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

SMP Submittal accepted February 28, 2012\(^1\), Ordinance No. 28034
Prepared by Kim Van Zwalenburg on April 5, 2013, Revised July 17 and August 5, 2013

Brief Description of Proposed Amendment: The City of Tacoma (City) has submitted a comprehensive update to their Shoreline Master Program (SMP or TSMP) for review and approval by the Department of Ecology (Ecology). The updated master program contains locally tailored shoreline management policies, regulations, including a shoreline environment designation map and shoreline district maps, administrative provisions and critical area regulations. Additional reports and supporting information and analyses are included in the submittal and noted below. One of the key documents developed by the City in support of the SMP is a Public Access Alternatives Plan that will help further public access opportunities throughout the City.

FINDINGS OF FACT

Need for amendment: The proposed amendment would replace the City’s existing SMP in its entirety. The 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 (State master program approval/amendment procedures and master program guidelines) and WAC 173-27 (Shoreline management permit and enforcement procedures). The City’s SMP was originally approved by Ecology in 1977, significantly rewritten in 1995 and last amended in 2008. As the City notes in the SMP Introduction, “…there have been substantial changes in the way shorelines are regulated. New scientific data and research methods have improved our understanding of shoreline ecological functions and their value in terms of fish and wildlife, water quality and human health. This information also helps us understand how development in these sensitive areas impacts these functions and values.” (p. 2, TSMP)

Ecology finds that the City has documented the need to amend and update its shoreline master program.

Documentation of current conditions: The Tacoma SMP will regulate activities along approximately 46 miles of marine and freshwater shorelines including portions of Commencement Bay and the Tacoma Narrows, the lower portions of the Puyallup River and Hylebos Creek and Wapato Lake.

Puget Sound/Commencement Bay: The Inventory and Characterization divided the nearly 34 miles of marine shoreline into five reaches ranging from the least developed (Point Defiance) to the most developed (Waterways, which encompasses downtown and the Port of Tacoma). The table below gives a sense of the extent of shoreline modification.

\(^1\) Initial documents were received 2/7/2012. Additional documentation was provided on 2/13 and 2/17/2012. Ecology’s letter acknowledging receipt was dated 2/18/2012.
### Table 4-2. Shoreline Armoring by Reach

<table>
<thead>
<tr>
<th>Reach</th>
<th>Length (mi)/Percent of Reach with Armoring</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – Narrows</td>
<td>4.4 mi / 76%</td>
<td>Primarily vertical wood bulkheads with and without riprap. Includes five docks.</td>
</tr>
<tr>
<td>2 – Point Defiance</td>
<td>0.5 mi / 18%</td>
<td>Primarily bulkheads. Area has also been modified by mass-wasting (i.e., landslides).</td>
</tr>
<tr>
<td>3 – Ruston Way</td>
<td>6.5 mi / 97%</td>
<td>Includes nine docks. Five of the bulkheads are described as “poor condition”</td>
</tr>
<tr>
<td>4 – Waterways</td>
<td>15.8 mi / 71%</td>
<td>Significant structural alterations with Port of Tacoma industrial waterways development.</td>
</tr>
<tr>
<td>7 – Marine View Drive</td>
<td>0.2 mi / 12%</td>
<td>Includes 159 docks, generally associated with marinas.</td>
</tr>
</tbody>
</table>

(Inventory & Characterization, Dec 2007)

Many of Tacoma’s marine shorelines consist of artificial fill, particularly along the rail line running along the Narrows, Ruston Way and the port area of Commencement Bay and shoreline bluffs have been cut off from direct interaction with the shoreline (thus limiting sediment inputs). There are also numerous drainages which discharge (often seasonally) to the nearshore area, via culvert in many cases, though there are a number of pocket estuaries and the opportunity to restore more. It is generally accepted that fully 99% of the tidal marshes in Commencement Bay are gone as are most of the historic mudflats.

There are also significant water quality and sediment impacts resulting from historic and current land uses. Remediation efforts (through both the Environmental Protection Agency’s Superfund actions and Washington’s Model Toxic Control Act) along the most industrialized shorelines have been underway for the past two decades and a number of nearshore mitigation sites have been developed.

Despite wide scale impacts, along Tacoma’s shorelines and throughout the Puyallup River watershed, there are documented areas that support forage fish, kelp and eelgrass, and riparian vegetation. The nearshore area is also known (and in some cases designated critical) habitat for a variety of fish and wildlife species, including threatened and endangered anadromous fish and marine mammals.

**Puyallup River:** Approximately 2.7 linear miles of the lower Puyallup River are located in the City upstream from the confluence with Commencement Bay. The river has been heavily impacted by modifications throughout the watershed, and is constrained by dikes, revetments and levees along the entire reach. The historic river delta and estuarine wetlands are largely gone after more than a century of development, and sediment and water quality are documented problems. However, the river provides habitat for salmon, steelhead and bull trout, and a number of off-channel and side-channel mitigation projects have been developed. In addition, the Puyallup Tribe continue to fish for salmon along the lower Puyallup.
Hylebos Creek: Approximately 0.5 mile of lower Hylebos Creek is within Tacoma. The watershed is one of the most developed in the state and modifications to the creek have been extensive including channelization and vegetation removal. Levees and revetments line a significant portion of the channel within the City. While conditions are unlikely to change west of Marine View Drive which is characterized by intense industrial-related development, the area east of Marine View Drive is less developed and slated for additional restoration projects.

