ATTACHMENT A: FINDINGS AND CONCLUSIONS
FOR PROPOSED COMPREHENSIVE UPDATE TO THE TOWN OF HUNTS POINT
SHORELINE MASTER PROGRAM

SMP Submittal accepted March 4, 2013, Ordinance No.12-224
Prepared by Anthony Boscolo on July 25, 2013

Brief Description of Proposed Amendment:

The Town of Hunts Point 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. The updated SMP also contains critical area regulations which have been incorporated into the SMP as Appendix D. 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 policies of the Shoreline Management Act, the applicable guidelines and implementing rules. The original Town SMP was approved by Ecology in 1975. The SMP has never been comprehensively updated. This SMP update is also needed to address land use changes that have occurred along the Town’s shorelines over the past 38 years and to provide consistency between the updated SMP and the Town’s Comprehensive Plan. The Town of Hunts Point is a residential community which is nearly built out. The majority of the community is comprised of large estate style development. Smaller waterfront lots also exist in the town’s three cove communities. Environmental protections provided by the Town’s Critical Areas Ordinance also needed updating to ensure protections beyond the Wetherill Nature Preserve and to achieve the no net loss of ecological function.

SMP provisions to be changed by the amendment as proposed:

This comprehensive SMP update is intended to entirely replace the Town’s existing SMP. Under the existing SMP, there are two environment designations; Residential – Natural, and Residential – Natural “A”. In contrast, the updated SMP regulates activities and development along the Town’s shorelines using the following four (4) new designations, each containing purpose statements, designation criteria, and management policies. The new designations and their purposes statements are listed below:

1) Natural – The purpose of the “Natural” environment is to “protect those shoreline areas that are relatively free of human influence or that include intact or minimally degraded shoreline functions intolerant of human use.
2) **Shoreline Residential** – The purpose of the "Shoreline Residential" environment is to accommodate residential development and appurtenant structures that are consistent with this chapter. An additional purpose is to provide appropriate public access and recreational uses.

3) **Stormwater Utility** – The purpose of the “Stormwater Utility” environment is to accommodate the unique characteristics of a stormwater facility.

4) **Aquatic** – The purpose of this environment is to protect, restore, and manage the unique characteristics and resources of the area.

The table below is a summarization of the changes in the updated SMP along with a comparison to the existing 1975 SMP.

<table>
<thead>
<tr>
<th>Proposed Change Topic</th>
<th>Existing 1975 SMP Requirement</th>
<th>Proposed Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shoreline Stabilization</td>
<td>Bulkheads allowed when approved by town council, building official, and Army Corps of Engineers.</td>
<td>Consistent with Guideline requirements of WAC 173-26. New Stabilization is restricted to the minimum size necessary and allowed only with a demonstrated need for protection and proof of infeasibility of softer alternatives through a geotechnical analysis.</td>
</tr>
<tr>
<td>Critical Area Regulations</td>
<td>Critical area regulations established to protect sensitive areas. Sensitive areas have been established as wetlands and the Wetherill Nature Preserve.</td>
<td>Incorporated CAO provisions which have been modified for consistency with the SMA and include protections for fish and wildlife habitat conservation areas, and wetlands. Buffer widths range from 30 – 225 feet.</td>
</tr>
<tr>
<td>Allowed/Prohibited Uses</td>
<td>A Use and modification table does not exist. The existing SMP only contains goal and policy language. The SMP makes reference to the towns existing zoning documents as providing the regulations to implement the SMP and states that the zoning regulations shall be considered part of the SMP. Specific goal and policy language covers the following uses: outdoor advertising, utilities,</td>
<td>A use and modification matrix is embedded in the SMP which was created to align with the Town of Hunts Point’s anticipated future land use. The new matrix specifically addresses types of modifications anticipated and their appropriateness in a lacustrine environment. The following uses have been prohibited outright: Boating facilities, commercial development, industrial development, parking, boathouses, launching ramps, launching rails, breakwaters, groins, and jetties.</td>
</tr>
<tr>
<td>Breakwaters, Jetties, Groins</td>
<td>Unlisted</td>
<td>Prohibited</td>
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<tr>
<td>Piers, docks</td>
<td>Permitted. No longer than 100’</td>
<td>Permitted to 100’. Minimum size needed for access to the watercraft. Limited to 4’ in the first 30’ and 6’ thereafter</td>
</tr>
<tr>
<td>Ecological protection</td>
<td>Requirements to preserve and protect aquatic life and fragile shoreline areas.</td>
<td>Implementation of the concepts of no net loss of shoreline ecological function and mitigation sequencing.</td>
</tr>
</tbody>
</table>

The Updated SMP includes more site and use-specific policies and regulations designed to achieve no net loss of ecological function such as:
• Stabilization preference hierarchy from non-structural, to soft, to hard being the least preferred option.
• Geotechnical reports required as specified in WAC 173-26 for shoreline stabilization with exception for lots located in Fairweather Basin, Haug Channel, and Cozy Cove where replacement structures do not require a demonstration of need.
• Mitigation sequencing is applied to all development regulated by the SMP within the shoreline jurisdiction.
• Vegetation conservation is applied throughout shoreline jurisdiction across all shoreline environment designations.

