

**ATTACHMENT A: FINDINGS AND CONCLUSIONS
FOR PROPOSED AMENDMENT TO THE CITY OF EVERETT
SHORELINE MASTER PROGRAM**

SMP Submittal Accepted: September 6, 2009, Ordinance No. 3129-09
Prepared by David Pater, on August 26, 2010

Brief Description of Proposed Amendments:

The City of Everett is proposing an amendment to its Shoreline Master Program (SMP). The amendment (City Ordinance # 3129-09) incorporates the Marshlands Sub-Area Plan into the SMP and adds SMP text changes. The Subarea Plan was prepared as the result of a Settlement Agreement reached on appeal of Everett's 2003 SMP update. The sub-area plan provides for a combination of restoration, recreation agricultural and residential uses with restoration being the predominate proposed shoreline use.

FINDINGS OF FACT

Need for Amendment: The proposed amendment is needed to update the Shoreline Master Program (SMP) with the addition of the Marshlands Subarea Plan. As part of the 2003 SMP settlement agreement The City of Everett was required to develop the Marshlands Subarea plan and incorporate the plan into the SMP. It also needs to meet the State Shoreline Master Program Guidelines (WAC 17-26) and comply with the statutory deadline for comprehensive update of the SMP (RCW 90.58.250 080).

Amendment History, Review Process: The proposed SMP amendment was originally submitted to Ecology on July 1, 2009. The Everett City Planning Commission held two public hearings on March 3, 2009 and May 19, 2009 and passed the amendment by resolution on May 19, 2009. The Everett City Council approved the amendment (City Ordinance # 3129-09) on June 17, 2009.

The proposed SMP amendment were received by Ecology for state review on July 1, 2009, and verified as complete on September 6, 2009. Notice of the state comment period was distributed to Ecology regional and statewide mailing lists and interested parties identified by the City of Everett on April 7, 2010, in compliance with the requirements of WAC 173-26-120..., and as follows: The state public comment period began on April 12, 2010 and continued through May 12, 2010. Notice of the public comment period, including a description of the proposed amendment, the authority under which the action is proposed, and the manner in which interested persons may obtain copies and present their views was provided in the April 9, 2010 edition of the Everett Herald, The City of Everett's official newspaper of record. A total number of eight individuals or organizations submitted comments on the proposed amendments. Ecology sent all oral and written comments it received to the City on May 27, 2010. On July 13, 2010 the City of Everett submitted to Ecology its responses 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 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 -020 definitions).

Consistency with SEPA Requirements: The City submitted evidence of SEPA compliance in the form of a final Environmental Impact Statement (EIS) dated February 2009. Everett issued a scoping notice on the EIS on March 5, 2008.

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

These supporting documents include:

- *Draft Environmental Impact Statement City of Everett Marshlands Subarea Plan, October 2008.*

Summary of Issues Raised During The Public Review Process: The City's SMP amendment drafting/public review process brought out a few issues that required further discussion and analysis. The issues below are a summary of key points from a number of citizens I have also included applicable City and Ecology commentaries.

Dale & Elaine Wilson, 6716 Larimer Road, Everett, WA 98208.

Comment #1: The ability of the Marshlands land area to support agriculture will be destroyed by changing the use of agriculture from 795 acres to 188.7 acres.

Brian Bookey, President National Food Corporation 1930 Merrill Creek Pkwy, Ste A Everett, WA 98203

| *Comment #2: Of the identified 795 acres of agricultural land in the Marshlands area, only 188.7 are retained for agricultural purposes in the Subarea Plan. This significant loss of farmland is compounded by the loss of significant additional agricultural lands in numerous other habitat restoration projects in the Snohomish River basin. There is no coordination of these projects, nor is their adequate consideration given in each to the loss of agricultural lands. Mr. Alex Alexander, 3914 52nd Street, S.E. Everett, WA 98205. Comment report entitled “A regional Assessment of the Amended Marshlands Subarea Plan”*

Comment #10: Restoration vs. Destruction of USDA PRIME Farmland
The USDA has classified over 90% of Marshlands soils as “prime farmland all”. The City of Everett has not had a proactive policy towards soils resources preservation. It has not taken into

consideration agricultural land preservation, within the context of the national and state issue of accelerated farmland loss due to development.

