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

SMP Submittal accepted, November 27, 2012, Ordinance No. 2399
Prepared by Sarah Lukas on December 13, 2013

Brief Description of Proposed Amendment:

The city of Sumner 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 map, administrative provisions, and revised critical area regulations incorporated in full as Chapter Six part VII. Additional reports and supporting information and analyses noted below are included in the submittal.

FINDINGS OF FACT

Need for amendment. This amendment is needed for consistency with Part III of WAC 173-26. The original Sumner SMP was approved by Ecology in December 1974. Sumner completed an amendment for consistency with the statutory deadline for a comprehensive update of the City’s local Shoreline Master Program pursuant to RCW 90.58.080 and 100 that was approved by Ecology in 2004. This proposed amendment is needed to comply with additional planning and procedural requirements under the SMA implemented post Sumner’s 2004 amendment. The proposed amendment brings the City’s SMP into compliance with the no-net-loss requirement of the updated guidelines found in WAC 173-26. The update is also needed 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 (CAO), Comprehensive Plan, and Flood Management Plan.

This comprehensive SMP update is intended to entirely replace the City’s existing SMP. This updated SMP does not increase the linear extent of shorelines to be regulated by the City at this time. Currently the Sumner SMP regulates 1.35 miles of the Puyallup River, and 6.07 miles of the White River. The City is also predesignating an additional 1.32 miles of the Puyallup River and 1.28 miles of shoreline on Lake Tapps within its Urban Growth Area. Both of these areas will be regulated by the Pierce County SMP until the City completes the annexation process to include them in the municipal boundary. All of the shorelines in Sumner’s Shoreline Master Program - the White River, the Puyallup River, and Lake Tapps - are Shorelines of Statewide Significance.

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 a meeting open to the public was held March 21, 2012, and a public hearing before the Planning Commission was held on May 10, 2012. Affidavits of publication provided by the City indicate notice of the hearing was published on April 25, 2012.

Ordinance # 2399 was passed on August 6, 2012, adopting the updated Master Program subject to Ecology’s final approval. The Sumner City Council held a public hearing on July 16, 2012; no members of the public testified.
The proposed SMP amendment was received by Ecology for state review on October 26, 2012 and was determined to be incomplete. Upon request, missing documentation was received November 26, 2012 and a letter verifying the complete submittal was sent November 27, 2012. Notice of the state comment period was distributed to state task force members and interested parties identified by the City on January 2, 2013 in compliance with the requirements of WAC 173-26-120. The state comment period began on January 14, 2013 and continued through February 18, 2013. No public hearing was held by Ecology on the proposed amendments. Notice of the public comment period, including a description of where interested persons may obtain copies and submit their views, was provided in post cards and on Ecology’s website. One organization submitted comments on the proposed amendment. Ecology sent the comments it received to the City on February 21, 2013. On May 13, 2013 the City submitted to Ecology its responses to issues raised during the state comment period. Ecology’s responses to issues raised during the comment period are available as part of the SMP amendment process record in the required and 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 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:

These supporting documents include:

- a November 2009 public participation plan;
- an April 2010 shoreline inventory, characterization, and analysis report;
- a May 2011 cumulative impacts analysis;
- a July 2012 no net loss report; and,
- a September 2011 restoration plan

Summary of Issues Raised During The Public Review Process:
The Muckleshoot Tribe of Indians submitted substantive comments during both the City’s update process and the state approval process of the Sumner SMP. The comments received focused primarily on recommending more environmentally protective regulations to enable the re-establishment of native salmon runs. The following changes are included in response to these comments.

One change allows aquaculture for the purposes of restoration in all environment designations on the Puyallup and White Rivers. The allowance is required to ensure consistency with the preferred uses of shorelines of the state in RCW 90.58.020, WAC 173-26-201(2)(d), and WAC 173-26-241(3)(b), and
for consistency with the policies and provisions concerning Shorelines of Statewide Significance in RCW 90.58.020 and WAC 173-26-251. As a water dependent use, aquaculture is a preferred use within shoreline jurisdiction under the SMA. The city of Sumner proposed to prohibit aquaculture in the SMP due to conflicts of aquaculture within areas prone to flooding. However, the allowance of aquaculture within the City for the purpose of restoration of native salmon benefits the ongoing efforts to restore treaty protected fisheries and associated resources, and supports the SMA’s policies for protection and enhancement of ecological function and water-dependent uses within the shoreline jurisdiction.

