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

SMP Submittal accepted January 15, 2013, Resolution No. 22-2012
Prepared by Robert Fritzen on March 26, 2013

Brief Description of Proposed Amendment:

The City of Burlington (city) 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. 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 of the SMP Guidelines contained in WAC 173-26 and 27.

The city originally adopted the Skagit County SMP. Chapter 173-19 WAC (now repealed) states the initial city SMP was approved by Ecology on July 15, 1981. At that time, only a corner of the city abutted the Skagit River. Currently, the city reports to have roughly three miles of river shoreline. As indicated in the city’s Shoreline Analysis and Shoreline Inventory Report, this SMP update is needed to address land use changes that have occurred along the city’s shorelines over the past 32 years. An update will also provide consistency between the SMP and the environmental protection and land use management policies and practices provided by the city’s Critical Areas Ordinance, Comprehensive Plan, Flood Management Plan, and the National Marine Fisheries Service Biological Opinion. Applicable sections of the Critical Area Ordinance have been incorporated into the SMP and have been included as Appendix A, Shoreline Wetland, Fish and Wildlife Habitat, and General Critical Areas Regulations.

Amendment History, Review Process: The city indicates the proposed SMP amendments originated from a local planning process that began mid-2009. The record shows that Planning Commission acted as a citizens committee and held at least fifteen public meetings between late 2009 and mid-2012. A public hearing before the Planning Commission adopted the draft SMP on May 16, 2012. With passage of Resolution #22-2012, on September 13, 2012, the city authorized staff to forward the proposed amendments to Ecology for approval. Affidavits of publication provided by the city indicate notice of the hearing was published on August 16, 2012.

The proposed SMP amendments were received by Ecology for state review and verified as complete on January 16, 2013. Notice of the state comment period was distributed in early
February to state task force members and interested parties identified by the city in compliance with the requirements of WAC 173-26-120. The state comment period began on February 13th and continued through March 15, 2013. Ecology did not hold a public hearing. One comment was received from the Department of Archeology and Historic Preservation (DAHP). DAHP offered specific language changes, which the city has reviewed and tentatively agreed to incorporate into the SMP as written in Attachment B – Required Changes. The only other changes necessary are those inadvertently omitted by the city that had been provided by Ecology in review of earlier draft SMPs. These changes are for the most part related to format, punctuation, and omitted language. The changes are listed in Attachment B or Attachment C – Suggested Changes.

**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, which are 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 SMP 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 “Notice of Adoption” to an existing Environmental Impact Statement. The notice was emailed to the Ecology SEPA Unit on December 14, 2012. The notice was distributed and posted by Ecology. No comments were received.

**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:

- *Public Participation Plan* created late 2009
- *Shoreline Analysis Report and Shoreline Inventory* dated June 2012 containing:
  - Shoreline Inventory
  - Opportunities for Protection and Restoration
  - Analysis of Ecologic Functions & Ecosystem-Wide Processes
  - Land Use Analysis and Implications
  - Skagit River Big Bend Reach Habitat Restoration Feasibility Study
  - Gages Slough Management Plan
  - Biological Opinion Checklist

**Summary of Issues Raised During The Public Review Process:** The city's SMP amendment drafting/public review process was not contentious. Very few comments were received.

**Summary of Issues Identified by Ecology as Relevant To Its Decision:** Due to the limitation of basic uses such as restoration, public access, recreation and transportation, and to the city’s cooperation, Ecology did not have any relevant issues.
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, RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and WAC 173-26.020 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.

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 providing notice of and conducting open houses and public hearings, 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 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 RCW 90.58.090 and WAC 173-26-120.
Ecology concludes that the city has chosen not to exercise its option to increase shoreline jurisdiction pursuant to RCW 90.58.030(2)(d)(ii) 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 both Shoreline Management Act policy and 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.