Note: I consolidated the city's response to these three similar comments.

City of Everett's Response: The DEIS addresses the loss of agricultural land and related City and County policies on pages 74-76, 78, 80-83, 133-140, 145-147, and 166-174. The FEIS addresses the loss of agricultural lands on pages 8-9, 14-15, 53-55, 77, and 99-102. We believe we have adequately addressed the tradeoffs between agricultural lands and habitat restoration. While designated as Agricultural, the properties are also identified as potential restoration areas in adopted plans that required considerable coordination among State and federal agencies, Tribes, and many local jurisdictions in Snohomish County.

The City recognizes the trade-offs in loss of agricultural lands and the restoration of habitat for listed salmonoid species, as well as other wildlife. If the restoration actions proposed in the Marshland Subarea Plan are determined to be feasible, and resources are obtained to implement the projects, there will be a reduction in agricultural use in the area, and an increase in habitat for listed salmonoid species and other wildlife, as well as increased trails and areas for passive recreation. Prior to conversion to farmland, this area provided large areas of habitat for salmon and other species. One report states:

The conversion of the Marshland marsh for agricultural uses in the 1880s was the largest single loss of off-channel rearing habitat in the entire Snohomish River basin. Even under conservative estimates of summer and winter rearing capacity, the historic marsh at Marshland would have provided more rearing capacity for Coho and Chinook than the total rearing capacity of all remaining off-channel habitat within the Snohomish River floodplain between the head of Ebey Slough and the confluence of the Snoqualmie and Skykomish rivers. (Haas, 2001)

The Subarea Plan covers only a portion of the larger Marshland area. The Subarea Plan includes a variety of actions that will result in ensuring the remaining farm land is productive including ensuring that access is maintained for farm equipment to agricultural areas adjacent to restoration areas, and ensuring that property owners outside of restoration areas have the same or better level of flood protection and drainage after restoration proposals as they presently have.

The Snohomish River Basin Salmon Conservation Plan description of Marshland restoration opportunities states that, "Members of the Coordinated Diking Council have major concerns about proposed restoration projects along this stretch of river, and do not currently support moving this idea forward. Further work with the farming community would be needed to build project support." City staff and consultants did meet early on with representatives of the farming community, including Neil Wheeler of the Coordinated Diking Council, (see Meeting notes in Tab S of the Notebook provided to Ecology); and City staff presented the project to the Snohomish County Agricultural Advisory Board. A representative of the Marshland Flood Control District, as well as farmers / dairy owners were included in the Stakeholder Committee. Neil Wheeler received all public notices for the project. To further address this issue, Policy 9 in Section 4.1.3.1 of the Subarea Plan requires the City to "Ensure structural flood protection measures are consistent with the Snohomish River Comprehensive Flood Control Management

Plan, and coordinated with Snohomish County, the Marshland Flood Control District, the Coordinated Diking Council, Natural Resources Conservation Service, affected utilities, BNSF, and property owners.”

Ed Husmann, President, Snohomish County Farm Bureau, 13420 339th Ave SE, Sultan, WA 98294

Comment #2: Of the 1065.3 acres total Marshlands acreage; a large portion are designated agricultural lands. Both the City of Everett and Snohomish County are obliged by the Growth Management Act to designate and protect agricultural lands. See, RCW 39.70A.030(2), RCW 39.70A.020(8), RCW 39.70A.060, RCW 39.70A.070(1). Hence this plan to destroy designated agricultural land is most clearly violative of the GMA.

