

**ATTACHMENT A: FINDINGS AND CONCLUSIONS
FOR PROPOSED AMENDMENTS TO THE SNOHOMISH COUNTY
SHORELINE MASTER PROGRAM UPDATE**

SMP Submittal Accepted: February 2, 2011, Resolution No. 10-058
Prepared by David Pater, on January 13, 2012

Brief Description of Proposed Amendments:

Snohomish County is proposing a comprehensive update of its entire shoreline master program (SMP). The SMP update replaces the County's 1993 shoreline master program. Snohomish County's shoreline consists of approximately 33 miles of marine shoreline, 910 Miles of freshwater lake shoreline, and 1132 miles of river and stream shoreline. The SMP update also includes designated floodplains which greatly expands shoreline jurisdiction in the Snohomish and Stillaguamish river valleys. The existing SMP also includes floodplains.

SMP Goals, policies and shoreline environments will become an element of the comprehensive plan. The SMP regulations will become a separate section in the County development code. The critical area regulations are incorporated directly in the SMP as another code section. County critical areas regulations apply to all marine and freshwater shorelines.

This SMP update is needed to address land use changes that have occurred along the County's shorelines over the past 40 years, and bring the SMP current with the environmental protection and land use management policies and practices provided by the County's 2007 Critical Areas Ordinance (CAO), Comprehensive Plan elements, and the 2003 SMP Guidelines (WAC 173-26). This update also brings the County into compliance with RCW 90.58.080 (Time Tables for Local Governments to Develop and Amend Master Programs).

FINDINGS OF FACT

Need for Amendment: The proposed amendment is needed to update the shoreline master program (SMP) environment designations, policies and regulations. Snohomish County's current SMP has been implemented since 1993. This SMP update is needed to update shoreline policies and regulations which reflect the current level of environmental protection and land use management provided by county 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 March 2004. The Shoreline Advisory Committee (SAC) assisted with developing the SMP, meeting 21 times from September 2004 to February 2006. SAC held two public open houses in May 2005. The record shows that two SMP workshops open to the public were held on May 17 & 18, 2006,. Five Planning Commission meetings were held from November 30, 2004 to July 25, 2011. Two SMP public hearings before the County Planning Commission on July 25, 2006 and February 23, 2010. Five County Council Land Use Planning Committee meetings, September 12, 2006, September 9, 2008, January 26, 2010 July 10 & 27, 2010 and three County Council public hearings/meetings September 1, & 22, 2010, and October 13, 2010. Affidavits of publication provided by the County indicate notices of the hearings were published.

The Snohomish County Council considered 32 SMP amendments during the local adoption process. 24 of these amendments were approved and incorporated into the SMP update upon local adoption October 13, 2010. Some Ecology draft SMP comments were incorporated into the amendments.

With passage of Ordinance No. 10-058, on October 13, 2010, the Snohomish County Council adopted the 2010 SMP Update and authorized staff to forward the proposed SMP update to Ecology for approval.

Ecology finds that the City satisfied the minimum SMP-Guideline standards related to public process (WAC 173-26-201 (3) b) and submittal (WAC 173-26-110) of the SMP to the Department for review and approval.

Department of Ecology Public Review: The proposed SMP amendments were received by Ecology for state review on December 28, 2010, and verified as complete on February 2, 2011. Notice of the State comment period was distributed to state task force members and interested parties identified by Snohomish County on March 8, 2010, in compliance with the requirements of WAC 173-26-120, and as follows: The state comment period began on May 3, 2011 and continued through June 3, 2011. A public hearing was conducted in Everett on May 12, 2011. Notification of the State comment period and Public Hearing was provided in the April 27, 2011 edition of the Everett Herald newspaper, Snohomish County's official newspaper of record. A total of 156 comments were submitted by eleven organizations and eight individual citizens on the proposed SMP. Ecology sent all comments it received to the County on June 17, 2011. On September 2, 2011 Snohomish County submitted to Ecology its responses to issues raised during the state comment period. A number of required and recommended changes resulted from comments received during Ecology's public comment period. These changes are outlined in attachment B.

