

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

SMP Submittal accepted September 24, 2014, Resolution No.288
Prepared by Chad Yunge on October XX, 2015

Brief Description of Proposed Amendment:

The City of Nooksack 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 local ordinances # 607 – Critical Areas, and #650 – National Flood Insurance Program 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 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 original City SMP was approved by Ecology in 1975 and was last amended in 2001. This SMP update is also needed to address land use changes that have occurred along the City’s shorelines over the past 14 years and 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, Comprehensive Plan, and Flood Management Plan.

SMP provisions to be changed by the amendment as proposed. This comprehensive SMP update is intended to entirely replace the City’s existing SMP.

Amendment History, Review Process: The city indicates the proposed SMP amendments originated from a local planning process that began in 2009. The record shows that an initial notice that the update process was underway was mailed to the public, local, state and federal agencies, tribes and other interested parties on May 29, 2010. A community visioning workshop open to the public was held on December 6, 2010 with the City Council to identify problems with the current SMP and future opportunities. Notice of the meeting was published in the Lynden Tribune on November 24, 2010. A 60-day public comment period on the city’s draft SMP started on April 4, 2012 and two public hearings before the City Council were held on June 4 and June 18, 2012. The announcement of the comment period and public hearings were published in the Lynden Tribune on April 4, 2012. A third public hearing regarding revisions made to the draft SMP was held before the City Council on April 21, 2014. Notice of this hearing was published in the Lynden Tribune on March 26, 2014. With passage of Resolution No. 288, on July 21, 2014, the City Council authorized staff to forward the proposed amendments to Ecology for approval.

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

- A signed resolution was provided to Ecology that indicated the City’s intent to adopt through Resolution No. 288, signed on July 21, 2014. (WAC 173-26-110(1));
- Amended environment designation maps were submitted to Ecology (WAC 173-26-110(3));
- Materials summarizing the update process was provided to Ecology (WAC 173-26-110(4));
- Evidence of compliance with the State Environmental Policy Act (SEPA) was provided to Ecology including a Determination of Non-significance issued by the City on December 21, 2012 along with a completed Environmental Checklist dated December 20, 2102. (WAC 173-26-110(5));
- Evidence of compliance with the public notice and consultation requirements of WAC 173-26-100 was provided to Ecology (WAC 173-26-110(6));
- The City indicated that no public, agency or tribal comments were received during the local approval process (WAC 173-26-110(7));
- A copy of the completed SMP submittal checklist was provided to Ecology (WAC 173-26-110(8));
- Copies of the shoreline inventory and characterization report, cumulative impacts analysis, and restoration plan were submitted to Ecology (WAC 173-26-110).

The proposed SMP amendments were received by Ecology for state review and verified as complete on September 24, 2014. Notice of the state comment period was distributed to state task force members and interested parties identified by the City on November 10, 2014, in compliance with the requirements of WAC 173-26-120, and as follows: The state comment period began on November 17, 2014 and continued through December 19, 2014. One comment was received from the State Department of Archaeology and Historic Preservation (DAHP) on December 19, 2014. Ecology sent the written comments it received to the City on December 29, 2014. On March 24, 2015, the City submitted to Ecology its responses to issues raised during the state comment period. These responses, along with Ecology’s own responses to issues raised during the comment period are included in Appendix 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 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 21, 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:

- a December 31, 2010 shoreline inventory and characterization,
- a December 31, 2010 shoreline use analysis,
- a December 1, 2011 restoration plan]
- a March 8, 2012 cumulative impacts analysis, and
- a March 8, 2012 No Net Loss Report.

Summary of Issues Raised During The Public Review Process:

The City did not receive any written comments in opposition to the SMP throughout the update process. The Department of Archaeology and Historic Preservation (DAHP) provided comments during Ecology's public comment period suggesting changes to the policies and regulations of the SMP dealing with cultural and historic resources. As a result of the DAHP comments, the City made changes to select provisions and requested that Ecology incorporate the changes in our review. The DAHP comments, along with the City and Ecology responses are included in Appendix D.

Summary of Issues Identified by Ecology as Relevant To Its Decision:

Ecology's required changes are limited to relatively minor jurisdictional and procedural corrections to the City's SMP. Changes were also required to update regulations pertaining to the protection of wetlands in order to be consistent with the most current, scientific information available on this topic.

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/amendment, 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 City, be included in Ecology's approved SMP amendments.

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.

With exception of buffer areas of the Nooksack Slough, 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 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 alternative/s is effective 14 days from Ecology's final action approving the alternative/s.