist which was completed by the
city.

Ecology staff thoroughly reviewed the SMP goals, policies, regulations, environment
designations, maps, administrative provisions, definitions, and legal provisions for consistency
with the Guidelines. Ecology staff also thoroughly reviewed and evaluated the city’s SMP
inventory, characterization and analysis, public involvement process, and Growth Management
Act integration, including critical areas. In addition, Ecology staff reviewed and evaluated the
city’s Shoreline Restoration Plan including the background data and documentation.

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 for the proposed
SMP amendments on April 26, 2007; notice of the SEPA determination was published in the
Bellingham 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:

- a public participation plan,
- a shoreline inventory and characterization,
- a cumulative impacts analysis,
- a shoreline use analysis, and
- a shoreline restoration plan
- data sheets, aerial photos, and technical reports
- staff reports, meeting minutes, and hearing records

Summary of Issues Raised During The Public Review Process: The City’s SMP amendment
drafting/public review process was lengthy and drawn out at times due to differing opinions and
perspectives. The city did an exemplary job of bringing together many diverse interest groups
and facilitating meaningful dialogue with all the parties. At the conclusion of the local process,
the city staff was praised for their extended outreach efforts and diligence throughout the effort.
During the eight-year public participation period, considerable discussion centered on the
following topics:

Buffers and structural setbacks – Citizens expressed concern over the application of buffers
within shorelines, however, many citizens also appreciated the flexibility built into the provisions
for existing lots and structures. Of particular concern has been the size and scope of setbacks
and buffers along Lake Whatcom, the city’s drinking water supply, and along the marine
shoreline where major redevelopment is being planned by the City and the Port. The challenge
along Lake Whatcom, most of which is developed with single-family residences within the City
and UGA, is allowing existing residences some degree of expansion/renovation potential while
improving water quality and nearshore. The debate bounced back and forth between 50-ft or smaller buffers and 100-ft and larger buffers. The City finally settled on 100-ft and larger buffers with flexible provisions to address re-development while requiring upgrades to stormwater management and shoreline habitat.

In the Marine shoreline environments, the city’s shoreline ranges from relatively intact areas towards the outer edges of the city and within the UGA to a heavily industrialized central waterfront landscape. In the relatively intact marine shoreline areas that are designated Natural or Urban Conservancy, the vegetative buffer varies from 200 ft down to 50-100 ft in the more develop areas. In the central waterfront area, the debate centered on how to treat existing armored/bulkheaded shoreline being used and planned for water-dependent uses compared to the same types of shoreline that is planned for non-industrial mixed commercial/recreational uses. A great deal of the latter shoreline areas are undergoing toxic waste clean-up efforts in conjunction with the Bellingham Bay Pilot Project including the defunct Georgia-Pacific Mill site and 26-acre aeration stabilization basin (ASB), and several old municipal landfill sites. A great deal of discussion has occurred between the Port and the City regarding these areas resulting in two primary high-intensity shoreline designations: Urban Maritime and Waterfront District. Based on the multiple objectives of providing for habitat protection/restoration, public access, and water-oriented uses, each of these two primary designations is further refined into three sub-designations: Water-Oriented Uses, Shoreline Mixed Use, and Recreational Uses. Vegetative buffers range from zero on vertical bulkhead/wharf shoreline to 25-ft minimum on sloping or restored shorelines. Structural setbacks are a minimum 50-ft from the OHWM depending on the type of use and proposed height. In general, larger buffers and setbacks are established for non-water-oriented uses with the exception that the portions of water-dependent uses that need direct water access are exempt from the buffer/setback standards.

Non-conforming structures and uses – Existing non-conforming structures that could be used for conforming, even preferred, uses were the subject of requests for greater flexibility in these limited instances where such uses are also consistent with the shoreline designation. In particular, old industries that have been modernized such as the Mt. Baker Plywood operation located on a fill adjacent to the Squalicum Creek Estuary that no longer is water-dependent/water-related due to changes from log transport to specialized wood materials being trucked in are considered part of the working waterfront despite the future potential for re-locating to an upland site. Such a transition would likely require large incentives to vacate the present location and move off of the waterfront. Improvements to the existing facility to shrink the footprint and improve efficiencies are encouraged under the new SMP. The City has planned this area of its UGA to automatically transition into an Urban Conservancy shoreline designation upon annexation. As such theses areas, as mapped in BMC 22.11.10, are consistent with the purpose, policies and criteria of the urban conservancy environment designation.