Several other changes to the SMP were also recommended by the Muckleshoot Tribe of Indians, and agreed to by the City in the response process to the state public comment period, and in turn incorporated into the recommended changes (Attachment C). These include: the allowance of scientific research within all shoreline areas, as well as the addition of policies and regulations associated with this allowance; the retention of trees cut within the vegetative buffer to be retained as habitat; the addition of a 2:1 replacement ratio for all trees removed within the vegetative buffer; the addition of a minimum requirement of trees to be planted when establishing the vegetative buffer; and the removal of allowing fish to use stormwater retention ponds as off-channel habitat.

An error of the description of shoreline jurisdiction was also identified in comments submitted during the state public comment period. Because this correction is required for consistency with WAC 173-26-211(2)(b), the change in the description to the Puyallup River joint planning area is included the required changes (Attachment B).

**Summary of Issues Identified by Ecology as Relevant to Its Decision:**

Recommended changes identified by Ecology include: Rewriting the process describing the local permit decision and appeal, filing permits with Ecology, and the state appeal process. As written in the submitted draft, some steps were omitted from the process, and the process overall was not written in a linear fashion, placing some consecutive steps out of order.

The Mineral Resource Lands’ section from chapter six of the SMP is removed, and a prohibition of mining in all shoreline environment designations is added as recommended changes in response to a request from the City. This request stems from the determination that mineral resource lands are not located within shoreline jurisdiction, and mineral resource lands are the only areas within the city of Sumner that mining is permitted.

Required changes include the removal of remnant language from the CAO. The city of Sumner’s Critical Areas Ordinance (CAO) was embedded into the SMP as chapter six for consistency with 90.58.090(4) RCW and 36.70A.480(3) RCW. However, remnant procedural and exemption language from the CAO was left intact without revisions, conflicting with the permitting scheme of the SMP which will now regulate critical areas within shoreline jurisdiction. Several of the required changes (Attachment B) edit or remove exemptions not found in 90.58.030(3)(e) RCW or WAC 173-27-040.

Changes are also required to alleviate internal inconsistencies within the document. Docks and other in-water moorage facilities are prohibited outright in the use matrix, however docks were allowed as over water structures in the public access provisions as well as the administrative section as an allowed
revision to a shoreline permit. This internal conflict was resolved by removing language associated with the allowance of docks in the public access and permit revision sections.

The definitions of the terms floodway and aquaculture were not consistent with WAC 173-26-020 and required editing.

The submitted SMP failed to require a geotechnical report establishing damage to the primary structure within three years as demonstration of need for new structural shoreline stabilization measures for consistency with WAC 173-26-231(3). Additional language was added to the modifications section to meet this requirement.

Several uses in the submitted SMP were allowed in areas inconsistent with the environment designation as specified in WAC 172-26-211. There were also inconsistencies with allowances of shoreline modification provisions specified in WAC 173-26-231, and the use provisions in WAC 173-26-241 regarding areas inappropriate for such development. Changes for consistency include the prohibition of utilities as a primary use in the natural environment designation (WAC 173-26-211(5)(a)); the requirement of a shoreline conditional use permit for the placement of dredge material in all shorelands (WAC 173-26-231(3)(f)); the prohibition of the placement of dredge material in the natural environment designation unless for the purpose of restoration; and, the prohibition of parking in critical fresh water habitat, wetlands, and the associated buffers (WAC 173-26-241(3)(k).

The SMP allowed the reduction of wetland mitigation ratios down to 1:1, which is inconsistent with the most current science 90.58.100(1) and WAC 173-26-201(2)(a) to meet no-net-loss of ecological function. This administrative allowance was eliminated so the wetland mitigation ratios incorporated into the SMP will apply.

A change was necessary to the effective date of the shoreline master program for consistency with 90.58.090(7) RCW.

A change was required to specify the date of filing for consistency with 90.58.140 RCW.

Exemptions to the substantial development permit are governed by 90.58.030(3)(e)RCW and WAC 173-27-040. Language of several of these exemptions required editing for consistency.

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, 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.

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.

Consistent with RCW 36.70A.480(4), Ecology concludes that those SMP provisions relating to critical areas within Shoreline Management Act jurisdiction assure 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 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)(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 is effective 14 days from Ecology’s final action approving the alternatives.