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

SMP Submittal accepted November 21, 2012, Resolution No. 528
Prepared by Kim Van Zwalenburg on March 5, 2013, Revised May 20, 2013

Brief Description of Proposed Amendment:

The City of Ruston (City) is proposing a comprehensive update of their Shoreline Master Program (SMP) to comply with the Shoreline Management Act (RCW 90.58) and the 2003 Shoreline Guidelines (WAC 173-26). The updated SMP contains: locally tailored shoreline management policies and regulations, a shoreline designation map (Appendix A), and administrative procedures. The Inventory and Characterization documents there are no designated critical areas within shoreline jurisdiction. Additional reports and supporting information and analyses are included in the submittal and noted below.

FINDINGS OF FACT

Need for amendment: The City’s current SMP was adopted in 1974 and has never been updated. Since then the industrial activity along the shoreline has ceased and, after cleanup is completed, the Ruston shoreline is planned for redevelopment including improved public access. The proposed amendment is needed to bring the City’s SMP into compliance with the 2003 Shoreline Guidelines and to meet the statutory deadline set forth in RCW 90.58.080 and 100. This update also addresses the need for updated shoreline policies and regulations that are consistent with the City’s Comprehensive Plan, zoning, and other applicable ordinances.

Ecology finds that the City has documented the need to adopt an updated shoreline master program.

Documentation of current conditions: As part of the update process, the City developed an Inventory and Characterization (North Creek Consulting, 2010) which documents current conditions. The City was incorporated in 1906 as a company town in support of the Asarco (aka Tacoma) smelter which was established in 1889. The City is located near the outer edge of Commencement Bay in Pierce County and today is completely surrounded by the City of Tacoma. The smelter operated until the 1980’s and the City’s 1200 linear feet of shoreline is a result of smelter slag placed as fill by the smelter operation. The site is now a Superfund site and since the 1990’s has been undergoing clean up under the direction of the Environmental Protection Agency. Clean up activities are nearing an end and the City has been working with a new property owner on a master plan for redeveloping the site. Development must be consistent with controls (established in the Consent Decree) placed on the site to prevent the reintroduction of contaminants into the environment. The entire shoreline edge is lined with large rock to prevent erosion of slag material containing arsenic into the water.

Ecology finds that the July 2010 Inventory & Characterization adequately inventories and analyzes the current conditions of the shoreline located in Ruston. This document synthesizes existing information and was used to inform the master program update as well as provide a basis for future protection and restoration opportunities in the City’s shoreline jurisdiction. (WAC 173-26-201(3)(c) and (d))

Shoreline Use Analysis: The Inventory and Characterization documents the existing land uses, proposed future uses (mixed use) and the constraints on water dependent uses in the City. The City
only has jurisdiction over a fraction of the shoreline (approximately 1200 lineal feet) and marine waters fronting the entire site with the majority of the property located within Tacoma. The SMP clearly establishes a preference for water-dependent uses in the Aquatic designation and public access within the first 100 feet of the OHWM.

Ecology finds that Ruston has adequately documented current uses and considered SMA preferred uses consistent with WAC 173-26-201(3)(d)(ii) and WAC 173-26-201(2)(d).

**SMP provisions to be changed by the amendment as proposed:** This is a comprehensive update to the SMP and will replace the current SMP in its entirety.

**Shoreline Jurisdiction:** The City proposes to limit jurisdiction to all water areas and shorelands located within 200 feet from the Ordinary High Water Mark (OHWM) of Puget Sound. There are no designated critical areas within shoreline jurisdiction.

Ecology finds that the Ruston SMP has appropriately defined shoreline jurisdiction consistent with the Act.

**Shorelines of Statewide Significance (SSWS):** RCW 90.58.020 specifically calls out SSWS for special consideration declaring the “the interest of all of the people shall be paramount in the management” of these shorelines. Only the portion of Puget Sound located seaward of the line of extreme low tide is designated a SSWS.

Ecology finds that the SMP has appropriately identified the SSWS within the City’s jurisdiction and has included policies for management of these areas (15.01.030(B)(8)). The policies are consistent with RCW 90.58.020.

**Shoreline Master Program Goals and Policies:** The goals and policies contained in 15.01.030 and 15.01.040 of this SMP address the elements outlined in RCW 90.58.100 General policy goals of the act and WAC 173-26-176 Guidelines for shorelines of the state.