Dock and pier standards – Shoreline owners articulated practical boating needs and safety concerns regarding size limitations on piers and floats. Other citizens expressed concern that over-sized, out-of-shoreline designation character boat lifts, floats and docks would be allowed if reasonable parameters were not established. In order to limit the nearshore impact from piers on lakes, the city has proposed a width standard of 5-ft with the length being not more than the average of the five piers on either side of the proposed pier since nearly all existing lots have
piers. One 8-ft by 10-ft “bump-out” on a pier in addition to the 5-ft width is proposed for undefined recreational use. Floats are limited to 8-ft by 16-ft in size to be constructed with non-toxic materials and having grating providing not more than 60% water surface coverage. Some minor revisions are required to clarify the proposed standards and make them consistent with other agency standards e.g. WDFW, Corps, etc. Staff has included these minor changes, which the City has reviewed and supports, in the “required revisions” in Attachment B. These can be summarized as: narrowing the pier width to four (4) feet; removing the overwater “bumpout”; and establishing several performance standards to limit overall dock length to the minimum necessary to serve the intended purpose.

Marine piers and floats are separated into two major categories: “protected areas” and “unprotected areas”. Protected areas are defined as within a marina or protected from direct wave impacts by a breakwater, jetty or groin. Unprotected areas are defined as not protected from direct wave impacts by a breakwater, jetty or groin or in a marina.

In protected areas, piers and gangways must be designed with the smallest water surface coverage practical when located between the OHWM and minus 10-ft MLLW. Piers, floats, and gangways within or over a critical area must be designed with the minimum necessary water-surface coverage in order to provide safe access provided all mitigation sequencing steps have been adhered to and pilings are either steel or concrete. Floats are not to be located shallower than minus 10-ft MLLW unless no feasible alternative exists.

In unprotected areas, the above requirements apply plus between the OHWM and minus 15-ft MLLW:

- Piers, gangways, and floats shall be perpendicular to shore, if feasible.
- Maximum grating required for piers, floats and gangways.

Dredging standards – Some concerns were raised that dredging activities were not clearly defined in relation to hazardous waste remediation efforts and also for maintenance dredging of marinas, etc. Some clarification of terms has been made in the “required revisions” to provide greater consistency with other state rules.

Referenced Zoning and other City codes – Minor corrections to re-word direct references to other city codes and make them general informational references has been recommended and supported by the City so that the SMP isn’t cluttered with incorporated code sections unnecessarily.

Non-Water-Oriented Uses (NWOUs)– A great deal of discussion occurred between the City, Ecology and the Port concerning when, where and how NWOUs could be accommodated into the existing and planned water-front revitalization. Many citizens and interested parties were also heavily involved in the public discussions involving this subject. The Shoreline Mixed-Use portions of the Waterfront District and Urban Maritime shoreline designations make adequate provision for the special situations where NWOUs are allowed.
A responsiveness summary addressing the public’s comments during the city review process was submitted with the proposed SMP amendment and reviewed by Ecology staff (itemized in Attachment D). In addition, a public comment summary following the Ecology public hearing was provided to the city and the city’s response addressing the public’s concerns is attached.

**Summary of Issues Identifed by Ecology as Relevant To It’s Decision:**

In addition to the numerous minor corrections and clarifications required for internal consistency and as summarized above, several corrections to permit processes and definitions were required to make the proposed SMP consistent with RCW and WAC terms and requirements. These minor revisions concerning Variance, Conditional Uses, Mitigation Sequencing, and the definitions for “development”, “appurtenance” and “accessory development” are supported by the City and contained in the “required revisions”.

One process issue became apparent through the public and agency review process that relates to the future Waterfront District City/Port plan known as the **Waterfront District Master Plan and Development Agreement (WDMPDA)**. This legal agreement between the City and the Port of Bellingham contains the roles and responsibilities, the infrastructure required, and the comprehensive development plans for the approximately 236-acre industrial site located on the prime downtown waterfront and previously predominately occupied by the now-defunct Georgia-Pacific Pulp Mill. Due to the complications of multiple MTCA sites being cleaned up over varying schedules, the WDMPDA has evolved over the past several years and now is in a form that allows the SMP to be approved to provide the overall policies and regulations for the shoreline portion of the overall waterfront District. The process issue that was raised concerns the City and Port’s desire to modify the setback/buffers within the Waterfront District once the WDMPDA is finally through its public process and approved. The solution that was developed provides default setbacks/buffers in the SMP now with the opportunity in the future, upon Ecology review and approval for SMA consistency, any proposed modifications as a result of refinements coming from the approved WDMPDA. This process provision ensures any future minor modifications that the City may need in re-developing its central waterfront will remain consistent with the SMA and approved-SMP while providing needed flexibility without an unnecessary minor SMP-amendment procedure. Significant or major changes to the approved-SMP would require a formal SMP amendment.

