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

SMP Submittal accepted January 13, 2013, Resolution No. 12-30
Prepared by David Pater on September 23, 2013

Brief Description of Proposed Amendment:

The City of Oak Harbor has submitted to Ecology for approval, a comprehensive update to their Shoreline Master Program (SMP) to comply with the Shoreline Management Act (SMA) and SMP Guidelines requirements. This update replaces the City’s 1999 shoreline master program currently in affect. This updated shoreline master program will guide construction and development in the City’s 13 miles of marine shoreline including Oak and Crescent Harbors. The SMP contains locally tailored shoreline management policies, regulations, environmental designation maps, administrative provisions as well as local ordinances #1440 (Critical Areas Regulations) and ordinance #835 (Flood Damage Prevention Code) incorporated 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 current City SMP was approved by Ecology in 1999. This SMP update is also needed to address land use changes that have occurred along Oak Harbor’s shorelines over the past 15 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 January 6, 2005 Critical Areas Ordinance, Comprehensive Plan, and Flood Damage Prevention Code.

Current SMP vs. Comprehensive Update

Oak Harbor’s last comprehensive SMP update was in 1999. The 1999 SMP is 64 pages in length; it contains detailed policies and shoreline environment designation criteria. The bulk of the program focuses on regulations and administrative provisions. The 1999 version is not integrated with the City comprehensive plan or critical areas regulations.

Overall the updated SMP is a significant upgrade from the current 1999 SMP. The shoreline inventory and characterization information has been effectively integrated into the SMP regulations and shoreline environment designations. The SMP update has more detailed use and modification policies and regulations. It has better recognition of the City’s unique shoreline management issues. Shoreline setbacks reflect existing land use conditions and ecological functions, and include vegetation management zones. Shoreline environments include allowed and prohibited uses, focus on protecting existing ecological functions on more intact shorelines, while allowing the continuation of established uses. Public access standards recognize existing shoreline access trails and areas, while providing direction on future public access including a possible public pier. Wetlands within shoreline jurisdiction are well protected within the incorporated critical areas regulations consistent with
Ecology wetland buffer guidance. Critical areas regulations and sections of the flood damage prevention code are incorporated as SMP appendices. All the applicable standards are housed in one document which will make implementation more effective.

The State SMP guidelines are significantly more restrictive than the 1999 SMP. The SMP update is consistent with applicable aspects of the guidelines. Overall it provides excellent protection for existing ecological functions and restricts key uses and modifications. Established uses such as residential and commercial are permitted outright within the appropriate shoreline environments. Shoreline stabilization, overwater structures and utilities are broken down into a number of subcategories for further shoreline management distinction. Pier and dock design standards are consistent with applicable US Army Corps of Engineers regional general permit standards #6. Unique buffers/setbacks standards for residential, parks and conservancy shorelines are proposed.

Below is a comparison of key SMP elements between the draft 2012 SMP and the current 1999 version.

**Shoreline Environments:**

1999: Shoreline environments are limited to four (urban, urban residential, aquatic and natural environments). SMP has a black and white shoreline environment map.

2012: Seven shoreline environments including conservancy, residential bluff conservancy, residential, urban public facility, urban mixed use and aquatic. Color GIS shoreline environment map improves mapping clarity.

**Shoreline Uses and Modification Matrix:**

1999: Basic uses and modifications are defined by permitted, conditional use and prohibited within a single table.

2012: Table 1 (Shoreline Uses Table) and Table 3 (Shoreline modifications) provides detailed use and modifications allowances and prohibitions that are consistent with applicable SMP regulations. In some cases activities are further broken down by type (i.e. residential: single and multi-family, shoreline stabilization: structural, non structural and beach restoration). Overwater structures and marina activities are particularly well defined.

**Development Standards Matrix:**

1999: Contains no development standards table. But does outline 30 foot residential and commercial setbacks within the regulations. There are no defined buffers.

2012: Table 2 (Summary of Shoreline Development Standards) provides detailed unique shoreline environment buffers/setbacks. Buffers and setbacks from buffers are defined by key uses. Setbacks range from 50 to 100 feet with accommodations for developed areas. Also outlined are impervious surface limits, minimum lot frontage, height limits and referenced density standards.
Shoreline Uses and Modifications

1999: Limited policies and regulations for some uses and modifications. Policies and regulations are more extensive for more common uses and modifications such as residential and marinas. Also contains some general policies.