Wapato Lake: At 34 acres, Wapato Lake consists of three hydrologically connected waterbodies which have been significantly modified over time. Much of the immediate surrounding shorelands are in an 87-acre city park, with a small amount of residential development adjacent to the uppermost lake. The upper two lakes are surrounded by wetlands and relatively well vegetated, while the lower lake is surrounded by open grassy areas and a general lack of fringing vegetation. Most of the water coming into the middle and upper waterbodies are from two storm drains which drain portions of the I-5 corridor and surrounding neighborhoods. The lake is shallow, has a high nutrient load and low dissolved oxygen leading to frequent algae blooms. It has been closed to swimming since 2006.

Ecology finds that the December 2007 Tacoma Shoreline Inventory & Characterization (ESA Adolfson) adequately inventories and analyzes the current conditions of the shorelines located in Tacoma. 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. The report is consistent with the Shoreline Guideline requirements in WAC 173-26-201(3)(c) and (d).

Shoreline Use Analysis: As part of Tacoma’s inventory and analysis of their shorelines, two additional reports were developed. The Tacoma Waterfront Lands Analysis, November 2008 (BST) provides a detailed inventory of land ownership and uses along the entire Tacoma shoreline, focusing particularly on the water-dependent uses. It also includes an analysis of future demand for (a) general cargo and grain terminals, (b) other bulk terminals, and (c) commercial boat and vessel moorage. The report concludes that “any future water dependent uses will most likely occur in District S8 or S10” (page 7). In addition, regarding the lay berthing activity in the S-7 (Sperry Ocean Dock), the report found that “there are few (if any) places that this activity could be relocated to in the City” (page 5).

The Shoreline Use Analysis, December 2008 (ESA Adolfson) went a step further and, by shoreline district, looked at current use and development patterns, supply and demand for water-dependent uses, plans and trends, and potential use conflicts among other topics. As stated on page 2, “The key finding of this [the Waterfront Lands Analysis] analysis is that Tacoma’s waterfront is well utilized, with few areas available and suitable for water-dependent industry that are not already being utilized as such.”

Both reports concluded that the current S-7 district contains two existing water-dependent activities: the grain terminal and the Sperry Ocean Dock lay berthing (moorage) facility. Both note that the lack of suitable upland acreage², along with the potential conflict with neighboring residential uses, precludes the likelihood of any new water-dependent industrial uses along Schuster Parkway in the vicinity of the Sperry site.

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² There are approximately seven acres of vacant land, mostly forested steep slope above Schuster Parkway.
Contingent on acceptance of required changes in Attachment B, Ecology finds that Tacoma has adequately considered supply and demand for SMA preferred uses and the potential for use conflicts 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 comprehensive SMP update is intended to entirely replace the City’s existing SMP and will regulate approximately 38 linear miles of marine shoreline, 6 miles of riverine shoreline (both banks) and a little over 1 mile of lake shoreline along four waterbodies: Puget Sound/Commencement Bay, Hylebos Creek, Puyallup River and Wapato Lake.

**Shoreline Jurisdiction:** The City proposes to use the minimum jurisdiction allowed including the water areas of all shoreline waterbodies, shorelands located within 200 feet of the Ordinary High Water Mark (OHWM), the designated floodway plus 200 feet on streams, and all associated wetlands (Section 4.1).

*Ecology finds that the Tacoma 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. In Tacoma, the portion of Puget Sound located seaward of the line of extreme low tide and the Puyallup River and its shorelands are designated SSWS (Section 4.3).

*Ecology finds that the SMP has appropriately identified SSWS within the City’s jurisdiction and has included policies for management of these areas (Sections 4.3 and 4.4). The policies are consistent with RCW 90.58.020 and WAC 173-26-251.*

**Shoreline Master Program Goals and Policies:** The goals and objectives contained in Chapter 3 of the 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. ³

*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 Environment Designations:** Assignment of shoreline environment designations is a fundamental aspect of the SMP update. Tacoma’s existing SMP identifies four environment designations, but effectively uses only three, assigned across 14 shoreline districts ⁴: Natural, Conservancy, and Urban. The Rural designation was never assigned to any shoreline within the City.

In the updated SMP, there are six (6) proposed designations (Natural, Urban Conservancy, Shoreline Residential, High Intensity, Downtown Waterfront and Aquatic) assigned to 17 Shoreline Districts. The Downtown Waterfront designation was created to address the special characteristics of the Thea Foss Waterway Shoreline District.

³ Also see the Shoreline Environment policies (Chapter 5), General policies (Chapter 6), the General Use policies (Chapter 7) and the Shoreline Modification policies (Chapter 8).

⁴ The City is not pre-designating shorelines within its adopted Urban Growth Area.