Amendment History, Review Process: The Town indicates the proposed SMP amendments originated from a local planning process that began in 2009. The record shows that notice went to all addresses within the Town limits notifying residents of the shoreline master program update. The Planning Commission worked on the SMP Update during their regularly schedule meetings from November 28, 2010 through September 26, 2011. After providing public notice in The Seattle Times on October 26, 2011, the Planning Commission held public hearing on November 7, 2011 and forwarded a recommended Shoreline Master Program to the Town Council on November 28, 2011. Following the Planning Commission work, the Mayor appointed a Shoreline Committee to finish the draft SMP Update. The Shoreline Committee held six meetings on October 19, and November 3, 2011 and April 24, June 27, September 19, and October 29 2012. At the conclusion of the Shoreline Committee’s work, the SMP package was transmitted to the Town Council. Legal notice of the Town Council’s public hearing was published in The Seattle Times on November 15, 2012. The Town Council held a public hearing on December 3, 2012.

Pursuant to WAC 173-26-110, as indicated below, the Town of Hunts Point has satisfied the submittal requirements for a comprehensive SMP update:

• Pursuant to WAC 173-26-110(1), a signed resolution was provided to the department which indicated the Town’s intent to adopt through Resolution No. 12-224, signed on October 1, 2012.

• As a comprehensive update, Resolution No. 12-224 is consistent with WAC 173-26-100(2).

• Pursuant to WAC 173-26-100 and RCW 36.70A.106, notice of intent was transmitted to the Washington State Department of Commerce and the Department of Ecology on January 28, 2013.

• Pursuant to WAC 173-26-110(3), amended environment designation maps were submitted to the department.

• Pursuant to WAC 173-26-110(4), materials, minutes, and process summary were provided to the department.
• Pursuant to WAC 173-26-110(5), SEPA was noticed on September 19, 2012. On September 17, 2012, the Town issued a SEPA Determination of Non-Significance (DNS) with a comment period ending October 1, 2012. No appeals were filed.

• Pursuant to WAC 173-26-110(7), copies of all public, tribal, and agency comments were submitted to the department.

• Pursuant to WAC 173-26-110(8), a completed SMP checklist was submitted to the department.

• Pursuant to WAC 173-26-110(9), copies of the use analysis, inventory and characterization, cumulative impacts analysis, and restoration plan were submitted to the department.

With passage of Resolution No. 12-224, on October 1, 2012 the Town 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 March 4, 2013. Notice of the state comment period was distributed to state task force members and interested parties identified by the Town on March 22, 2013, in compliance with the requirements of WAC 173-26-120, and as follows: The state comment period began on April 1 and continued through March 3, 2013. One group submitted comments on the proposed amendments. Ecology sent the written comments it received to the Town on June 11, 2013. On July 25, 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.

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 Town’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 Town’s Shoreline Restoration Plan including the background data and documentation.

**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 September 17, 2012. Notice of the SEPA determination was published in The Seattle Times on September 19, 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 Town in support of the SMP amendment:

These supporting documents include:

- a February 2012 public participation plan,
- a August 2011 shoreline inventory and characterization,
- a October 2012 cumulative impacts analysis/No Net Loss Report, and
- a July 2012 restoration plan

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

The Town’s SMP amendment drafting/public review process had minimal public participation with few oral and written comments submitted. The comments submitted were included in the Town’s complete submittal package. The Town did a quality job of addressing the concerns of interested parties. During the public review process, debate centered on the following topics: Pier/dock dimensional standards, setbacks and uses allowed within, impervious surfaces, and dredging standards for the cove communities.

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

**Exceptions to stabilization standards** – As proposed, the SMP contains exceptions from the stabilization requirements of WAC 173-26-231(3)(a) for properties located in the historic channel communities located in Hunts Point.

The WAC does contain room for flexibility when regulating many types of uses, but the stabilization requirements of WAC 173-26-231(3)(a) are prescriptive and do not contain much flexibility. Bypassing the ‘demonstration of need’ requirement is inconsistent with the WAC. Required changes have been incorporated to ensure consistency with WAC 173-26-231(3)(a).

**Setbacks and deferring authority** – As proposed, the SMP contains provisions for structural setbacks. The setbacks vary by underlying zoning designation, but have a singular consistent exemption built in. This exemption shuts off the setback stated in the SMP and defaults the authority to any previously approved plat, subdivision, or development application. This transfer of authority away from the combined local/state authority is in conflict with RCW 90.58.

**Uses within the setback** – As proposed, there is no limit to specific accessory uses or impervious surfaces located 10’ and 50’ landward of OHWM within the R-20 and R-40 zones respectively. Waterward of the 10’ and 50’ boundaries, impervious surfaces are limited to 25% and 20%. Pursuant to WAC173-26-201(2)(e) mitigation sequencing is required to be applied to all development within shoreline jurisdiction. Allowing non-water oriented accessory uses within the setback is in conflict with avoidance of ecological impacts as required by WAC173-26-201(2)(e). Required changes have been incorporated to ensure consistency with WAC173-26-201(2)(e).
Recognition of anadromous species – As proposed, the SMP contains provisions for critical areas within Appendix D, Critical Areas Regulations for Shoreline Jurisdiction. Fish and wildlife habitat conservation areas are specifically addressed in Section 3. This section is generally consistent with the requirements of WAC 173-26-221(2), however, the submitted language specifically excludes ‘Lake Washington’ when regulating uses which impact areas used by anadromous species.

Shoreline master programs are required to provide for management of critical areas designated as such pursuant to RCW 36.70A.170 (WAC 173-26-221). WAC 365-190-130 establishes the minimum guidelines for the development of fish and wildlife habitat conservation area regulations. Further, pursuant to WAC 173-26-221 and RCW 90.58.020, the SMP must regulate Fish and Wildlife habitat conservation areas through recognition and protection of the statewide interest. Required changes have been included to ensure critical area protection consistent with WAC 173-26-221(2), WAC 365-190, and RCW 90.58.090 (4).

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).

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 Town, 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 Town’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 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.