ATTACHMENT A: FINDINGS AND CONCLUSIONS FOR PROPOSED AMENDMENTS TO THE CITY OF FEDERAL WAY SHORELINE MASTER PROGRAM

SMP Submittal Accepted: January 18, 2011, Resolution No. 10-597
Prepared by David Pater, on August 5, 2011

Brief Description of Proposed Amendments:
The City of Federal Way is proposing a comprehensive update of its entire shoreline master program (SMP). The SMP update replaces the City's 1998 shoreline master program. Federal Way's shoreline consist of 4.84 miles of marine shoreline, Approximately 3.3 Miles of freshwater shoreline including: the northwest shore of Lake Killarney, 46 acre Steele Lake and 55 acre North Lake, both are located entirely within the city limits. Current land use on the City's shoreline is dominated by residential development with a few park areas. Extensive marine bluffs and a few associated wetlands mainly with the lakes characterize the shoreline.

SMP Goals, policies and shoreline environments will become an element of the comprehensive plan. The SMP regulations will become a separate section in the City development code. The critical area regulations are incorporated directly in the SMP as another code section.

FINDINGS OF FACT

Need for Amendment: The proposed amendment is needed to update the shoreline master program (SMP) environment designations, policies and regulations. Federal Way's current SMP is from 1998. This SMP update is needed to address the need for updated shoreline policies and regulations which reflect the current level of environmental protection and land use management provided by city comprehensive plan elements, and other applicable city code. 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 90.58.080).

Amendment History, Review Process: The proposed SMP update originated from a State Shoreline Master Program Update Grant that began in November 2005. The Shoreline Citizen Advisory Committee assisted with developing the SMP from July 2006 to December 2006. The record shows that four SMP public meetings open to the public were held on June 7, 2006, March 28, 2007, May 21, 2007 and August 4, 2010. Five Planning Commission meetings were held from February 14, 2007 to August 25, 2010. Three City Council Land Use Committee meetings May 21, 2007, September 8, 2010 and October 4, 2010 and two City Council meetings June 5, 2007 and October 19, 2010. Two SMP public hearings before the City Planning Commission on April 4, 2007, August 25, 2010. Affidavits of publication provided by the City indicate notices of the hearings were published.

With passage of Ordinance No. 10-597, on October 19, 2010, the Federal Way City Council adopted the 2010 SMP Update and authorized staff to forward the proposed SMP update to Ecology for approval.

The proposed SMP amendments were received by Ecology for state review on December 20, 2010, and verified as complete on January 18, 2011. Notice of the State comment period was distributed to state task force members and interested parties identified by the City of Federal Way on March 8, 2010, in compliance with the requirements of WAC 173-26-120, and as follows: The state comment period began on March 11, 2010 and continued through April 12, 2010. Ecology staff determined a public hearing was not necessary. Notification of the State comment period was provided in the March 9, 2010 edition of the Federal Way Mirror newspaper, Federal Way's official newspaper of record. A total number of one organization (Futurewise) and no individual citizens submitted comments on the proposed amendments. Ecology sent all written comments it received to the City on April 27, 2010. On June 13, 2010 Federal Way submitted to Ecology its responses to issues raised during the state comment period. A few required changes resulted from comments received during Ecology's public comment period. These changes are outlined in attachment B.

Consistency with Chapter 90.58 RCW: The proposed comprehensive amendment has been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4) and (5). The City has also provided evidence (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 City of Federal Way.

Consistency with SEPA Requirements: The City submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance for the proposed SMP amendment on March 31, 2007; notice of the SEPA determination was published in the Federal Way Mirror on March 31, 2007. 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 City in support of the comprehensive SMP amendment:

These supporting documents include:

- *a March 2006 public participation plan,*
- *a June 2007 shoreline inventory and characterization,*
- *a May 2010 cumulative impacts analysis,*
- *a June 2007 shoreline use analysis, and*
- *an April 2010 shoreline restoration plan*

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.