City of Everett Response: Both Snohomish County and the City have a wide variety of legal mandates that have to be balanced in land use regulations, including, but not limited to the following:

- **RCW 39.70A.020(8)** (referenced in the comment) also requires that fisheries industries be maintained and enhanced.
-
- **RCW 36.70A.060(4)** states that “Forest land and agricultural land located within urban growth areas shall not be designated by a county or city as forest land or agricultural land of long-term commercial significance under RCW 36.70A.170 unless the city or county has enacted a program authorizing transfer or purchase of development rights.” WAC 365-190-050(1) states that “Counties and Cities must have a program for the transfer or purchase of development rights prior to designating agricultural resource lands in urban growth areas.” The City has not adopted such a program for agricultural lands, so is precluded from designating the portion of the Subarea in the urban growth area for commercial agriculture of long-term significance.
- **WAC 365-196-730 Federal authorities.**
 - (1) Counties and cities drafting or amending comprehensive plans and development regulations under the act should consider the effects of federal authority over land or resource use within the planning area, including:
 - (a) Treaties with Native Americans;
 - (c) Federal statutes or regulations imposing national standards;
 - (d) Federal permit programs and plans;
 - (2) Examples of such federal standards, permit programs and plans are:
 - (g) Recovery plans and the prohibition on taking list species under the Endangered Species Act;
- **WAC 173-26-186 Governing principles of the guidelines (Shoreline Master Program Guidelines).**
- **173-26-201. Comprehensive process to prepare or amend shoreline master programs.**

Comment #3: The Department of Ecology and other state agencies are required to comply with state statute and by RCW 36.70A.103 to comply with city and county comprehensive plans. Hence the Department of Ecology is itself prohibited from permitting this planned destruction of designated agricultural lands.

RCW 36.70A.103: State agencies shall comply with the local comprehensive plans and development regulations and amendments thereto adopted pursuant to this chapter except as otherwise provided in RCW [71.09.250](#) (1) through (3), [71.09.342](#), and [72.09.333](#).

Ecology's Response: The Everett Shoreline Master Program is an element of the City Comprehensive Plan. RCW 36.70A.103 Authorizes the city to amend the comprehensive plan in order to adopt or amend the shoreline master program at any time. The December 2004 SMP settlement agreement required the city to prepare the Marshlands Subarea Plan and incorporate into the SMP. If approved by Ecology the Plan will become part of the SMP and subsequently part of comprehensive plan.

Mr. Alex Alexander, 3914 52nd Street, S.E. Everett, WA 98205. Comment report entitled "A regional Assessment of the Amended Marshlands Subarea Plan"

Comment #1: Abstract- The Marshlands Sub-Area Plan retains a decisive weakness of river non-integration. The plan also fails to recognize the need to accommodate extreme flooding events.

City of Everett's Response: The purpose of the Subarea Plan is to restore areas adjacent to the Snohomish River to reconnect those areas to the river and tidal influence. The City has adopted the flood maps prepared for Federal Emergency Management Agency (FEMA) and adopted associated regulations that have been approved by FEMA. The Subarea Plan recognizes that not all questions have been answered related to how the project will affect flood flows and impact other properties in the floodplain. Subarea Plan Section 3.3.2.1.1 identifies the studies that will be needed prior to restoration design.

*Comment #4: Under Appreciation as City Policy
The City needs to return public safety to the forefront of the marshlands subarea development plans. The city has done an insufficient job of floodway planning over the last ten years.*

City of Everett's response: The City has met all legal requirements for floodplain planning. Ecology conducted a Community Assistance Visit on July 9, 2009 and determined that the City was fully compliant with NFIP and State floodplain regulations. The EIS for the Riverfront Redevelopment evaluated the impacts of flooding during a 500-year event and determined that significant impacts would not result. Additional analysis of flooding impacts will occur prior to construction of any tidal restoration in the Marshlands. See response to Comment #1 directly above.

Ecology directed comment: The Department of Ecology's participation on the Marshlands stakeholder committee failed to promote more improvised planning in the development of the sub-area plan.

