Brief Description of Proposed Amendment:

The Town of Eatonville 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, administrative provisions as well as Eatonville’s Critical areas Code EMC 15.16.115 adopted by reference as part of the SMP. 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 Town’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. The original Town SMP was approved by Ecology in 1975 and was last amended in 1981. This SMP update is also needed to address land use changes that have occurred along the Town’s shorelines over the past 33 years and to provide consistency between the updated SMP and the environmental protection and land use management policies and practices provided by the Town’s 2005 Critical Areas Ordinance and Comprehensive Plan.

This comprehensive SMP update is intended to entirely replace the Town’s existing SMP. The proposed updated program regulates development along three streams within the Nisqually River Watershed, including approximately one half mile of Lynch Creek, one half mile of Ohop Creek, and one and one half miles of the Mashel River.

Eatonville also planned for future annexations within its urban growth areas (UGAs). The Town has done this by pre-designating areas of the Town’s UGAs currently regulated by the Pierce County shoreline master program. These areas will be regulated by the Town’s SMP upon annexation of these areas into the Town’s municipal boundary. These shoreline areas include approximately one half mile of Ohop Creek, three quarters of a mile of Lynch Creek, one mile of the Mashel River, and one quarter of one mile of the Little Mashel River.

Amendment History, Review Process: The Town indicates the proposed SMP amendments originated from a local planning process that began on July 24, 2009. The record shows that workshops open to the public were held on October 5, 2009 and February 23, 2010, and a public hearing before the Planning Commission was held on May 16, 2011. Affidavits of publication provided by the Town indicate notice of the hearing was published on May 11, 2011, and the Planning Commission passed a motion recommending that the SMP be sent for approval to the Town Council December 5, 2011.
With passage of Resolution #2012-HH, on June 11, 2012, the Town authorized staff to forward the proposed amendments to Ecology for approval.

The proposed SMP amendments were originally received June 27, 2012, and were found incomplete. A letter of request identifying the missing documentation was sent by Ecology July 20, 2012, and on September 20, 2012 Ecology received the missing portion of the SMP amendment for state review and verified as complete on October 18, 2012.

Notice of the state comment period was distributed to state task force members and interested parties identified by the Town on November 25, 2012 in compliance with the requirements of WAC 173-26-120, and as follows: The state comment period began on December 3, 2012 and continued through January 14, 2013. Ecology exercised its discretion under WAC 173-26-120(4), and did not hold a public hearing as part of the state comment period. More than 30 days were provided for public comment due to the relation to the holiday season. One individual submitted comments on the proposed amendment. Ecology sent all comments it received to the Town on January 23, 2013. On April 4, 2013, the Town submitted to Ecology its responses 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 Town 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 Town.

**Consistency with SEPA Requirements:** The Town 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 October 25, 2011 and a second time on July 25, 2012. Notice of the SEPA determination was published in the *The Dispatch*, August 1, 2012. Ecology did not comment on either DNS.

**Other Studies or Analyses supporting the SMP update:** Ecology also reviewed the following reports, studies, map portfolios and data prepared for the Town in support of the SMP amendment:

- *a September 2009 Public Participation Plan;*
- *a July 2010 Shoreline Inventory, Characterization, and Analysis Report;*
- *an October 2011 Cumulative Impacts Analysis;*
- *an October 2011 Restoration Plan; and,*

**Summary of Issues Identified by Ecology as Relevant To Its Decision:**
Several areas of the submitted SMP are not consistent with the requirements found in 90.58 RCW and associated Washington Administrative Code 173-26 part III. The following changes to the proposed SMP are required:

Several changes to the introduction section, *How to Use This Program*, are needed as follows. A change clarifying how to determine if a proposal is permitted, prohibited or exempt within shoreline jurisdiction is necessary within this section. As written it identifies proposals the applicant finds to be exempt to require no further review or permitting from the Town which is inconsistent with WAC 173-27-040. This section also incorrectly describes uses and modifications as allowed outright even if they require a shoreline permit which is inconsistent with RCW 90.58.140(2), which requires a permit for all substantial development taking place on shorelines of the state. Lastly, this section incorrectly states that a prohibited use can be permitted with a shoreline variance permit, inconsistent with WAC 173-27-170(5).

Changes clarifying how and when the Town can regulate shorelines within its Urban Growth Areas (UGAs) are needed. As written the Town identifies that the SMP regulates these areas, but until such areas are annexed into the municipal boundary by the Town of Eatonville these shorelines are subject to the Pierce County SMP. This change is necessary for compliance with WAC 173-26-150.

The proposed SMP incorrectly identifies the shoreland area designation criteria when describing associated wetlands subject to the Eatonville SMP. Changes were made to remove language identifying the, “regulated waters of the Puget Sound,” which are not relevant in Eatonville. Additional language was also necessary to identify wetlands located within the 100-year floodplain as associated and regulated by the SMP consistent with WAC 173-22-040(3).

The proposed SMP does not contain an Aquatic shoreline environment designation (SED) that regulates areas waterward of the ordinary high water mark (OHWM) separately from the adjacent upland areas. The Aquatic SED is one of the six recommended SEDs in WAC 173-26-211(5). As required in WAC 173-26-211(4), if the recommended SED classification system is not utilized a local government may use equivalent environments, “provided it is consistent with the purposes and policies,” found in WAC 173-26-211(4) and (5).