⁵ Tacoma’s shoreline jurisdiction is divided into shoreline districts which are zoning districts. Each district has a shoreline environment designation.
Each environment designation has a purpose statement, designation criteria and management policies. Each shoreline district has a stated intent, boundary description and district-specific use and modification regulations and development standards. There are multiple districts in the Natural, Urban Conservancy and High Intensity designations and the SMP allows for variation in allowed uses and development between districts within the same environment designation (see Table 9-2).

<table>
<thead>
<tr>
<th>CURRENT CITY DESIGNATIONS</th>
<th>PROPOSED DESIGNATIONS</th>
<th>MILES</th>
<th>DESIGNATION CRITERIA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conservancy</td>
<td>Urban Conservancy</td>
<td>6.60</td>
<td>• Planned for maintaining or restoring shoreline functions</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Planned uses are publicly beneficial</td>
</tr>
<tr>
<td>Urban</td>
<td>High Intensity</td>
<td>37.30</td>
<td>• High-intensity water-oriented commercial, transportation, industrial uses</td>
</tr>
<tr>
<td>Natural</td>
<td>Natural</td>
<td>2.20</td>
<td>• Free of human influence</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Intact shoreline functions</td>
</tr>
<tr>
<td>New Designations</td>
<td>Shoreline Residential</td>
<td>0.36</td>
<td>• Primary zoned single-family residential</td>
</tr>
<tr>
<td></td>
<td>Downtown Waterfront</td>
<td>3.55</td>
<td>• Thea Foss Waterway</td>
</tr>
<tr>
<td></td>
<td>Aquatic</td>
<td></td>
<td>• Marine Waters</td>
</tr>
</tbody>
</table>

(Cumulative Impacts Analysis, Nov. 2011)

Figure 5 above provides an overview of how Tacoma designates its shorelines under the existing and proposed regulations.

Contingent on acceptance of required changes in Attachment B, Ecology finds that the process of evaluation used to assign shoreline designations was appropriately conducted. Ecology also finds that each shoreline designation in the SMP has a clearly stated purpose, designation criteria and policies and is adequately mapped on the Shoreline Environment Designations Map (TSMP Figure 5-1). The designations provide a framework for implementing shoreline policies and regulations. The allowed uses and regulations for each shoreline designation are generally similar but do vary by district (TSMP Table 9-2). District-specific regulations (TSMP, Chapter 9) have been developed that account for different shoreline conditions, while helping assure implementation of the purpose of each environment designation and the policy goals of the SMA including protection of existing shoreline ecological functions.

General Master Program Provisions: Chapter 6 includes regulations that address archaeological, cultural and historic resources; marine shoreline and critical areas protection; public access; vegetation conservation; views and aesthetics; and water quality and quantity.
To assist in implementation of public access policies, the City developed the Public Access Alternatives Plan (PAAL). This plan is not part of the SMP but will be central to implementing public access requirements and opportunities over time. The plan identifies existing and potential public access opportunities along the City’s shoreline and includes criteria for prioritizing public access projects. In addition, it includes a strategy for implementation. In response to this planning effort, the Port of Tacoma stepped forward and, working closely with the City, has developed a public access plan for their properties which will be referenced in the PAAL.

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”. Chapter 8 of the SMP specifically addresses these activities, including shoreline stabilization, fill, excavation and dredging, clearing and grading, ecological restoration and moorage facilities.

Ecology finds that the City has considered and addressed shoreline modifications as required in 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 SMP addresses applicable shoreline uses in Chapter 7 General Use Policies and Regulations and Chapter 9 District-Specific Regulations.

Contingent on the City’s acceptance of required changes set forth in Attachment B, Ecology finds that the Tacoma 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.

**Critical Area Provisions**: Tacoma has chosen to embed their critical area regulations in Section 6.4 of the SMP. These provisions address marine shorelines, fish and wildlife habitat conservation areas, wetlands, streams and riparian habitats, geologically hazardous areas, flood hazard areas and aquifer recharge areas.

Ecology finds that the City has adequately defined and protected critical areas, as defined in WAC 173-26-221(2), and that no net loss of shoreline ecological functions should be assured (RCW 36.70A.480(4)).

**Cumulative Impacts Analysis (CIA)**: Draft reports (February 2010 and January 2011), evaluating the cumulative impacts of reasonably foreseeable future development, were produced on draft versions of the SMP. A final CIA was issued in November 2011 along with a No Net Loss Summary memorandum (ESA, February 2012). The CIA reports consistently found that implementation of the SMP over time (20 year planning horizon) was unlikely to result in cumulative impacts to shoreline ecological functions from the existing baseline conditions.

Ecology finds that Tacoma has evaluated the cumulative impacts of reasonably foreseeable future development over the next 20 years. The potential for net loss of shoreline ecological functions is low as identified in the CIA. 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 and No Net Loss Summary 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: Tacoma developed a restoration plan based on the information in the Inventory and Characterization (ESA, 2007). The final Shoreline Restoration Plan (ESA, 2011) identifies specific and programmatic restoration opportunities and actions for each shoreline district and waterbody. The City’s SMP includes both restoration goals and objectives in Chapter 3 and policies and regulations in Chapter 8 that permit and promote restoration efforts along all City shorelines and explicitly link restoration actions to the Shoreline Restoration Plan. In addition, the City developed a Shoreline Habitat Fee-in-lieu Prospectus should the City decide to develop such a mitigation program in the future.