Ecology's Response: Ecology participated on the stakeholder committee as one of a number of resource management agencies and also in the capacity of overseeing the State grant that funded the Marshlands Subarea planning process. The SMP settlement agreement required the City to develop a subarea plan that emphasized habitat restoration and other land use alternatives. The plan's inclusion of significant tidal restoration areas recognizes the value of this habitat to fish and wildlife as well as improving estuarine functions in the lower Snohomish River. Specific project designs for each plan phase will be addressed in the future when implementation funding is more certain. Project designs will need to take into consideration site specific and river and estuarine processes to increase the chance of long-term success and benefit.

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

Application of the April 2006 City Critical Areas Regulations to the Marshlands Subarea

The City has chosen to incorporate their April 2006 Critical Areas Regulations to the SMP. The 2006 CAO would only apply in the Marshlands Subarea. The 2003 environmental sensitive areas ordinance would still apply to all other city shorelines. Inclusion of the CAO reasonable use provision in the SMP amendment conflicts with the Shoreline variance permitting process in the State Shoreline Mgt. Act Specifically RCW 90.58-140 (10) (Development Permits).

As part of the required changes Section 2.1 Components of the Shoreline Master Program will incorporate the City ordinance number and adoption date of the 2006 Critical Areas Ordinance into item A.7. It will also list out EMC 19.37.050 B (Reasonable Use Exception) as a SMP exception as followings "With the exception of the following subsections EMC 19.37.050 B (Reasonable Use Exception)

Addresses 2004 SMP Settlement agreement requirement to develop the Marshlands Subarea Plan and incorporate the plan into the SMP.

The Settlement Agreement was entered into between the Washington Environmental Council ("WEC"), the Everett Shoreline Coalition, Libby Johnson, the Pilchuck Audubon Society, People for Puget Sound (hereafter "ESC"), the City of Everett (the "City"), the Washington Department of Ecology ("Ecology"), and the Port of Everett (the "Port").

Section 4.2 (8) of agreement required Everett develop the marshlands subarea plan.

(8) The process shall produce a subarea plan that addresses: (1) a summary of the area's restoration potential and feasibility and a listing of the restoration goals and opportunities; (2) timeframes and benchmarks for achieving the restoration goals and opportunities; (3) committed and potential funding sources; (4) anticipated improvement in the ecological functions of the areas identified by the plan for restoration; (5) shoreline master program regulations for protecting critical areas within the Marshlands; (6) mechanisms and strategies to ensure implementation of the subarea plan; and (7) mechanisms to review the effectiveness of the subarea plan and make changes if review reveals the subarea plan is not effectively promoting the plan's identified restoration opportunities or meeting its other goals, policies and objectives. The subarea plan shall also make a recommendation to the City Council regarding a designation and permitted use table for the Marshlands that is consistent with the Shoreline Management Act, the City's Shoreline Master Program, and the results and conclusions of the final subarea plan submitted to the City Council.

This SMP amendment is consistent with applicable sections of the Settlement Agreement.

Marshlands Shoreline Environment Designations:

Section 4.15 and figure 4.20 have been changed to be consistent with the proposed subarea plan. The bulk of the marshlands area was Interim Urban Conservancy Agriculture. The interim label has been removed under the revised designation. The city will re-designate various sections of Marshlands as the proposed sub-area plan restoration phases are implemented. Other noteworthy changes included: reduction of shoreline residential area on the western border and inclusion of an insert map in figure 4.20 to clarify Urban Industrial and Urban Conservancy shoreline environments in the northwest corner of the marshlands subarea.

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the City of Everett's SMP amendment 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 amendment, contains sufficient policies and regulations to assure that no net loss of shoreline ecological functions will result from implementation of the new master program amendment (WAC 173-26-201(2)(c)).

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

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

Ecology concludes that the City of Everett'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.

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendment is consistent with the policy of the Shoreline Management Act, the applicable guidelines and implementing rules subject to the required changes identified in Attachment B – Required changes. It is recommended that Ecology approve this amendment with these required changes. The effective date of this amendment will be the date the department receives the City's notice of acceptance of the changes required in Attachment B.