The environment designations applied to the shoreline jurisdiction were also closely examined during the agency review process. During this review, three reaches along Squalicum Creek were identified as having inconsistencies with the management policies of the Natural designation which they resided. The underlying zoning and future land use designations for the subject reaches indicate a range of activities could occur, including commercial and industrial uses. WAC 173-26-211(5)(a) contains strong policy language against locating new commercial and industrial uses within the Natural environment designation. In discussions with the city, the decision was made to change the environment designation from Natural to Urban Conservancy. The Urban Conservancy designation brings these reaches into consistency with the purpose, management policies, and designation of WAC 173-26-211(5)(e). Additionally, the structure of
the SMP, with its reach specific development standards, allows a change to the environment designation without a corresponding change to development regulations. As such, the environmental protections for Squalicum Reaches 6-8 remain unchanged, consistency with the City of Bellingham Comprehensive Plan is maintained, and conflicts with WAC 173-26 have been avoided.

Provisions for non-water-oriented recreational development were also discussed during the agency review process. Within specific reaches natural environment designation, new non-water-oriented recreational development is allowed under the proposed SMP. WAC 173-26 requires rational for allowing non-water-oriented recreational uses within the natural environment designation. The subject reaches can be divided into two groups; public and privately owned. The private reaches are principally located along Squalicum Creek and have buffers which extend a maximum of 200 - 250 feet. Minimal development has occurred within these areas. The publicly owned reaches are located along Lake Padden, Lake Whatcom, Chuckanut, Squalicum and Whatcom Creeks. The public reaches contain both water-oriented and non-water-oriented recreational uses. Buffers in these reaches also extend a maximum of 200 - 250 feet. Given the specific physical conditions of these reaches, their planned and existing use, and regulations of the SMP, allowing non-water-oriented recreational uses upland of critical area buffers (along with public access) is consistent with RCW 90.58 and WAC 173-26.

Additionally, the agency review process identified the prohibition of boating facilities within the shoreline residential environment designation as an issue needing further qualification. Boating facilities are a water-dependent preferred use within the SMP. WAC 173-26 directs local jurisdictions to ensure that boating facilities are located only at sites with suitable environmental conditions, shoreline configuration, access, and neighboring uses. The city’s shoreline characterization report identifies water quality impairments as a key concern in Lake Whatcom. Further, Lake Whatcom provides drinking water to the City of Bellingham. The development pattern of this environment designation consists of single-family residential lots for which intensive uses such as boating facilities could create public health concerns. Therefore, the city’s decision to prohibit boating facilities in the shoreline residential environment of Lake Whatcom and Lake Padden is consistent with WAC 173-26 and RCW 90.58.

Finally, Attachment C contains several recommended revisions that are a result of public comments and agency review. These revisions can be summarized as improvements that will make the document more user-friendly. The purpose and intent of the SMP provisions are not altered by these recommended revisions.

Both the required and recommended changes, Attachments B and C respectively, were created in collaboration with the city. On May 7, 2012 city staff presented the changes to the Bellingham City Council and the city has indicated their support of the changes.

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the City’s SMP proposal, 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 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 master program amendments (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 and prevent a net loss of shoreline functions.

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.

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, notices, consultation with parties of interest and solicitation of comments from tribes, adjacent local government agencies, state and federal agencies, and Ecology throughout the amendment process.

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 SMP amendment 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 WAC 173-26-120.

Ecology concludes that the City has NOT chosen 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. 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. For administrative consistency, the city’s CAO and SMP critical area buffers are identical. An additional 15-ft wide structural setback as measured from a wetland buffer is required within SMA jurisdiction. For other buffers, the structural setback varies from 5 to 15 feet from the buffer edge depending on the shoreline designation and reach.

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendments are consistent with the policy of the Shoreline Management Act, 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 (and any recommended revisions), is effective two weeks from the date Ecology receives written notice that the City has agreed to the required changes.

NEXT STEPS

As provided in RCW 90.58.090(2)(e)(ii) the City may choose to submit an alternative to all or part of the changes required 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 on the amendment.