Ecology finds that the Shoreline Restoration Plan is based on appropriate technical information available to the City during the SMP update and can serve as a tool for the City and others to restore 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: The record shows Tacoma began the comprehensive update to their SMP in early 2006 on their own initiative. Work on the update slowed for a time while the City responded to a Growth Management Hearings Board decision to include marine buffers in their newly updated critical areas ordinance. Beginning in July 2009, work began consistent with a scope of work described in SMA Grant No. G10000141. The grant provided $125,000.

Public Participation: The Public Participation Report (January 2012) documents all public participation efforts proposed and carried out. A technical review committee was formed early to assist in review of the Inventory & Characterization, Restoration Plan and other technical documents. In addition to meetings with interested parties (including community groups, neighborhood councils, business interests and environmental organizations), the City held six general public workshops and informational meetings, issue-specific workshops on Thea Foss Waterway and public access (among others).

Notice of all public meetings was broad consisting of mailings and newspaper ads. The Planning Commission was briefed 39 times since 2006 (all meetings were open to the public) and members of City Council were briefed 24 times. A preliminary draft SMP was released in September 2010 for early public review and comment. The City established an SMP update webpage on their Planning website.

Local Review Process: In April 2011, the Planning Commission issued a revised draft SMP for review and comment and held a public hearing on June 1, 2011. Legal notice of the hearing was published in The News Tribune on May 12, 2011. The record indicates City Council held a public hearing on September 27, 2011. Concerns raised during the local process focused on the following issues: public access, existing and future uses at the Sperry Ocean Dock site located on Schuster Parkway and concerns about potential conflicts between industrial uses and future uses along the east side of the Thea Foss Waterway. With passage of Ordinance #28034 on November 29, 2011, the City Council authorized staff to forward the locally adopted SMP to Ecology for approval.

Consistency with SEPA Requirements: The City submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Preliminary Determination of Non-Significance (DNS) and Adoption of Existing Environmental Document for the proposed SMP amendments on May 2, 2011. Notice of
the SEPA determination was published in the *Tacoma Daily Index, Inc.* on May 9, 2011. Comments were accepted until June 10, 2011. The record indicates the DNS was final on June 17, 2011. Ecology did not comment on the DNS.

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

**State Review Process:** The proposed SMP amendment was received by Ecology for state review on February 7, 2012 and verified as complete February 28, 2012. Notice of the state comment period was distributed to state task force members, potentially interested tribes, and interested parties identified by the City by mail on April 18, 2012 and by email April 19, 2012, in compliance with the requirements of WAC 173-26-120. The state comment period began on April 23, 2012 and continued through June 7, 2012. Notice was posted on the Ecology website for shoreline master programs: [http://www.ecy.wa.gov/programs/sea/shorelines/smp/mycomments/tacoma.html](http://www.ecy.wa.gov/programs/sea/shorelines/smp/mycomments/tacoma.html) and on Ecology’s Public Involvement Calendar and Ecology issued a News Release. In consultation with City staff, and recognizing the significant public participation effort of the City, Ecology staff determined a public hearing was not necessary but extended the comment period to 45 days.

Thirty-two individuals and four local agencies submitted a total of 36 comment letters during the public comment period. Ecology sent all written comments it received to the City on June 22, 2012. The City requested three separate extensions (8/20, 10/17 and 12/13/2012) in order to respond to the comments received. On December 27, 2012 the City submitted its responses to issues raised during the state comment period to Ecology.

Ecology staff met with City staff on three separate occasions (February 11, April 11 and June 20 (postponed from May 22 at the City’s request) to discuss proposed changes to the locally adopted SMP.

**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.

**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:

- *Tacoma Public Participation Report, January 2012*
- *Tacoma Shoreline Inventory and Characterization, December 2007 (ESA Adolfson)*
- *Tacoma Shoreline Use Analysis, December 2008 (ESA Adolfson)*
- *Tacoma Waterfront Lands Analysis, November 2008 (BST)*
- *Cumulative Impacts Analysis November 2011*
- *No Net Loss Summary Memo, February 2012*
- *Shoreline Restoration Plan (undated but completed in 2011)*
- *Rationale for Proposed Shoreline Designations (memo), February 2012*
Additional References:

- Final Findings of Fact, Conclusions of Law and Order, SHB Nos. 89-4 & 89-7
- Dome to Defiance, Tacoma’s Urban Waterfront, A City Club of Tacoma Research Report, May, 1988
- Tacoma Planning Commission, Findings and Recommendations, August 17, 2011
- Maps prepared by BST Associates for the Waterfront Lands Analysis (2008), provided at the July 20, 2011 Planning Commission meeting

Summary of Issues Raised during the Ecology Public Review Process: Comments submitted generally focused on the re-designation of the segment containing the Sperry Ocean Dock site from the S-7 Schuster District to a transitional S-6/7 Schuster Parkway Transition Zone, the existing lay berthing activity at the Sperry site, public access along Schuster Parkway; aquaculture; environment designations and mitigation sequencing; buffers; and utilities.