Ecology finds that the City has addressed the requirement to establish policies per RCW 90.58.100(2) and WAC 173-26-201(2)(e).

**Shoreline Designations:** Assignment of shoreline environment designations is a fundamental aspect of the SMP update. The existing SMP designates all shorelines as Urban. The new SMP (15.10.050) proposes two designations: High Intensity and Aquatic.

Ecology finds that the process of evaluation used to assign shoreline designations in the City was appropriately conducted. Ecology also finds that each shoreline designation in the SMP has a clearly stated purpose, designation criteria and policies but that the Ruston Shoreline Jurisdiction Map must be revised (Attachment B- Required Changes) to adequately map the Aquatic designation. The designations provide a suitable framework for implementing shoreline policies and regulatory measures specific to each designation.

**General Master Program Provisions:** Section 15.01.060 includes regulations that address archaeological, historic and cultural resources; environmental protection and conservation; public access; restoration and water quality, stormwater and nonpoint pollution.
Ecology finds that the City has included all the required general provisions in the proposed SMP consistent with WAC 173-26-221.

Shoreline Modifications: WAC 173-26-231(1) distinguishes shoreline modifications from shoreline uses by describing them as those actions “undertaken in support of or in preparation for a shoreline use”. The entire site is a historically modified shoreline consisting of slag fill and riprapped shoreline. Development proposals will be constrained by the long-term need to ensure the clean up measures remain intact. However, the SMP does address shoreline modifications including limiting fill and dredging waterward of the Ordinary High Water Mark and limiting overwater structures.

Ecology finds that the City has considered and addressed shoreline modifications as required in the WAC 173-26-231.

Shoreline Uses: WAC 173-26-241 outlines specific common uses and types of development that can occur within shoreline jurisdiction. The Ruston SMP addresses applicable shoreline uses in 15.01.050 Shoreline Designation Policies and Regulations, and 15.01.070 Use and Shoreline Modification Regulations.

Ecology finds that the Ruston SMP adequately identifies uses common along the City’s shoreline, establishes a clear preference for water-oriented uses and public access, and clearly shows by shoreline designation, where certain uses are allowed, conditionally allowed and prohibited.

Cumulative Impacts Analysis: Listed as a Governing Principle of the SMP Guidelines, WAC 173-26-186 (8)(d) states “Local master programs shall evaluate and consider cumulative impacts of reasonably foreseeable future development on shoreline ecological functions and other shoreline functions fostered by the policy goals of the Act.” To ensure this, SMPs shall contain policies, programs and regulations that address adverse cumulative impacts, including those resulting from exempt development, and fairly allocate the burden of addressing cumulative impacts among development opportunities.

The Cumulative Impacts Analysis (2012) report indicates that there are plans to redevelop the site after cleanup has been completed and that if implemented as written, it is anticipated that Ruston’s proposed SMP will achieve no net loss.

Ecology finds that Ruston has evaluated the cumulative impacts of reasonably foreseeable future development. The locally adopted SMP appears to fairly allocate the burden of addressing cumulative impacts among development opportunities. Ecology finds that the City’s SMP and supporting Cumulative Impact Analysis are consistent with the SMP Guidelines governing principle (WAC 173-26-186(8)) as well as the legislative intent of the Shoreline Management Act under RCW 90.58.

Restoration Plan: Local SMPs are required to include goals, policies and actions for restoration of impaired shoreline ecological functions (WAC 173-26-201(2)(f); WAC 173-26-186(8)(c)). The goal is for these provisions, when implemented over time, to improve the overall condition of habitat and resources within the shoreline area of each city and county (WAC 173-26-201(2)(c)).

Ruston developed a restoration plan based on the information gathered in the Inventory and Characterization (2010). The Shoreline Restoration Plan (February 2012) identifies programmatic
restoration opportunities and actions. Because the entire site is a Superfund cleanup site, site specific opportunities are limited; however the Restoration Plan does identify regional efforts that the City can help support. The City’s SMP includes policies (15.01.030) and regulations (15.01.060(D)) that permit and promote restoration efforts along City shorelines and explicitly links restoration actions to the Ruston Shoreline Restoration Plan.

