DRAFT ATTACHMENT A: FINDINGS AND CONCLUSIONS FOR PROPOSED AMENDMENTS TO THE YAKIMA COUNTY SHORELINE MASTER PROGRAM

SMP Submittal – July 22, 2008
Yakima Co. Ordinance No. 14-2007, City of Grandview Ordinance No. 2008-12, City of Granger Ordinance No. 1093, City of Mabton Ordinance No. 890, Town of Naches Ordinance No. 639, City of Selah Ordinance No. 1898, City of Toppenish Ordinance No. 2008-12, City of Union Gap Resolution No. 733, City of Wapato Ordinance No. 1191, City of Zillah Ordinance No. 1167

Prepared by Doug Pineo, November 18, 2009

Brief Description of Proposed Amendments:

Yakima County and coordinating Cities of Grandview, Granger, Mabton, Naches (Town of), Selah, Toppenish, Union Gap, Wapato, and Zillah are proposing a **comprehensive regional update** of their Shoreline Master Programs (SMPs).

FINDINGS OF FACT

Need for Amendment: The proposed amendments are a comprehensive update of the original Yakima County SMP, which was adopted by Ecology into the Statewide Shoreline Master Program in 1974. Grandview, Granger, Naches, Selah, Union Gap, Yakima, and Zillah also adopted the county SMP by reference in 1974. Since that time, the cities of Toppenish and Wapato determined to adopt the updated SMP. The proposed amendments will remedy inconsistencies among the SMP, zoning ordinance and comprehensive plan, including the current critical areas ordinance, for the purposes of reconciling the management of shorelines of the state and growth management. For Yakima County, the updated SMP amends the existing Yakima County Comprehensive *Plan 2015.*

The submitted proposed amendment reflects the result of completing the new comprehensive shoreline inventory and analysis, as required in RCW 90.58.100 and WAC 173-26201.

Many miles of the shorelines across Yakima County have been altered, from manipulated river flows supporting agricultural irrigation, conversion for agricultural use, transportation and utility infrastructure, and residential, industrial and commercial development. In conformance with the Shoreline Management Act, the updated SMP manages land uses to protect shoreline natural resources and ecological function, while fostering preferred uses in shorelines, and protecting private property rights and public access to the shorelines of Yakima County and its incorporated municipalities.

SMP Provisions To Be Changed By The Amendment As Proposed: The submittal is a comprehensive SMP update designed to comply with the SMP Guidelines (WAC 173-26), and will replace the existing SMP(s).

Amendment History, Review Process: Yakima County indicates the proposed SMP update originated with a local planning process that began in 2002, with initiation of the shoreline inventory and characterization. The record shows that an extensive process to engage a range of stakeholders and the general public in the update process occurred between 2002 and July, 2007. This process included 36 meetings with interest groups, five public open houses, six meetings with city and town elected officials (the Countywide Planning Policy Committee), eight city and town staff meetings, thirty-six county Planning Commission Study Sessions and eight Stakeholder Roundtable Meetings, followed by public hearings before the Yakima County Planning Commission, and public hearings before the Yakima County Board of County Commissioners on July 31, 2007. City (and Town of Naches) Councils of all of the participating municipalities conducted public hearings before adopting the regional SMP update.

Affidavits of publication provided by the County indicate notice of a public hearing was published in the Yakima Herald-Republic on June 28 and July 12, 2007.

With passage of Ordinance # 14-2007, on December 18, 2007, the County authorized staff to forward the proposed amendments to Ecology for approval. The participating municipalities subsequently adopted the regional SMP update in the winter, spring and summer of 2008.

The proposed updated Yakima County Regional SMP update was received by Ecology for state review and verified as complete on August 4, 2008. Notice of the state comment period was distributed to state task force members and interested parties identified by the County , in compliance with the requirements of WAC 173-26-120, and as follows: The state comment period began on August 17, 2008 and continued through September 16, 2008.

On September 3, 2008, Ecology held a public hearing in Yakima to seek input on the proposed amendments. Notice of the hearing, including a description of the proposed amendment and the authority under which the action is proposed, the times and locations of the hearing/s and the manner in which interested persons may obtain copies and present their views was provided in the August 17 and August 24 editions of the Yakima Herald, the County's official newspaper of record. Twelve (12) individuals or organizations submitted comments on the proposed amendments. Ecology sent all oral and written comments it received to the County and adopting municipalities on September 19, 2008. On November 10, 2008 the County submitted to Ecology its responses (and on behalf of the adopting municipalities) to issues raised during the state comment period. Ecology’s own responses to issues raised during the comment period are available as part of the SMP amendment process record.

Consistency with Chapter 90.58 RCW: The proposed amendments have 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 County also provided evidence (see above) of its compliance with SMA procedural requirements for amending an SMP contained in RCW 90.58.090.

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 -020 definitions). This included review of a SMP Submittal Checklist, which was completed by the County.

Consistency with SEPA Requirements: The County submitted evidence of SEPA compliance in the form of a SEPA checklist, and issued a Determination of Non-Significance for the proposed SMP amendments on December 8, 2006; notice of the SEPA determination was published in the Yakima Herald on November 23, 2006. Ecology did not comment on the DNS.

Other Studies or Analyses supporting the SMP update: Ecology reviewed the following reports, studies, map portfolios and data prepared for the County and municipalities in support of the SMP update:

1) Shoreline Inventory and Characterization Report, prepared by the Geography and Land Studies program at Central Washington University (including the digital map portfolio);

2) Shoreline Land and Water Dependency Demand Analysis;

3) Vegetation Management White Paper;

4) Channel Migration Delineation Report;

5) Scientific Review Report (Best Available Science);

6) Public Participation Plan;

7) GIS Data including existing and proposed environment designation data and Critical Areas GIS data.