The complete record of the City’s response to these comments is found in Attachment D.

Summary of Issues identified by Ecology as Relevant to its Decision: Ecology identified the following issues as relevant to its decision: consistency with the Urban Conservancy shoreline environment designation, water-dependent uses (aquaculture, lay berthing (deep water moorage)), the S-6/7 Schuster Parkway Transition Zone, and optimal implementation of Shorelines of Statewide Significance. These issues are addressed below.

Shorelines of Statewide Significance (SSWS): The SMP appropriately identifies SSWS within the City as the Puyallup River and those portions of Commencement Bay and Puget Sound lying seaward from the line of extreme low tide. This includes the S-9 Puyallup River and most of the S-13 Marine Waters of the State shoreline districts.

The Shoreline Guidelines in WAC 173-26-251 requires that local master programs recognize the specific use preferences identified in the SMA and provide for “optimum implementation” of the statutory policy. This is done by providing SMP provisions that implement: (a) statewide interest, (b) preserve resources for future generations and (c) give preference to uses identified in RCW 90.58.020. Ecology is required to ensure “optimum implementation of the policy of this chapter to ensure the statewide interest” (RCW 90.58.090). The Guidelines recognize that the state’s interest will vary depending on the geographic location, type of shoreline, and local conditions (WAC 173-26-251(2)).

In developing master program provisions, local governments are required to give preference to priority uses set forth in RCW 90.58.020 (1) through (7). Development standards must be established that: ensure long-term protection of ecological resources of statewide importance; provide for the shoreline needs of water-oriented uses and other shoreline economic resources of statewide importance, including navigable harvests; provide for the right of the public to use, access, and enjoy public resources of statewide importance.
Tacoma’s SMP, in addition to explicitly citing the use preferences of RCW 90.58.020, includes twelve additional policies in Section 4.4.

Ecology finds that, contingent upon the City’s acceptance of the required changes set forth in Attachment B related to commercial aquaculture and lay berthing along the S-6/7 Schuster Parkway Transition (see below), the SMP will provide “optimum implementation” of the statutory policy within SSWS set forth in RCW 90.58.020 and will also be consistent with the SMA and Guidelines use preferences.

**Water Dependent Uses:** This type of use is defined as “a use or portion of a use which cannot exist in a location that is not adjacent to the water and which is dependent on the water by reason of the intrinsic nature of its operations.” (WAC 173-26-020) By definition, these types of uses need to be directly adjacent to or on/in the waters of the state or they cannot exist.

The SMA is very clear that these uses are preferred: “…To this end uses shall be preferred which are consistent with the control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state’s shoreline.” (RCW 90.58.020, emphasis added).

The Guidelines (WAC 173-26-201(2)(d)) support this preference by requiring local government utilize the following preferences and priorities when determining allowable uses and resolving use conflicts on shorelines within their jurisdiction in the order listed (emphasis added):

(i) **Reserve appropriate areas for protecting and restoring ecological functions to control pollution and prevent damage to the natural environment and public health.** In reserving areas, local governments should consider areas that are ecologically intact from the uplands through the aquatic zone of the area, aquatic areas that adjoin permanently protected uplands, and tidelands in public ownership. Local governments should ensure that these areas are reserved consistent with constitutional limits.

(ii) **Reserve shoreline areas for water-dependent and associated water-related uses.** Harbor areas, established pursuant to Article XV of the state Constitution, and other areas that have reasonable commercial navigational accessibility and necessary support facilities such as transportation and utilities should be reserved for water-dependent and water-related uses that are associated with commercial navigation unless the local governments can demonstrate that adequate shoreline is reserved for future water-dependent and water-related uses and unless protection of the existing natural resource values of such areas preclude such uses. Local governments may prepare master program provisions to allow mixed-use developments that include and support water-dependent uses and address specific conditions that affect water-dependent uses.

(iii) **Reserve shoreline areas for other water-related and water-enjoyment uses** that are compatible with ecological protection and restoration objectives.

(iv) **Locate single-family residential uses where they are appropriate** and can be developed without significant impact to ecological functions or displacement of water-dependent uses.

(v) **Limit nonwater-oriented uses** to those locations where the above described uses are inappropriate or where nonwater-oriented uses demonstrably contribute to the objectives of the Shoreline Management Act.
For Shorelines of Statewide Significance, local government must also apply the preferences in WAC 173-26-251(2).