Marine Bluff Shoreline Setbacks; The final draft SMP provided to the Federal Way City Council contained no shoreline residential setback from top of marine bluffs. The City Council decided to not include a defined setback but have site specific engineering studies determine that setback. After consultation with City planning staff and additional analysis of City geological hazard maps; it was concluded that Geo-hazards mapping places at least 95% of all marine shoreline bluffs outside of shoreline jurisdiction. The CAO Geological Hazardous Areas Development Regulations (15.10.160 (2) (limitations) requires a minimum 25 foot setback from a defined geo-hazard area provides some additional protection for the marine bluffs. This setback coupled with site specific engineering analysis requirements provides a base level of protection for the rare residential lot that is both in shoreline jurisdiction and in a defined geological hazard area.

Lake Shoreline String line Setbacks: This issue was debated at both the City Planning Commission and City Council mainly due to a homeowner proposal.

Proposed SMP regulation 15.05.080 Shoreline residential environment.

(5) Shoreline Uses (c) Setbacks
(a) If single-family residential development is proposed on a lot where properties on at least one side of the lot are developed in single-family residences located less than 50 feet from the ordinary high water mark, then the proposed residential development may be located the same distance from the ordinary high water mark as the adjacent residences (using the string line setback method as defined in FWRC 15.05.030), but shall in no case be closer than 30 feet from the ordinary high water mark.

The home owner proposal would have allowed the string line setback to be used to require new houses to be setback greater than 50 feet to maximum 100 feet if an existing structure on either side of a vacant parcel was setback greater than 50 feet.

This proposal was rejected by the City Council and the above regulation is proposed.

Piers and Dock Standards. The City Council approved a major upgrade to both marine and freshwater pier and docks standards. Adopting an SMP with many key dimensional and light transmission elements of the US Army Corps Regional General Permit standards for marine and freshwater piers, docks and walkways. Over time this will help to reduce overwater coverage impacts on the City’s lake and Puget Sound shorelines.

Relevant Citizen Comments from Ecology public comment period:
Dean Paterson, Futurewise

Comment #1 Changes are Needed to the Environment Maps to Protect Remaining Intact Areas

Futurewise reviewed the shoreline environments map and compared it to the development patterns observed using Google Earth. Discrepancies were found between the proposed environment designations and the shoreline environment designation criteria. There are several areas that appear to be completely undeveloped and intact and should be Natural, and several areas that are developed but have intact vegetation and should be Urban Conservancy.

Some of the Futurewise recommended changes are within the city limits, with others in the City's potential annexation area. Many designation changes focus on converting Conservancy shoreline segments to Natural. All the proposed Natural shoreline environment areas are located in public parks. Intact areas designated Conservancy are mainly zoned for medium to low density residential development. City staff balanced characterization information, current land uses and zoning to come up with the proposed shoreline designations. Staff was also concerned about creating significant areas of nonconforming structures.

City Response: *The Shoreline Environment designations were established early on in the SMP development process (2006/2007) and subject to extensive public comment and Department of Ecology review. There were no required changes to our shoreline environment designations in the formal comments provided by the Department of Ecology in early 2009.*

We can appreciate the time and effort Futuewise put into reviewing aerial photography and developing suggested changes. However, city staff and consultants also considered existing land use, existing zoning designations and adjacent land uses. We also refrained from creating "spot zones" based on individual parcel characteristics, and from creating areas of nonconforming development.

Ecology response: Ecology discussed with City staff, Futurewise's concerns with some of the shoreline designations especially concerning the lake shorelines.

Marine Shorelines: Many of Futurewise's proposed changes focused on converting Urban Conservancy shoreline to Natural. While parts of this shoreline are undeveloped it also is platted for medium and low density single family residential development. Application of the natural environment to these areas would create permitting challenges for the city, and city staff felt the natural environment would be too restrictive. Also given that the vast majority of the shoreline in these areas is high bluff; most of the shoreline jurisdiction falls within the defined CAO geological hazard areas, which significantly restricts any development.

Lake Shorelines: Ecology/Federal Way discussions particularly focused on associated wetlands for Steele and North Lakes. Some of these areas are designated Urban Conservancy, while others are designated Residential shoreline. Federal Way staff felt the shoreline environment changes would have little environmental benefit, simply because the city critical areas regulations do not allow development within designated wetland areas. The differences in allowable uses, minimum setbacks, vegetation retention, etc between Shoreline Residential and Urban Conservancy environment simply don't apply in the case of designated wetland areas. The shoreline jurisdiction for these associated lake wetlands also ends at the wetland edge. The buffers are under the jurisdiction of the city-wide critical areas regulations.