Summary of Issues Raised During The Public Review Process: The Yakima County Regional SMP update drafting and public review process was at times contentious. The update began as an ambitious effort to adopt an integrated Shoreline Master Program and Critical Area Ordinance (SMP/CAO). The process began with the use of the Bleiker Model from the Institute for Participatory Management and Planning,

as the centerpiece of the public participation plan. After a contentious hearing conducted by the Yakima County Planning Commission in December 2006, the Planning Commission convened a series of structured, well facilitated Stakeholder Roundtable Meetings to salvage the SMP/CAO update process. Considerable debate centered on the following topics:

- Some participants opposed the integration of the SMP and CAO;

- Some participants wanted the county and municipalities to abandon the SMP update, citing the timing and funding deadlines adopted in amendments to the SMA in 2003. Yakima County and its municipalities are not required to complete updates to their SMPs until December 1, 2013;

- Riparian, associated upland, and associated wetland buffers:

    - Whether associated wetland buffers were too wide or too narrow;

    - Requiring buffers for new agricultural uses in shorelines of the state;

    - Adequacy of buffers to protect upland wildlife habitat in shorelines, including their habitat function as wildlife movement corridors;

    - Adequacy of the use of science in designating shoreline environments and developing buffers and other use regulations.

- Surface mining in channel migration zones;

- Applicability of the SMP to existing agricultural uses;

- Adequacy of Best Available Science (BAS) as defined in the Growth Management Act (GMA) and relevant Washington Administrative Code, for assessing and characterizing ecological function in shorelines.

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

1. <u>Shoreline and Wetland Buffers</u> -- Substantial controversy arose among many stakeholders throughout the SMP update process over proposed buffers. The Yakima County regional SMP update was originally intended to integrate the SMP and CAO. Consequently, the use of science in the shoreline inventory and characterization was intended to meet the Best Available Science standard in the GMA. On the mainstem Yakima River and its major tributaries in Yakima County, an innovative shoreline environment designation is used called “Floodway/CMZ” (floodway/channel migration zone), within which most development is significantly constrained. In some reaches of the Yakima River, the Floodway/Channel Migration Zone environment designation is several thousand feet wide. Conversely, minimum wetland buffers in the SMP are less

than were recommended by the Yakima County Planning Commission, and may not meet the wetland Best Available Science guidance.

2. Surface mining in the Floodway/Channel Migration Zone Environment Designation -- Some stakeholders raised concerns about prohibiting surface mining in some environments in SMP jurisdiction. In an effort to preserve the ability of rivers and streams in Yakima County to move across their channel migration zones in geologic time frames as much as may be feasible in the County's working landscapes, the new SMP features the unique shoreline environment designation called Floodway/Channel Migration Zone. In the locally adopted SMP, surface mining is prohibited in this environment, but is allowed in some other shoreline environments such as the Rural environment. The county conducted an inventory and assessment of resources lands for compliance with GMA requirements which concluded that a 100 year supply of economically accessible, technically appropriate aggregates for civil construction exist in the county outside of the major channel migration zones.

3. The locally adopted SMP is a complex document and is not easy to understand. The SMP does not adopt the Critical Area Ordinance (CAO) by reference, but rather adopts the same language in many cases as policy and regulation. This makes it possible to amend the SMP without requiring Ecology approval of the county's CAO, but adds language applying only in shorelines in a sometimes ambiguous manner.

4. The SMP as locally approved appears to equate the fish and wildlife protection provisions of the CAO as adequate for SMPs. The standard in shorelines is distinct from the GMA. The SMA "*contemplates protecting against adverse impacts to the land, its vegetation and wildlife, and the waters of the state and their aquatic life…*" (RCW 90.58.020), and the SMP Guidelines require achieving a standard of "no net loss of ecological function" in shorelines. The Yakima County regional SMP also places a strong emphasis on riparian and aquatic habitats, while the SMA makes no distinction among aquatic, wetland and upland environments in shorelines.

5. Reasonable Use Exceptions and Flood Hazard Permits are not administered through the SMA or local SMPs. Authorizations provided in the SMA include Shoreline Substantial Development Permits, Shoreline Conditional Use Permits, Shoreline Variances, and approvals of uses and developments which are exempt from the requirement for a Shoreline Substantial Development Permit (RCW 90.58.140, WAC 173-27).

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the County's and adopting municipalities' SMP proposal, 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 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 master program amendments (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 County and adopting municipalities, 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 County's existing critical areas ordinance, and those of the adopting municipalities.

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

Ecology concludes that the County has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 regarding public and agency involvement in the SMP amendment process.

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

Ecology concludes that the County's SMP 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 WAC 173-26-120.

Ecology concludes that Yakima County and the adopting municipalities have chosen not to exercise their option pursuant to RCW 90.58.030(2)(f)(ii) to increase shoreline jurisdiction to include buffer areas of all 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 County's and adopting municipalities' critical areas ordinances. 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 are consistent with the policy of the Shoreline Management Act, the applicable guidelines and implementing rules, once required changes set forth in Attachment B are approved by the County and adopting municipalities. Ecology approval of the proposed amendments with required changes, is effective on the date at which Ecology receives written notice that the County and adopting municipalities have agreed to the required changes.

As provided in RCW 90.58.090(2)(e)(ii) the County or any of the adopting municipalities may choose to submit an alternative to all or part of 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.