**Aquaculture** – Aquaculture is a water-dependent use and as such is a preferred use on the state’s shorelines.

Furthermore, the Shoreline Guidelines make clear that this activity is of statewide interest, can result in long-term over short-term benefit and can protect the resources and ecology of the shoreline. The Guidelines go on to say: “Local government should consider local ecological conditions and provide limits and conditions to assure appropriate compatible types of aquaculture for the local conditions as necessary to assure no net loss of ecological functions.” (WAC 173-26-241(3)(b)) In addition, master programs should recognize that the potential locations for aquaculture can be relatively restricted, and some forms of the technology are in the formative stages and experimental. Thus master programs should provide some latitude in the development of this use. Lastly, the Guidelines state that “Aquaculture should not be permitted in areas where it would result in a net loss of ecological functions, adversely impact eelgrass or macroalgae, or significantly conflict with navigation and other water-dependent uses.” (Emphasis added).

There appear to be few areas, if any, for traditional commercial shellfish operations (i.e. few sandy beaches outside of those in Point Defiance Park). In many of the shallower and more protected areas, there are existing recreational marinas (Day Island, Breakwater Marina, and multiple marinas in the Thea Foss waterway and on the outer end of the Hylebos Waterway along Marine View Drive).

There are no known existing aquacultural activities in the City and no known history of interest by any applicant. Until receipt of the comment letter from the Pacific Coast Growers Association during the state comment period, there had been no interest or concern expressed regarding the proposed language of the SMP.

Ecology agrees that aquaculture is a critical industry for the state of Washington and a preferred use under the Shoreline Management Act. Ecology also agrees that it is an activity of statewide interest. However international trade and the port facilities to support that trade are also activities of statewide interest.

Ecology also recognizes that it is appropriate to identify areas where commercial aquaculture activities are unlikely to occur in the foreseeable future due to the presence of high quality ecological resources, existing water-dependent activities or legacy pollution.

Ecology finds that the existence of the Port of Tacoma, an international shipping port, the high demand for existing and future water-dependent recreational facilities, few undeveloped or lightly developed shorelines, and few if any appropriate sites justifies limits on the scale of commercial aquaculture. Ecology finds that Tacoma has not adequately demonstrated that a total prohibition of commercial aquaculture, in particular the type of small scale aquacultural activities referenced in Ecology’s required changes, is appropriate based on the existing conditions of the City’s shorelines.

See Attachment B – Required Changes(Items 3 and 4).

**Lay-berting**: The SMP classifies this activity as a Port/Industrial Development (Table 9-2) and defines it as follows: “Lay-berth or lay-by-berthing” is the berthing of oceangoing ships of at least 300’ in length, typically while awaiting deployment, repair and maintenance, and/or while awaiting a berth at a separate facility.” (Chapter 10, definition #79)
“Lay-berthing” is not defined in state statute or rule but is generally understood to mean a variation of “berth”: “(2) the place where a ship lies when at anchor or at a wharf.” (Mirriam-webster.com). The Shorelines Hearings Board described it as “berthing vessels in a reduced operating status with no movement for extended periods of time.”

Regardless of the exact definition, this activity necessarily occurs within the S-13 Marine Waters of the State Shoreline District and requires deep water (thus locating within Shorelines of Statewide Significance). Uses located within the S-13 District “that are associated with an upland shoreline district” are only “permitted where the use or development is also permitted in the upland Shoreline District”. The SMP goes on to say that “those uses or development occurring between ordinary high water mark and the Outer Harbor Line shall be considered ‘associated’ with the upland zoning.” (Section 9.15 D(1))

The Sperry Ocean Dock site is currently used for the lay berthing of two vessels because of the natural deep water (greater than 50’ deep). Both the Shoreline Use Analysis and the Waterfront Lands Analysis clearly document that deep water moorage of this type is at a premium. The locally adopted SMP proposes to re-designate this stretch of shoreline from Urban to Urban Conservancy and to allow port/industrial activities but to prohibit lay berthing.

The lay-berthing use has continuously occupied the Sperry site since 1986. The two ships currently moored there are part of the U.S. Navy Ready Reserve fleet but the site could be used to berth any ship in need of deep water moorage. This use has been particularly controversial over the years with the neighborhood on the bluff above the site. While issues originally focused on the height of the vessels and impacts to residential views, in recent years concern has focused around apparent noise and air pollution events that may be related to the periodic running of the ships engines.

Ecology finds that this activity occurs in the S-13 Marine Waters of the State Shoreline District but allowance for this is controlled by the upland shoreline district. Ecology also finds that this activity occurs within Shorelines of Statewide Significance (waterward of extreme low tide) and in a designated Harbor Area. Lay berthing is a water dependent use, favored by the Shoreline Management Act and supported further by the preferences for uses located within Shorelines of Statewide Significance (RCW 909.58.020). Ecology finds that the record does not support prohibition of lay berthing in the proposed S-6/7 shoreline district. See Attachment B – Required Changes (Item 9).

**Urban Conservancy (UC) Shoreline Environment Designation**: The locally adopted SMP assigns the UC designation to seven shoreline districts. Four of the seven districts currently have an Urban designation under the existing SMP, including the proposed S-6/7 Schuster Parkway Transition and S-9 Puyallup River districts.

