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

SMP Submittal accepted September 27, 2012, Ordinance No.09-12
Prepared by Sarah Lukas on March 18, 2013

Brief Description of Proposed Amendment:

The City of Buckley 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, administrative provisions as well as Appendix A: the environment designation map, Appendix B: the local critical areas regulations and Appendix C: the Restoration Plan, as part of the SMP.

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 of the SMP Guidelines contained in WAC 173-26 and 27. The original City SMP was approved by Ecology in 1975 and went through one amendment in September 1999, which was also a comprehensive update.

This comprehensive SMP update is intended to entirely replace the City’s existing SMP. This updated SMP regulates 3.86 miles of the White River, a Shoreline of Statewide Significance. This is the same portion of the White River regulated under the 1999 SMP; however, the newly proposed SMP does not regulate the entire 100-year floodplain like the 1999 SMP. The new SMP only regulates the minimum jurisdiction which is the landward extent of the floodway extending 200-feet in the contiguous 100-year floodplain and associated critical areas. The city no longer wishes to exercise the option to extend jurisdiction to include the whole floodplain.

Amendment History, Review Process: The city indicates the proposed SMP amendments originated from a local planning process that began on September 28, 2009. The record shows that a workshop open to the public was held on January 24, 2011, and a public hearing before the Planning Commission was held on July 9, 2012. Affidavits of publication provided by the City indicate notice of the hearing was published on June 13, 2012.

With passage of Resolution # 09-12, on August 14, 2012, 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 September 27, 2012. Notice of the state comment period was distributed to state task force members and interested parties identified by the City on October 24, 2012, in compliance with the requirements of WAC 173-26-120, and as follows: The state comment period began on November 1, 2012 and continued through December 3, 2012. One person submitted comments to Ecology on the inventory and characterization report, a background document produced as part of the comprehensive
update process. Ecology submitted the written comments it received to the City on December 7, 2012; And on the same day, the City responded by submitting back responses to Ecology to issues raised during the state comment period.

**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 March 8, 2012. Notice of the SEPA determination was published in the Courier Herald on March 14, 2012. 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:

- *an April 28, 2010 Public Involvement Plan,*
- *a January 2011 Shoreline Analysis Report for City of Buckley’s Shorelines: White River*
- *an August 2012, Cumulative Impacts Analysis, and*
- *a June 2012, No Net Loss Report.*

**Summary of Issues Raised During The Public Review Process:**

During the course of the City’s SMP amendment process the city received comments. Both the Cascade Water Alliance and the Muckleshoot Tribe wrote letters to the City during the planning period.

The Cascade Water Alliance had concerns over the ongoing repair, maintenance and planned replacement of the White River Diversion Dam and Flume located within the City. The Muckleshoot Tribe had several comments associated with the existing fish trap located at the White River Diversion Dam, as well as allowed uses located in proximity to critical freshwater habitat. Neither of these organizations commented during the state public comment period. The city responded to comments received in writing and ultimately addressed issues by making some changes to the draft SMP prior to local adoption to accommodate these existing and ongoing uses.

Ecology found disparities in the locally adopted SMP with the Statute and Guidelines as follows:

**Shoreline jurisdiction**

1. The landward extent of shoreline jurisdiction can vary in accordance to the discretionary allowances found in 90.58.030(2)(d)(i) and (ii) RCW. It is the decision of the local government to
choose the landward extent of the shoreland area regulated by the SMP. This was not defined to the extent necessary to clearly understand the area regulated.

The definition of the floodway directly impacts the landward extent of jurisdiction. Where the floodway is mapped, as described in 90.58.030(2)(d) RCW, the floodway is used instead of the OHWM as the beginning point of shoreline jurisdiction “...Shorelands or shoreland jurisdiction means those lands extending landward two hundred feet in all directions in a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways...” in the statute is discretionary to the local government, as found in 90.58.020(18) RCW, ““Floodway” means the area, as identified in a master program, that either:

(a) Has been established in federal emergency management agency flood insurance rate maps or floodway maps; or

(b) Consists of those portions of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually. Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.”

The change identifies the city’s choice of defining the floodway with the adopted FEMA FIRMs, or part ‘a’ of the definition above. This change is specified in Attachment B, item 1.

2. Further, section 90.58.030(2)(d)(ii) RCW allows the local government to regulate, “… land necessary for buffers for critical areas, as defined in chapter 36.70A RCW, that occur within shorelines of the state…” The city of Buckley chose not to exercise its authority under this provision, leaving buffers extending outside of shorelands regulated by the local critical areas ordinance. This choice was not clearly identified in the SMP.

This change is specified in Attachment B, item 4.

Critical areas buffers and structural setbacks

The updated SMP incorporates the regulations for the protection of critical areas by adoption of appendix B, as consistent with WAC 173-26-221(2), “Pursuant to the provisions of RCW 90.58.090(4) and 36.70A.480(3) as amended by chapter 107, Laws of 2010 (EHB 1653), shoreline master programs must provide for management of critical areas designated as such pursuant to RCW 36.70A.170 (1)(d) located within the shorelines of the state with policies and regulations that:

(i) Are consistent with the specific provisions of this subsection (2) critical areas and subsection (3) of this section flood hazard reduction, and these guidelines; and

(ii) Provide a level of protection to critical areas within the shoreline area that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources.”
Appendix B identifies the White River as critical freshwater habitat and establishes a 150-foot buffer on the River. The adopted SMP establishes use dimensional standards, or structural setbacks, in Table 6-2 but referred to these areas as buffers in a applicable text describing Table 6-2. The SMP required clarity in this section to define the applicable setbacks and critical area buffers.

These changes are specified in attachment B, items 9, 10, 11, 12, and 13.

**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, 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. The recommended change includes rewording to make clear the provisions associated to dredging.

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.

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, 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 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. Approval of the updated SMP and proposed alternative/s is effective 14 days from Ecology’s final action approving the alternatives.