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

SMP Submittal accepted July 29, 2015, Resolution No. 15-1137
Prepared by Chrissy Bailey on March 17, 2016

Brief Description of Proposed Amendment:

The City of Kelso has submitted to Ecology for review and approval a comprehensive update to its Shoreline Master Program (SMP) to comply with Shoreline Management Act (SMA) and SMP Guidelines requirements. The updated master program contains locally tailored shoreline management policies, regulations, environment designation maps and administrative provisions, as well as regulations protecting critical areas embedded as Appendix C of the SMP. Additional reports and supporting information and analyses, as 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 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 SMP was approved by Ecology in 1977. That SMP was written as a regional program that applied to shoreline areas across all of Cowlitz County and the cities within. That SMP has never been amended or comprehensively updated. This SMP update is also needed to address land use changes that have occurred along the City's shorelines over the past 38 years and to provide consistency between the updated SMP and the environmental protection and land use practices in the City's Critical Areas Ordinances and Comprehensive Plan.

This comprehensive SMP update is intended to entirely replace the City's existing SMP. The updated SMP regulates approximately 21.5 miles of shoreline area, including portions of the Columbia River, the Cowlitz River, the Coweeman River and Owl Creek.

Amendment History, Review Process: The record indicates the proposed SMP amendment originated with a regional planning process that began on October 16, 2012. Kelso approached the update as part of a partnership (Cowlitz County Partnership) that also included Cowlitz County, Castle Rock, Kalama and Woodland. The record shows that extensive community involvement and public outreach were conducted by the Partnership and by the City during the update process.

A Technical Advisory Committee (TAC) was formed consisting of federal, state and local agencies, tribes, members of stakeholder groups and community members. This committee acted as the primary review body for draft documents, including the Shoreline Inventory and Shoreline Analysis report, and the draft SMPs. The committee met several times to review and discuss documents between the fall of 2012 and the summer of 2014. The committee's efforts resulted in recommendations to the City Planning Commission for further consideration.

A Community Visioning meeting was held at Kelso City Hall on November 13, 2012 to gather public input and inform development of the SMP. This meeting included an open house and presentations from the City and the Partnership's consultants to give participants an overview of the SMA and to gather the concerns, suggestions, ideas, and desired future outcomes of the participants with respect to

the future of the shorelines in the city. Copies of the draft shoreline inventory and analysis were also made available, and the findings discussed.

A public hearing before the Kelso Planning Commission was held on May 12, 2015. The affidavit of publication provided by the city indicates notice of the hearing was published on May 2, 2015 in The Daily News. At the May 12, 2015 hearing, no public was in attendance to provide testimony. After discussing the process and comments received during the process at its June 9, 2015 meeting, the Planning Commission recommended to the City Council that it adopt the proposed update to the Kelso SMP. On July 7, 2015 the Kelso City Council passed Resolution #15-1137, authorizing staff to forward the proposed amendments to Ecology for approval.

The proposed SMP amendments were received by Ecology for state review and the submittal package was verified as complete on July 29, 2015. Notice of the state comment period was distributed to state task force members, tribes and interested parties identified by the City via mailed postcards and email notifications on August 25th and 26th of 2015, in compliance with the requirements of WAC 173-26-120. The state comment period began on September 1, 2015 and continued through October 1, 2015. Three organizations submitted comment letters on the proposed comprehensive amendment during the comment period: Consolidated Diking Improvement District No. 3 of Cowlitz County (CDID No. 3), Drainage Improvement District No. 1 of Cowlitz County (DID No. 1), and the Washington State Department of Fish and Wildlife (WDFW). Ecology sent the written comments to the City on October 6th, 2015. On October 27, 2015, the City submitted to Ecology its response to comments. A summary of comments received and the city and Ecology's responses are attached as **Attachment D**.

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 the 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 an 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 a Determination of Non-Significance (DNS) for the proposed SMP amendments, issued on May 6, 2015. Notice of the SEPA determination was published in The Daily News on May 6, 2015.

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 Involvement Plan (June 2012),*
- *Shoreline Analysis Report (May 2014),*
- *Community Visioning Summary Report (March 2012),*
- *Final Cumulative Impacts Analysis (June 2015),*
- *Final No Net Loss Report (June 2015), and*

- *Final Shoreline Restoration Plan (June 2015).*

Summary of Issues Raised During The Public Review Process: During the city's SMP amendment process, Ecology, members of the TAC and the public raised concerns with shoreline environment designations, how to address structures and uses protected by existing levees, and integration of the City's critical areas ordinance into the SMP. These issues were considered and appear to have been addressed to the satisfaction of the public, because no one attended the public hearing on May 12, 2015 to provide further testimony.

Summary of Issues Identified by Ecology as Relevant to Its Decision: During the state public comment period, three groups submitted comments expressing concern with specific sections of the city's locally adopted SMP, as noted above. Concerns primarily related to public access on levees, construction standards applicable to new or altered dikes and levees, definitions, shoreline environment designations, buffers, dock and pier standards, and an in-lieu fee program.

