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

SMP Submittal accepted July 10, 2012, Ordinance No.12-932
Prepared by Sarah M. Lukas on December 7, 2012

Brief Description of Proposed Amendment:

The City of DuPont 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, the environment designation map (appendix A), and the 1995 Lonestar Settlement Agreement implemented through local ordinance 95-521 (appendix B), as well as critical area regulations embedded into the document customized for the city’s shoreline jurisdiction. Additional reports, 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 Part III. The original City SMP was approved by Ecology in 1975 and was last amended in 1995. Although the SMP has been amended twice since the initial SMP was adopted, it has never been comprehensively updated. This SMP update is also needed to provide consistency between the updated SMP and the environmental protection and land use management policies and practices provided by the City’s Critical Areas Ordinance and Comprehensive Plan.

This comprehensive SMP update is intended to entirely replace the City’s existing SMP. This updated SMP does not increase the land or waterbodies regulated by the city’s update. The linear extent of shorelines to be covered and regulated by the City SMP is approximately 3.5 miles of marine shoreline, most of which lies within the Nisqually Delta, a Shoreline of Statewide Significance as identified in 90.58.030(2)(f)(ii)(A).

Amendment History, Review Process: The city indicates the proposed SMP amendments originated from a local planning process that began on August 31, 2009 when the grant agreement was signed between the City and Ecology. The record shows that workshops open to the public were held on September 13, 2011 and September 27, 2011. A public hearing in front of the Planning Agency was held on February 13, 2012. Affidavits of publication provided by the City indicate notice of the hearing was published on January 14, 2012.

With passage of Ordinance 12-932, on May 22, 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 on June 18, 2012 and after receiving missing components on July 6, 2012, the submittal was verified as complete on July 10,
2012. Notice of the state comment period was distributed to state task force members and interested parties identified by the City on August 2, 2012, in compliance with the requirements of WAC 173-26-120, and as follows: The state comment period began on August 6, 2012 and continued through September 5, 2012. No individuals or organizations submitted comments on the proposed comprehensive update.

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 January 13, 2012. Notice of the SEPA determination was published in the News Tribune on January 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:

- a September 2009 Public Involvement Plan,
- an October 2010 Community Visioning Report
- a February 2011 Shoreline Inventory and Characterization,
- a January 2012 Cumulative Impacts Analysis,
- an August 2011 No Net Loss Report, and
- an August 2011 Restoration Plan

Summary of Issues Raised During The Public Review Process:

The City's comprehensive update process was at times contentious. Considerable debate centered on the applicability of the Shoreline Management Act to both Sequalitchew Creek and Sequalitchew Creek’s associated wetland, Edmonds Marsh. Throughout the update process community members continually made oral and written comments to the planning agency, as well as to Ecology staff that both waterbodies are important enough to be regulated under the Shoreline Master Program, regardless of Sequalitchew Creek no longer meeting the definition of a shoreline of the state.

Under the original 1975 DuPont SMP, Sequalitchew Creek was regulated as a shoreline of the state making Edmonds Marsh a shoreland also regulated under the original SMP. In 1993 the SMP was amended to remove the Creek from the SMP due to the creek no longer meeting the minimum 20 cubic feet per second flow criteria for rivers and streams as consistent with 90.58.030(2)(e) RCW. According to the 2011 Shoreline Analysis Report for the City of DuPont’s Shoreline: Puget Sound, currently
Sequalitchew Creek flows at approximately two cubic feet per second mean annual flow, establishing the Creek cannot be regulated as a shoreline of the state.

Two separate assessments were conducted by Ecology regional staff to investigate if Edmonds Marsh could meet the definition of a shoreline lake, or if the wetland could be considered a shoreland by association to another shoreline waterbody. Both assessments concluded that Edmonds March was neither a shoreline of the state, nor an associated shoreland.

**Summary of Issues Identified by Ecology as Relevant To Its Decision:**
There are changes required for the Master Program to be consistent with the Shoreline Management Act and the relevant Guidelines found in WAC 173-26. These changes include the replacement of definitions with those found in WAC 173-26; corrections to effective date to the Shoreline Master Program for consistency with 90.58.090(7) RCW; the removal of allowances for new roads waterward of the Ordinary High Water Mark; the removal of allowances for parking waterward of a water-related use; the removal of language allowing exemptions from the Substantial Development Permit for improvements to existing structures; and, the removal of administrative allowances for waiving application requirements.

**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).

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/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 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 alternatives is effective 14 days from Ecology’s final action approving the alternatives.