Section 5.5.4 of the SMP describes the purpose of the UC:

“The “urban conservancy” environment is intended to protect and restore the public benefits and ecological functions of open spaces, natural areas, restoration sites, and other sensitive lands where they exist within the City, while allowing a variety of compatible uses. It is the most suitable designation for shoreline areas that possess a specific resource or value that can be protected without excluding or severely restricting all other uses. It should be applied to

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6 Final Findings of Fact, Conclusions of Law and Order, SHB Nos. 89-4 & 89-7, page 6
those areas that would most benefit the public if their existing character is maintained, but which are also able to tolerate limited or carefully planned development or resource use. Permitted uses may include recreational, cultural and historic uses provided these activities are in keeping with the goals of protection and restoration as stated.”

Taken nearly verbatim from the Guidelines⁷, the SMP lists the following UC designation criteria in Section 5.5.4.C:

“The "urban conservancy" environment designation is assigned to shoreline areas appropriate and planned for development that is compatible with maintaining or restoring the ecological functions of the area and that are not generally suitable for water-dependent uses, if any of the following characteristics apply:

a) They are suitable for water-related or water-enjoyment uses;
b) They are open space or other sensitive areas that should not be more intensively developed;
c) They have potential for ecological restoration;
d) They retain important ecological functions, even though partially developed; or
e) They have the potential for development that is compatible with ecological restoration.”

In general, the SMP has applied the UC shoreline designation to those shorelines with sensitive areas and/or sensitive species, existing or proposed recreational facilities (such as parks and marinas) and/or existing or proposed environmental restoration or mitigation sites. There is some variation in allowed uses and development between districts in the UC environment designation (Table 9-2). However, the intent of each shoreline district and its implementing regulations should be consistent with the purpose and management policies for the applicable environment designation.

The Guidelines recognize that the UC environment can apply to a range of shorelines, including those along commercially navigable waters and include a policy addressing this circumstance (WAC 173-26-211(5)(e)(ii)(D)). The SMP allows the upland shoreline district to control uses in the S-13 Marine Waters Shoreline District (see discussion above on lay-berthing). In addition, much of Tacoma’s shoreline fronts on commercially navigable waters but the UC policies fail to address this circumstance.

In addition to the findings below for the S-6/7 and S-9 Shoreline Districts, Ecology finds that the City has appropriately designated Urban Conservancy shorelines within the SMP. Ecology also finds that much of the designated UC shorelines are located along commercially navigable waters, many of which have designated Harbor Areas. For shorelines designated as UC that are adjacent to commercially navigable waters, the Guidelines state that water dependent uses should be give highest priority (see WAC 173-26-211(5)(e)(ii)(D)). See Attachment B – Required Changes (Item 2).

S-6/7 Schuster Parkway Transition Shoreline District (Urban Conservancy): The S-6/7 shoreline district was created during City Council review and deliberation in response to public comment regarding uses that occur or could occur along this stretch of shoreline⁸. At the City Council public hearing and during Ecology’s public comment period, most comments focused on the presence of the

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⁷ WAC 173-26-211(5)(e)(iii)
⁸ In the SMP before the Council, the Planning Commission recommended extending the S-6 Ruston Way District to include the following properties: Jack Hyde and Chinese Reconciliation parks, the Tahoma Salt Marsh (a Natural Resources Damage Assessment (NRDA) mitigation site related to the Superfund cleanup of Commencement Bay) and the entirety of the Sperry Ocean Dock site (see Planning Commission Findings and Recommendations, dated August 17, 2011). All these parcels are within the S-7 under the existing SMP.
Sperry Ocean Dock facility and the existing lay-berthing activities. Comments reflected concerns regarding appropriate uses of the site, impacts to adjacent properties, and potential impacts to family-wage jobs should those uses be constrained by the master program.

As an alternative to the recommendation from the Planning Commission, the Council proposed this shoreline district include the Tahoma Salt Marsh and the Sperry Ocean Dock parcels which are currently located in the existing S-7 Schuster Parkway District (Urban). The proposed S-6/7 District is intended to be a transition zone between the proposed S-6 Ruston Way (Urban Conservancy) and S-7 (High Intensity). The two park properties (Jack Hyde and Chinese Reconciliation) would shift from the S-7 district to the S-6 (consistent with the Planning Commission recommendation).

Historically, the shoreline stretching from Ruston to the Thea Foss along what is now Ruston Way and Schuster Parkway was part of Tacoma’s industrial center. However, like the Ruston Way shoreline, the shoreline adjacent to and within the proposed S-6/7 segment of Tacoma’s shoreline has been transitioning from historic warehousing activities and other commercial and industrial water-oriented uses, to recreational uses, open space and natural resource mitigation.
The proposed transition zone recognizes both the change over time as well as the change in uses in geographic space. Over time, uses along the shoreline have been shifting from the historic commercial and industrial water-dependent and water-related uses to uses focused more on recreational and restoration activities. Along the shoreline, the Schuster Parkway transition zone acts as a buffer between more intensive uses, such as those allowed in the S-7 Schuster Parkway shoreline district (High Intensity) and the recreational and water-enjoyment commercial activities that occur in the S-6 Ruston Way shoreline district. The intent statement for the S-6/7 should more clearly state this purpose.