Upon further City staff review of the areas affected by designation changes: staff also pointed out that the changes would result in a number of parcels having split shoreline environment designations which could add to further confusion for the affected property owners. Possibly resulting in additional time and effort for city and Ecology staff, to explain the net effect and reasons for these changes, at the end of the SMP adoption process.

Further Ecology review of this issue concluded that that while ecological information for these wetlands warrants more protective designations, the adjacent existing residential development clearly calls for a residential shoreline environment. A parallel designation may have been appropriate. But given City concerns about split designations on a single parcel, and the fact that applying a more protective designation doesn't translate into more environmental protection; Ecology staff agrees with the City that a designation change at this late stage in the SMP process is not warranted.

<u>Comment #2: Proposed Setbacks are Inadequate to Protect Remaining Ecological Functions</u>

2B: Urban Conservancy
The proposed setback for Urban Conservancy is 50 feet for residential development (the most common development), and 30% of this area can be cleared and developed with yard features. This is the equivalent of a 35 foot setback. The proposed segments of Urban Conservancy usually have approximately 100 feet of intact vegetation. The areas we recommend for Urban Conservancy have similar vegetation characteristics or have rural character with large setbacks and partial vegetation. Under the proposed setbacks, these areas with 100 feet of intact vegetation would lose 65% of their area even though they can accommodate a 100 foot setback that more closely matches the scientific literature. Furthermore, no set percent should be allowed to degrade the buffer other than what is needed for water dependent facilities and access to the water. *See attachment B for required change to 15.05.080 (3) (e)*

If Urban Conservancy environment setback is not changed, the loss of functioning area outside the 50 foot setback needs to be accounted for in the Cumulative Impacts Analysis and mitigated in the Restoration Plan, which will be very difficult or impossible to do

2C: Shoreline Residential

The segments that are designated Shoreline Residential have a 50 foot setback, and 50% of this area can be cleared and developed with yard features. The 50 foot setback appears to be a good average for these highly developed areas, and is thus an appropriate setback. However, the allowance to clear and develop 50% of the setback area results in the equivalent of a 25 foot setback, which is inappropriate. Development in the setback area should be limited to water dependant facilities and access to the water. If Shoreline Residential environment setback is not changed, the impacts of the allowed 50% development area in the setback needs to be accounted for and mitigated in the Cumulative Impacts Analysis and mitigated in the Restoration Plan. *See attachment B for required change to 15.05.090 (3) (e)*

City Response to 2B &2C: City considered existing development patterns and zoning and feels that the proposed setbacks are appropriate for an urbanized area with predominately single family residential development.

Ecology response: In further review of the vegetation conservation standards (15.05.080 (3) & 15.05.090 (3) and the cumulative impacts analysis Ecology determined that the vegetation clearance allowance will make it difficult for the City to achieve no net loss of ecological functions on these shorelines in both the residential and urban conservancy environments.

The Ecology approved City of Des Moines SMP has the following vegetation conservation clearance allowances; *"No more than 15% of the area with native vegetation shall be cleared within the vegetation conservation area "*. This applies to all their residential shorelines. Required SMP changes are proposed for the residential and urban conservancy environments for allowed vegetation clearance and tree retention.

Comment 4: Additional Concerns Regarding Critical Area Protections

4C Under Section 15.10.250, wetlands under 2500 sq. ft. are not regulated or protected. Such exclusions must be eliminated from the SMP standards to ensure no net loss of shoreline resources as the SMP Guidelines require. In addition, wetlands are only rated into 3 categories using a non-scientific methodology that uses the primary criterion of size. We recommend using the Dept. of Ecology four category wetland rating system.[1] This system has the advantage of incorporating the current science on wetlands, which the SMA requires, and most wetland consultants and scientists are familiar with the system, potentially reducing costs for applicants and the city.