2012: Detailed policies and regulations for all applicable uses in State SMP guidelines. More detailed and specific policies and regulations for shoreline stabilization, piers and docks and archeological resources. Detailed environment impacts/mitigation regulations and vegetation conservation standards. Includes integrated critical areas regulations and flood hazard.

Amendment History, Review Process: The City indicates the proposed SMP amendments originated from a local planning process that began in August 2010. A shoreline advisory committee met eight times from July 13, 2011 to April 4, 2012. The record shows that workshops open to the public were held on July 20, 2011, and April 11, 2012. Four public hearings before the Planning Commission and meetings were held in 2012 on April 24, May 22nd, August 14 and September 25, 2010. Affidavits of publication provided by the City indicate notice of the meetings were published in the Whidbey News Times 15 days before each meeting and advertised on the city website. Six City Council meetings/public hearings were conducted April 20 and August 4, 2010, December 19, 2011, October 24, November 7 and November 20, 2012. The City Council approved the SMP update by resolution on November 20, 2012. Affidavits of publication provided by the City indicate notice of the hearings were published in the Whidbey News Times 15 days before each meeting and advertised on the City website.

With passage of Resolution #12-30, on November 20, 2012, the City 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 January 15, 2013. Notice of the state comment period was distributed to state task force members and interested parties identified by the City/County on March 4, 2012, in compliance with the requirements of WAC 173-26-120…, and as follows: The state comment period began on March 8, 2012 and continued through April 8, 2012. No public hearing was held. Comments from one citizen and one agency were received by Ecology.

Consistency with Chapter 90.58 RCW: 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 of Oak Harbor.

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 September 7, 2012. Notice of the SEPA determination was published in the Whidbey News Times on August 11, 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:

These supporting documents include:

- A October 2010 public participation plan,
- A September 2011 shoreline inventory and characterization,
- A November 2012 cumulative impacts analysis,
- A September 2011 shoreline use analysis,
- A November 2012 restoration plan

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

**City of Oak Harbor Public Comment:** East Ditch Freund Marsh

Background: In the later part of the draft SMP process salinity testing and vegetation identification by Ecology staff found that the Freund Marsh East Ditch should be included in City shoreline jurisdiction. Five residential properties border the East Ditch in the Dillard’s Addition residential neighborhood. City planning staff has worked with the affected property owners and the Department of Ecology to develop unique buffer and setback standards. These standards are included in the SMP required changes.

Tide gate: A number of citizens provided comments on the Freund Marsh tide gate. Some citizens felt that the tide gate was not properly functioning and this has contributed to saltwater intrusion into the marsh. City Public Works staff have indicated that the tide gate is properly functioning and there are no plans to replace or modify the Freund Marsh tide gate.

Pier allowances within the urban Mixed Use Shoreline Environment: Public input resulted in the City Council agreeing to permit single family piers and docks in the mixed use shoreline environment and allowing commercial and multifamily piers and docks as a conditional use. Recommended changes 2and 4 propose a conditional use for a single family pier. This would be considered more consistent with the SMP Guidelines pier and dock standards (WAC 173 -26-231 (3) (b).

**Department of Ecology Public Comment**. Comments where received by one citizen and the State Department of Archaeology (DAHP).

A Property owner adjacent to the Freund Marsh East Ditch believes that if the East Ditch tide gate had a proper check valve there would be no salt water intrusion into the ditch, which would remove bordering properties from shoreline jurisdiction. He has expressed this opinion to City Public Works and Planning staff numerous times.

Assistant State Archaeologist: Proposes to replace the entire Archeological and Historic Resources Section (Ch. 3 General Provisions #3) with the State Department of Archaeology & Historic Preservation (DAHP) model language, including adding a number of related definitions. After a number of months of examining this option; Oak Harbor agreed to replace this section with the DAHP
model language (see Exhibit A). The City and State DAHP also agreed on some alternative language reflected in recommended changes numbers 1, 2 and 5 thru 11. The alternate language addresses the City’s concerns with defining areas of known historic/archeological resources and provides better clarification for future shoreline permitting.

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

Freund Marsh East Ditch Buffer and Setback

Background: In the later part of the draft SMP process salinity testing and vegetation identification by Ecology staff found that the Freund Marsh East Ditch should be included in City shoreline jurisdiction. Five residential properties border the East Ditch in the Dillard’s Addition residential neighborhood. City planning staff has worked with the affected property owners and the Department of Ecology to develop unique buffer and setback standards. These standards are included in the SMP required changes (1, 4-9).

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the City of Oak Harbor’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 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 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/amendment 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 the 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.