Ecology finds that the Shoreline Restoration Plan is based on appropriate technical information available to the City during the SMP update. The Restoration Plan can serve as an effective tool for the City, non-profit organizations and the public to collectively improve shoreline conditions over time. Such restoration efforts are understood to help achieve the no-net-loss standard of the SMP Guidelines (WAC 173-26-186; WAC 173-26-201)).

Amendment History and Review Process: Ruston initiated a comprehensive update to their SMP and work began in December 2009 consistent with a scope of work described in SMA Grant No. G1000026. The grant awarded was $40,000.

Public Participation: The Public Participation Plan documents all public participation efforts proposed and carried out. The City relied on their Planning Commission to review all draft documents. In addition, the City provided draft technical documents to a list of agency and tribal individuals identified as having expertise for review and comment. All meetings of the Planning Commission were open to the public. An initial mailing was sent city-wide to all shoreline property owners. The City also established an SMP webpage on their Long Range Planning website.

Local Review Process: The record shows that the Ruston Planning Commission held 7 public meetings including two public hearings on May 25, 2011 and October 10, 2012. Notice of the most recent hearing was published in the Tacoma Daily Index. With passage of Resolution No. 528 on October 16, 2012, the City Council authorized staff to forward the locally adopted SMP to Ecology for approval.

Ecology finds the record submitted adequately documents compliance with WAC 173-26-100 and 110.

State Review Process: The proposed SMP amendments were received by Ecology for state review on November 1, 2012. Additional documentation was received November 16, 2012 and the submittal was verified as complete November 21, 2012. Notice of the state comment period was distributed to state task force members, potentially interested tribes, and interested parties identified by the Coalition and the City on December 27, 2012 by mail and December 28, 2012 by email, in compliance with the requirements of WAC 173-26-120. The state comment period began on January 7, 2013 and continued through February 6, 2013. Notice was posted on the Ecology website for shoreline master programs: http://www.ecy.wa.gov/programs/sea/shorelines/smp/mycomments/ruston.html and on Ecology’s Public Involvement Calendar. Ecology staff determined a public hearing was not necessary. Two individuals submitted comments on the proposed amendment.

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).

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 the SMP Submittal Checklist, which was completed by the City and provided with the submittal of the locally adopted SMP.

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 on June 17, 2012. Comments were accepted until July 1, 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:

- Public Participation Plan (undated)
- Shoreline Inventory and Characterization (July 2010)
- Cumulative Impacts Analysis (undated but developed by July 2012)
- Restoration Plan (February 2012)

Summary of Issues identified by Ecology as Relevant to its Decision:

Shoreline jurisdiction: Shoreline jurisdiction is defined in the statute and the SMP correctly identifies those areas waterward of the OHWM as in jurisdiction (15.01.010(C)(3)(a) and designates them as Aquatic (15.01.050(B)). However this area is not adequately mapped on the Official Shoreline Map (15.01.100). The map needs to be revised to adequately show the extent of the Aquatic designation.

Attachment B specifies a required change to the map to clarify the City’s jurisdiction over the area waterward of the OHWM and the applicable environment designation.

Administrative provisions and minor additions for consistency: There were a few relatively minor areas that need additional language to ensure consistency within the SMP, with RCW 90.58 and with the Shoreline Guidelines (WAC 173-26) including a couple of key administrative provisions.

Attachment B identifies required changes and rationale to resolve these inconsistencies.

Therefore, Ecology finds that the proposed SMP as approved by Ruston by Resolution No. 528 is not consistent with the applicable SMP Guideline requirements, as specifically identified in Attachment B-Required Changes. However, Ecology also finds that the SMP can be amended to ensure compliance with the SMP Guidelines through the City’s acceptance of the Required Changes listed in Attachment B.

Pursuant to WAC 173-26-120 Ecology has also identified Recommended Changes (Attachment C) to the SMP for consideration by the City.

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, 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 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 new comprehensive SMP 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 there are no critical areas within Ruston shoreline jurisdiction and therefore no buffers necessary for critical areas (RCW 90.58.030(2)(d)(ii)).

**DECISION AND EFFECTIVE DATE**

Based on the preceding, Ecology has determined the proposed amendments comprehensively updating the Ruston shoreline master program 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 fourteen (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 action. Approval of the updated SMP and proposed alternative/s is effective fourteen (14) days from Ecology’s final action approving the alternative/s.