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

SMP Submittal accepted May 8, 2012, Ordinance No.1789-12
Prepared by Sarah Lukas on August 24, 2012

Brief Description of Proposed Amendment:

The City of Milton 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 (appendix A), administrative provisions, Native Plant List (appendix B), as well as the critical area regulations or local ordinance # 1671 adopted by reference (Appendix C) 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 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 is working under a 1996 Shoreline Master Program which contains no dimensional standards for development. An unsuccessful attempt to update the SMP occurred in 2003 under an Ecology grant but this effort ended short of drafting a new Master Program for the city.

Amendment History, Review Process: The city initiated the comprehensive update as described within SMA Grant No. G1000047. The grant agreement originally provided $40,000 to be allocated to the city between July 1st, 2009 and June 30th, 2012. In response to requests from the city, the grant was amended four times over the course of the three years. The amendments added $13,442.00 of funding increasing the grant total to $53,442.00. This additional funding provided the city with resources to expand public participation and contractor time for deliverables found to be insufficiently financed in the original grant contract. The other amendments to the grant redistributed funding as needed among grant phases, updated contact information, changed the deliverable due dates, and extended the grant end date to August 31, 2012.

The record shows that the Planning Commission held three workshops open to the public occurring on November 3, 2010, June 22, 2011, and December 14, 2011.

The Planning Commission held nine sessions open to the public between November 3, 2010 and December 14, 2011 where the Shoreline Master Program’s policies and regulations were deliberated over and comments and questions from the public were taken.

The first public hearing was held on December 14, 2011 before the Planning Commission, Affidavits of publication provided by the City indicate notice of the hearing was published on December 2, 2011.
in *The Tacoma Weekly* newspaper. After the close of the public hearing, the Planning Commission made a recommendation to the City Council to adopt the Shoreline Master Program.

The second public hearing was held on April 16, 2012 before the City Council. Affidavits of publication provided by the City indicate notice of the hearing was published on March 30, 2012 through April 13, 2012 in *The Tacoma Weekly* Newspaper.

A determination of non-significance was issued by the city and the SEPA public comment period was held from December 8, 2011 to December 23, 2011. A legal notice was placed in *the Tacoma Weekly* newspaper.

With passage of Ordinance # 1789-12, on April 16, 2012, the City authorized staff to forward the proposed amendments to Ecology for approval and was submitted to Ecology on May 8, 2012.

The proposed SMP comprehensive amendment was received by Ecology for state review and verified as complete on May 11, 2012. Notice of the state comment period was distributed to state task force members and interested parties identified by the City on June 4, 2012, in compliance with the requirements of WAC 173-26-120, and as follows: The state comment period began on June 11, 2012 and continued through July 11, 2012. Only two comment letters were submitted to Ecology during the state comment period. Ecology sent both written comments to the City on July 16, 2012. On August 9, 2012 the City submitted to Ecology the city’s responses to issues raised during the state comment period (see Attachment D: Responsiveness Summary). In response to issues raised during the comment period, Ecology has included some of the comments as recommended changes to the locally adopted draft (see Attachment C: Recommended 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 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 December 11, 2011. Notice of the SEPA determination was published in the *Tacoma Weekly* newspaper on December 16, 2011. 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:

- *City of Milton’s Shoreline Master Program Update Public Participation Program (March 2010);*
Summary of Issues Raised During The Public Review Process:

The City’s SMP Comprehensive update process was at times contentious. Considerable debate centered on the relevance of the Shoreline Management Act to Surprise Lake as a shoreline of the state. Commenter’s disagreed that Surprise Lake should be regulated as a shoreline of the state primarily because of its small size (approximately 32 acres), and the private ownership of the bedlands. This issue was echoed over the update process through deliberations over setback standards for residential structures; vegetation conservation areas; dimensional standards for residential docks; and the allowance of public access on the Lake where none exists now.

In response to all written comments received during public comment periods the city created responsiveness summary: Shoreline Master Program Update Task 5.5 Responsiveness Summary. The city also provided documentation of email correspondence between commenter’s and city staff in the final submittal to Ecology May 8, 2012.

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 include the addition of statutory definitions missing in the locally adopted draft; the removal of allowances of structural shoreline stabilization measures due to boat wake; clarity of permit requirements for the placement of dredge spoil; the additions of permit requirements for modification in a textual format; and, the removal of allowances for reductions of dimensional standards to multi-family residential structures (see Attachment B: Required Changes).

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 amendment, subject to and including Ecology’s required changes (itemized with rationale in Attachment B), is consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 with rationale 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 with rationale 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 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 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.