To achieve the required equivalence and respect the choices of the Town of Eatonville to not to use an Aquatic SED, policies to achieve the purpose and management provisions from WAC 173-26-211(5)(a) were added to each SED (shoreline residential, urban conservancy, and natural) that are specific to areas below the OHWM.

Several changes to the matrix found on page 13, in Table 1 were necessary for internal consistency with other sections of the proposed SMP and the Guidelines as follows:

The title to the Table 1 was amended to include the word Modifications to accurately describe the permit requirements found in the table.

A shoreline conditional use permit is required for forestry practices within the Natural SED consistent with WAC 173-26-211(5)(a)(ii)(E). The table identified this as a permitted use with a shoreline substantial development permit.
Aquaculture was omitted from the proposed SMP. A change adding aquaculture for the purpose of restoring native fish runs is proposed in the SMP because it is a water-dependent preferred use is needed for consistency with RCW 90.58.020 and WAC 173-26-201(2)(d). No documentation was provided in the SMP update process identifying why a prohibition on this use was necessary to meet the provisions of RCW 90.58. However, Eatonville has a limited potential for aquaculture facilities in shoreline jurisdiction due to the lower flow rates of the rivers, and also because the shorelines in Eatonville are frequently flooded. The channels are relatively dynamic with regular channel movement and a large channel migration zone. Because of this, it is appropriate to limit the scope of aquaculture to ensure ecological protection and minimize future use conflicts. Table 1 was changed to allow aquaculture for the purposes of restoration as a substantial development permit in both the shoreline residential and urban conservancy SEDs, and to the natural SED as a shoreline conditional use permit. This change would still prohibit aquaculture as a commercial use in the SMP. To fully implement this change, policies and regulations on page 37 of the SMP were also added.

Table 1 identified commercial non-water-oriented uses as prohibited in all SEDs, however this is inconsistent with section 6.3 of the proposed SMP and WAC 173-26-241(3)(d), which both allow for non-water-oriented commercial uses. A change allowing non-water-oriented commercial uses in the shoreline residential SED was changed in Table 1.

Table 1 identifies new structural shoreline stabilization measures as prohibited, however section 5.1.2(3) of the SMP identifies such structures as allowed but requiring a conditional use permit and WAC 173-26-231(3)(a)(iii) allows for such structures when they meet the criteria. Changes were implemented to Table 1 to allow for new structural stabilization with a conditional use permit in all SEDs.

The proposed SMP does not identify at what point the vegetative buffer is measured from. Additional language was necessary to identify the point at which to measure the buffer and the method of measurement. The language that identifies the point to measure the buffer from and how is cited from the Eatonville Critical Area Ordinance in EMC 15.16.175(K), which describes the buffer for critical freshwater habitat.

The shoreline environment designation map found in Appendix A of the SMP identified it as a draft in the update process. Changes were made to remove this language. Also, language identifying the areas waterward of the ordinary high water mark as the aquatic SED was removed from the map. This language was the only place that identified the aquatic SED in the entire SMP.

Provisions to meet no-net-loss of ecological function in association with the mitigation sequence were omitted from the SMP. Additional language identifying all development within shoreline jurisdiction to avoid, then minimize, then compensate for impacts to the shoreline from proposed development to meet no-net-loss was added to meet the requirements found in WAC 173-26-186(8) and WAC 173-26-201(2)(e).

In addition to not having a regulation specific to meeting no-net-loss of ecological function, the proposed SMP identified that in addition to mitigation, unavoidable impacts can be addressed through restoration. This is a confusing statement that is inconsistent with the no-net-loss of ecological function requirement in WAC 173-26-186(8) because restoration does not compensate for impacts from a proposed development project. Proposed development within the shoreline is responsible for compensating for the impacts created from that proposal, not more or less. This regulation identifies
that a voluntary restoration activity unassociated with a proposed development within shoreline
jurisdiction could be used as compensation. This is inconsistent with the mitigation sequence found in
WAC 173-26-201(2)(e).

Several definitions are inconsistent with the definitions found in RCW 90.58, and applicable
Washington Administrative Codes (WACs). Edits to these definitions are necessary for compliance
with WAC 173-26-020, which requires the definitions of the local SMP to utilize the same definitions
of the statue and applicable rule.

In addition to the above required changes, the following changes are also recommended:

Table 1 prohibits transportation and utility corridor uses and development in the natural SED that is
consistent with WAC 173-26-211(5)(a)(ii)(A); however, there is a rail road and a major road (Center
Drive) existing in the natural SED. To accommodate these existing uses that potentially could require
expansions outside of the existing footprints a change is recommended to allow transportation and
utility corridors as shoreline conditional use permits in the natural SED.

Review typo graphical errors as identified in Attachment C.

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology
concludes that the Town’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 Town’s existing critical areas ordinance.

Ecology concludes that the Town’s municipal boundaries do not contain any Shorelines of Statewide
Significance, so that the Town’s SMP is not required to provide for the optimum implementation of
Shoreline Management Act policy (RCW 90.58.090(5).

Ecology concludes that the Town has complied with the requirements of RCW 90.58.100 regarding the
SMP amendment process and contents.

Ecology concludes that the Town 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 Town 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 Town has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the Town'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 Town has chosen not to exercise its option pursuant to RCW 90.58.030(2)(d)(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 Town’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 Town. 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 Town 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.