![Figure 3-Sperry Ocean Dock (2006) and Tahoma Salt Marsh (r). Most of overwater decking has been removed.](image)

The area offshore of S-6/7, including the Sperry Ocean dock, is documented as having natural deep water and the Waterfront Lands Analysis (BST, 2008) found that “there are few (if any) places that this activity could be relocated to in the City” (page 5). This particular site is also desirable because of the existing land-based access (via dock and driveway). In addition, this site is within the Harbor Area identified in Commencement Bay. Both the Waterfront Lands Analysis and Shoreline Use Analysis (ESA Adolfson, 2008) also note that the lack of suitable upland acreage, along with the potential conflict with neighboring residential uses, reduces the likelihood of any significant new water-dependent industrial use.

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9 All photos are from the Department of Ecology, Coastal Zone Atlas
10 There are approximately seven acres of vacant land, mostly forested steep slope above Schuster Parkway. In addition, both Schuster Parkway and the main line of the Burlington Northern Santa Fe Railroad lie between this slope and the Ordinary High Water Mark.
In the locally adopted SMP, the S-6/7 District allows port/industrial water-dependent and water-related development with a conditional use permit but explicitly prohibits lay berthing.

Ecology finds that the trend in the area over time has been a shift away from high intensity water dependent commercial and industrial uses to open space, recreational and resource mitigation activities. Ecology finds the record shows that any significant new port/industrial use will be limited due to the lack of available upland and constrained site access within the S-6/7. The intent statement for this shoreline district should recognize these trends.

Ecology finds that uses allowed in the adjoining Aquatic shoreline designation (S-13 Shoreline District) are only permitted where the use or development is also permitted in the upland Shoreline District (S-13 District-Specific Use Regulations). Ecology finds that the S-6/7 is directly adjacent to deep water that is located in the S-13 Shoreline District. Ecology also finds that this activity is occurring within Shorelines of Statewide Significance and within a designated Harbor Area and is a preferred use of the state’s shorelines (RCW 90.58.020). Ecology also finds it is well documented that the site provides deep water moorage, that long term moorage space for vessels requiring more than 35’ depths is limited in Commencement Bay and that this use continues to exist. Therefore, as further described in the “Water Dependent Uses” section above, Ecology is eliminating the prohibition on lay berthing.

However, because port/industrial uses are generally not a typical use in the UC designation, Ecology finds that it is appropriate to require a conditional use permit for this use, including lay berthing. A conditional use permit allows flexibility in the application of use regulations in a manner consistent with the policies of RCW 90.58.020 (WAC 173-27-160) and in this case, allows for the continuation of a water dependent use at a location that is intrinsically suited for deep water moorage, while at the same time reflects the trend from port/industrial uses to recreational uses and natural resource mitigation. See Attachment B – Required Changes (Items 6 and 9).

S-9 Puyallup River Shoreline District: As stated in the SMP: “The intent of the S-9 Puyallup River Shoreline District is to encourage recreational development of the riverfront, ecological restoration activities that restore historic floodplain processes and functions, while allowing industrial development of adjacent upland areas, and to encourage continued preservation of Clear Creek, its associated wetlands, and related ecosystems. Permitted industrial uses will develop and operate in a manner that is compatible with shoreline ecological functions.”

The Puyallup River is a Shoreline of Statewide Significance and, while heavily modified with levees and revetments along both banks, is designated by the City as a “stream of local significance” under the Critical Areas Preservation Ordinance (CAPO) due to the presence of rearing habitat for Chinook salmon and other salmonids (Tacoma Inventory and Characterization, pg. 8-27). The CAPO has established 150’ buffers for the river.

In addition, it is clearly documented that the portion of the Puyallup River in the S-9 district has no water-dependent port/industrial uses “because the channel is not maintained for navigation and the series of fixed span bridges crossing the river make it unsuitable for ship or barge traffic.” (Shoreline Use Analysis, page 23). There are existing industrial uses landward of the levees and current existing in-water uses are limited to tribal fishing, and habitat mitigation and restoration activities.
Ecology finds that it is appropriate to designate the S-9 Puyallup River Shoreline District as Urban Conservancy but also finds that it is not appropriate to allow water-dependent port/industrial uses due to the presence of the levees and the documented constraints on navigability. Ecology also finds that it is appropriate to allow for water-related and non-water-oriented industrial uses with a Conditional Use Permit based on the existing uses in the area, the 150’ critical area buffer which will limit future development to the outer 50’ of shoreline jurisdiction, the requirement to follow the mitigation sequence, and the limited vacant land remaining. See Attachment B – Required Changes (Item 10).

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the City’s proposed comprehensive amendment to its 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.

Consistent with RCW 36.70A.480(4), Ecology concludes that those SMP provisions relating to critical areas within Shoreline Management Act jurisdiction assures 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, subject to and including Ecology’s required changes (itemized in Attachment B) 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 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 Tacoma 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. The Department will take final action after receiving written notice that the City has agreed to the required changes. Approval of the updated SMP 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 on the amendment. Approval of the updated SMP and proposed alternative/s is effective fourteen (14) days from Ecology’s final action approving the alternative/s.