4D: The wetland buffer widths in Section 15.10.250 do not match the current scientific literature standards for protecting ecological functions. The proposed SMP wetland buffers are: 200 feet for Category 1; 100 feet for Category 2; and 50 feet for Category 3. The Ecology recommendations based on science are to use 4 categories, with buffers of 300 feet for Category I wetlands, 300 feet for Category II wetlands, 150 feet for Category III wetlands, and 50 feet for Category IV wetlands.[2] Thus the proposed wetland setbacks

are substantially lower than those recommended by science. We recommend adoption of one of the wetland buffer alternatives recommended by the Department of Ecology

4E: Sections 15.10.260 (modifications of wetlands), 15.10.270(2) (wetland buffer averaging), 15.10.270(4) (minor improvements in buffers), 15.10.270(5) (wetlands buffer reductions), and 15.10.270(6) (wetlands buffer modification) all allow intrusions into the buffer. Like stream buffers, as discussed above, these sections include criteria that do not use the concept of mitigation sequencing. Instead they allow intrusions for any purpose, as long as impacts are mitigated. A criterion is needed in all of these sections that states: "*Alternatives that avoid and minimize the need for a wetland or buffer location are not feasible.*" Using the word "feasible" (which is defined) ensures some actual need will be demonstrated before approval.

City Response: Critical areas protection was discussed at length with Department of Ecology staff. The critical areas regulations that were incorporated into the SMP provide the same protection as *the critical areas regulations that apply throughout the city. At such time as the city updates its critical areas regulations (will occur as part of 2014 comprehensive plan update) it will consider the BMPs that are established at that time and update the SMP to make sure appropriate BMP's are also established for the Shoreline Environment*

Ecology Response: City Staff explained to Ecology that shoreline wetland buffers are mainly in a degraded condition and that additional protection such as larger buffers would not result in measurable protection improvements. Staff also indicated that the amount of wetlands within shoreline jurisdiction was not significant to justify major changes to wetland buffer standards within the SMP. Additional Ecology analysis and City information on the wetlands associated with City lake shorelines indicate that while the wetlands are considered high quality (category one), they tend to be associated wetlands, where shoreline jurisdiction only extends to the edge of each wetland. The wetland buffers in these cases would fall under Federal Way's non-SMP CAO. So any changes to SMP CAO wetland buffer standards would not apply to the buffers for these category one wetlands. The SMP cumulative impacts analysis did not provide an in depth analysis of this issue, perhaps because of the above status of these wetland buffers.

Given the above information Ecology recommends the following required change in response to Futurewise comment 4E:

Article II. 15.05.040 General Development Standards

> Add the following as item (ii) to 15.05.040 (4)(a) Critical Areas:
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> When 15.10.270 (*Structures, improvements, and clearing and grading within regulated wetland buffers*), subsections (5) *Wetland Buffer Reduction* and (6) *Modification* are utilized for a project proposal, a shoreline variance permit is required if the overall proposed buffer width reduction exceeds 25 percent.

This change is recommended to insure consistency with other SMP/CAO buffer reductions that have been negotiated and approved within other local SMP's. The 25

percent reduction threshold reflects the critical areas best available science that indicates a significant loss in buffer ecological function for reductions that exceed 25 percent.

Comment #6: Special Treatment for Restoration Needs to Exclude Non-restoration Facilities. Section 15.05.040(8) needs to address a common problem for restoration projects. Projects sometimes include non-restoration elements that actually degrade or eliminate ecological functions. Such project elements should not receive the same special treatment as true restoration projects. We recommend adding a new subsection (d): *"When a restoration project includes non-restoration elements, such as docks, shoreline stabilization structures, etc., the non-restoration elements shall be reviewed separately from the remainder of the restoration project."*

City Response: City wants to have policies that encourage restoration and not discourage it. Elements of any restoration project that do not contribute to the restoration will be evaluated as part of the cumulative impact of the overall project.

Ecology Response: Federal Way staff recognizes the importance of shoreline restoration. They have prepared a complete restoration plan that will help improve their shorelines over the long term. Ecology trusts that city staff will apply applicable SMP standards to all projects.

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

All Ecology draft SMP comments have been addressed. The State public comment process brought out additional issues of concern that are worth consideration as required or recommended changes.

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CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the City of Federal Way's SMP proposal including the required changes identified in attachment B, are 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, 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).

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 Federal Way's existing critical areas ordinance and achieves no net loss of shoreline ecological functions.

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

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

Ecology concludes that the City of Federal Way'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 the City of Federal Way 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 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 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 amendment is consistent with the policy of the Shoreline Management Act, the applicable guidelines and implementing rules. Ecology approval of the proposed amendments is effective 14 days after Ecology's final action approving the SMP Update.