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

SMP Submittal accepted October 9, 2012, Ordinance No. 2012.07
Prepared by Sarah Lukas on April 29, 2013

Brief Description of Proposed Amendment:

The Town of Wilkeson 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, administrative provisions, an environment designation map (Appendix A), Critical Area Regulations (Appendix B), a Restoration Plan (Appendix C), Jurisdiction Exhibits (Appendix D), and a Department of Ecology-Channel Migration Zone Assessment (Appendix E) as part of the SMP. Additional reports and supporting information and analyses noted below, are included in the submittal.

FINDINGS OF FACT

Need for amendment. The proposed amendment is needed to comply with the statutory deadline for a comprehensive update of the Town’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. The original Wilkeson SMP was approved by Ecology in 1977, but the Town adopted Pierce County’s SMP in 1979, and has utilized it since. This SMP 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 Town’s Critical Areas Ordinance, Comprehensive Plan, and Flood Management Plan.

This comprehensive SMP update is intended to entirely replace the Town’s existing SMP. This updated SMP regulates approximately one and one half miles of Wilkeson Creek.

Amendment History, Review Process: The Town indicates the proposed SMP amendments originated from a local planning process that began in November 2009. The record shows that workshops open to the public were held on March 1, 2011, and a public hearing before the Planning Commission was held on May 16, 2012. Affidavits of publication provided by the Town indicate notices of the hearing were published on May 2, 2012 and May 9, 2012 in the Courier-Herald Newspaper.

With passage of Resolution # 2012.07, on June 12, 2012, the Town authorized staff to forward the proposed amendments to Ecology for approval.

The proposed SMP amendments were received by Ecology for state review and verified as complete on October 9, 2012. Notice of the state comment period was distributed to state task force members and interested parties identified by the Town on November 20, 2012, in compliance with the requirements of WAC 173-26-120, and as follows: The state comment period began on December 3, 2012, and continued through January 14, 2013. The state public comment period was elongated past
the standard 30-day period to accommodate the holidays. No comments were received during the state public comment period.

**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 Town 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 Town.

**Consistency with SEPA Requirements:** The Town 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 June 6, 2012. Notice of the SEPA determination was published in the Courier-Herald on June 6, 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 Town in support of the SMP amendment:

These supporting documents include:

- a September 2010 public participation plan,
- an April 2011 shoreline inventory and characterization,
- a June 2012 cumulative impacts analysis,
- a June 2012 No Net Loss Report, and
- a June 2012 restoration plan

**Summary of Issues Raised During The Public Review Process:**
The Town's SMP amendment process raised concerns by Wilkeson residents regarding flooding on Wilkeson Creek. Concerns of compliance with the SMP as well as the ability to protect property were raised over the course of the update process. As a result the Town chose to include the provisions allowed under 90.58.620 RCW which identifies all existing residential structures as conforming even if they do not meet the new bulk, dimensional, and performance standards in the updated SMP. This allows residential structures to be repaired and replaced in case of damage without requiring the structures be brought into conformance the updated standards.

**Summary of Issues Identified by Ecology as Relevant To It’s Decision:**
In the review of the locally adopted Shoreline Master Program inconsistencies were found with the applicable rule that require changes for state approval. The required changes include: clarifying the shoreline exemptions apply to the substantial development permit process, but not from the shoreline master program regulations or other shoreline permits; correcting the substantial development permit exemption dollar threshold to reflect the most current amount; clarifying that the Variance Permit is the correct vehicle for departures from bulk dimensional, and performance standards as defined in WAC 173-27-170, not the conditional use permit; correcting the effective date of the shoreline master program to reflect 90.58.090(7) RCW; clarifying that the Town cannot change a shoreline designation...
without amending the shoreline master program with the process identified in 90.58.090 RCW; and,
changing the definition of floodway to reflect the Town’s choice between the two definitions found
under 90.58.030(2)(b).

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the Town’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).

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 Town’s existing critical areas ordinance.

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 Town has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the Town 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 Town 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 Town has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the Town’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 Town has chosen not to exercise its option pursuant to RCW 90.58.030(2)(f)(ii) to increase shoreline jurisdiction to include buffer areas of critical areas within shorelines of the state. Therefore, as required by RCW 36.70A.480(6), for those designated critical areas with buffers that extend beyond SMA jurisdiction, the critical area and its associated buffer shall continue to be regulated by the Town’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 Town. 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 Town 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 alternatives is effective 14 days from Ecology’s final action approving the alternatives.