The Diking and Drainage districts were generally concerned with requiring public access on dikes and levees, because when people do not stay on marked paths and walk on the face of the levee they create erosion pathways. These erosion pathways have the potential to affect the structural stability of a levee. Furthermore, the districts stated many levees are located in easements obtained for diking purposes and they do not have the right to allow public access to the property. The city in its response pointed out that the SMP recognizes there will be limitations to public access, and includes provisions for alternative public access when safety or security would preclude reasonable public access or when conflicts would occur that cannot be avoided, minimized or mitigated.

The districts were also concerned with a requirement to design new dikes and levees to 'no greater than the minimum height required' (to provide flood control). The districts felt this requirement would result in having to incrementally raise levee heights to respond to changes in modeled flow elevations, which could be more costly and disruptive to the environment than completing one project constructed at higher than the 'minimum height required'. In its response the city indicated it understood and shared these concerns, and had modified the language in this section of the SMP in an effort to strike a balance between various public interests related to shoreline areas. Ecology concurs with the city's responses to the districts' concerns.

WDFW's comments included a suggestion that the definition of Conditional Use Permit (CUP) be added to Chapter 2 (Definitions) of the city's SMP. The city's response outlines that CUPs are addressed in Chapter 8 (Shoreline Administration and Enforcement) of the SMP. With regard to shoreline environment designations (SEDs), WDFW was concerned that the city's SEDs related more to the Comprehensive Plan than to ecological conditions along the shoreline. The city responded that both circumstances were considered when assigning SEDs, and that shoreline reaches assigned the High Intensity SED to align with Comprehensive Plan or zoning designations were still afforded protection through reach-specific buffers reflecting ecological conditions. WDFW also suggested recognizing agency guidance and permit requirements for removal of aquatic weeds and construction of docks and piers, to which the city did not object.

WDFW's comments expressed unease with language in the city's SMP stating that shoreline buffers did not extend past the waterward face of dikes, levees, railroads or streets. The agency suggested instead incorporating criteria for use in determining *functional* isolation, to recognize that important

habitat functions may still be provided by areas physically separated from the shoreline. The city's response noted that language had been added to the SMP to specify that vegetation removal in these areas would only be allowed provided it would not result in a net loss of shoreline ecological function. The city believes this provision addresses the concern raised regarding hydrologically associated riparian forests that are landward of a road, dike, etc. Finally, WDFW suggested the city provide more detail on the potential for a future in-lieu fee program. Suggested details included how funds would be managed and allocated, clear restoration objectives, and how no net loss of shoreline ecological functions would be ensured. The city's response noted that such details would be considered as any future plan is developed and before this provision is implemented. Ecology concurs with the city's responses to WDFW comments.

CONCLUSIONS OF LAW

After review of the complete record submitted and all comments received, Ecology concludes that the city's SMP proposal, 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, RCW 36.70A.480, and the applicable SMP guidelines (WAC 173-26-171 through 251) as well as the definitions in WAC 173-26-020. Ecology concludes that the proposed SMP amendment, subject to the required changes in **Attachment B**, meet the intent of the provision for no net loss of shoreline ecological functions provided in WAC 173-26-201(2)(c).

Ecology concludes that recommended changes identified in **Attachment C** will be consistent with SMA policy and the Guidelines and be beneficial to SMP implementation. These changes are not required, but if accepted by the city can be included in Ecology's approved SMP amendment.

As stipulated in RCW 90.58.610, RCW 36.70A.480 governs the relationship between shoreline master programs and development regulations to protect critical areas that are adopted under chapter 36.70A RCW. Consistent with RCW 36.70A.480(4), Ecology concludes that that the proposed SMP amendment, subject to the required changes in A**ttachment B**, meets the intent of the provision for providing a level of protection to critical areas located within shorelines of the state that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources.

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 complied with the purpose and intent of the local amendment requirements contained in WAC 173-26-100, including conducting 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 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 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 the procedural requirements for state review and approval of shoreline master program amendments have been followed, as set forth in WAC 173-26-120.

Ecology concludes that the city has chosen not to exercise its option pursuant to RCW 90.58.030(2)(d)(ii) to increase shoreline jurisdiction to include buffers for critical areas located 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 buffer shall continue to be regulated by the city's critical areas regulations.

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendments comprehensively updating the SMP are consistent with the policy of the Shoreline Management Act, the applicable Guidelines and implementing rules, once required changes set forth in **Attachment B** are accepted by the city.

As provided in RCW 90.58.090 (2)(e)(ii), the city may choose to submit an alternative to all or part of 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 action.

As provided in RCW 90.58.090(7), Ecology's final approval of the proposed amendment will become effective 14 days from the date of Ecology's written notice of final action.