Current Shoreline Conditions (1)

Marine: County marine shorelines consist of the Snohomish and Stillaguamish estuaries, shoreline bluffs and a few lower bank shoreline areas. Habitat consists of mainly estuarine and bluff environments which provide habitat functions for a variety of terrestrial and aquatic species. The majority of existing uses consist of single family residential development with agricultural, industry and undeveloped areas to a lesser extent. The large river estuaries are particularly important habitat for migrating salmon. Un-armored eroding bluffs also contribute to near shore geomorphic processes and provide habitat value. Some ecological functions such as sediment process, habitat and large woody debris have been significantly altered by shoreline armoring such as the BNSF railroad in southern Snohomish County. Residential armoring on Hat Island and north of the Snohomish River estuary has also impacted shoreline functions. Clearing of shoreline vegetation for residential development has also impacted habitat functions.

Lakes: Snohomish county lakes are predominately glacial in origin. Lake size varies widely from Lake Stevens (1021 acres) to smaller lakes barely larger than the SMA minimum of 20 acres. Many lakes have associated wetlands which can significantly expand jurisdiction for small lakes. Single family residential development makes up the majority of existing uses. Agriculture, recreation and undeveloped shorelines characterize the remainder of county lakeshores. Clearing of lakeshore riparian areas for residential development has significantly impacted near shore habitat and degraded water quality on the more developed lakes (Goodwin, Roesiger). Overwater structures in more developed lakes have also had significant aquatic impacts.

Snohomish River Basin: The largest and most developed river basin in the County. The entire Snohomish and Pilchuck Rivers are located within the County. The majority of the Skykomish River and a portion of the lower Snoqualmie are also within the basin. Shoreline uses consist of forestry in the upper river basin and residential development and agriculture in the floodplains and lower basins with Industrial development near Everett. The

lower and middle parts of the basin have been significantly impacted by urban/ residential development and agriculture. Channelization and diking have significantly affected ecological functions in the estuary and lower floodplain. Recent and future estuarine restoration efforts are providing habitat improvements for migrating salmon and terrestrial species. Clearing of riparian areas has impacted shoreline habitat water quality and large woody debris recruitment.

Stillaguamish River Basin: The 700 square mile river basin consists of the north, south and main stem of the Stillaguamish River. A large floodplain and estuary makes up the lower part of the watershed. The estuary is particularly important to migration salmon. Agriculture is the predominant land use in the lower watershed, while forestry dominates uses in the upper watershed. Smaller areas of rural residential are also present, more so in the middle and lower basin. Ecological functions have been significantly altered in the basin from forestry and agriculture activities. Hydrology, water quality, upland riparian habitat and large woody debris recruitment have been particularly degraded. Diking and channelization in the lower floodplain and estuary have impacted salmon habitat and terrestrial wildlife habitat.

Cedar Sammamish Basin: A small section of this basin is located within Snohomish County, consisting of portions of North, Swamp and Little Bear Creeks. Residential development has significantly impacted riparian areas on these creeks, as in much of southwest Snohomish County.

Skagit Basin: A small portion of the Skagit river basin is located in the County. This consists of three miles of marine shoreline on Skagit Bay, and upper reaches of the Sauk and Suiattle Rivers. Ecological functions and impacts are similar to the Stillaguamish basin. Although a good portion of the Suiattle River is located in protected wilderness.

(1) Snohomish County, Summary of Shoreline Ecological Functions and Conditions in Snohomish County February 2006.

Shoreline Environment Designation (2):

Assignments of Environment Designation are a fundamental aspect of the SMP update. Every stretch of shoreline has characteristics that can be recognized in common with similar areas informing to what degree natural characteristics have been altered over time. An SMP update must factor in how lands have been used historically including a general distinction between presently developed areas compared to relatively undisturbed shoreline areas. SMP-Guideline criteria provided in WAC 173-26-211 typically serve as the primary determinants of how shoreline environment designation assignments are made, along with reference to zoning and other regulatory overlays.

SMP changes include more site and use-specific policies and regulations for this broader extent of shorelines that are based on the County's inventory of conditions and demonstration of the potential to achieve no net loss of ecological functions as provided in their Cumulative Impacts Analysis. The existing SMP has five designations: Urban, suburban, rural, conservancy and natural. In contrast, the updated SMP regulates activities and development along County shorelines using the following seven (7) designations. Percentage of upland shoreline follows each designation. Snohomish County comprehensive plan zoning also was a key factor in determining shoreline designations. Natural and Urban Conservancy designated shorelines were separated out from the other three designations based in large part on the higher quality of existing ecological functions.

- 1) Urban Conservancy .6% - Consist of shorelines located within designated urban growth areas that have been identified as having higher quality ecological functions, than more developed urban

growth area shorelines. More intensive use & modifications are prohibited while others are classified as conditional uses.

- 2) Urban 1.5%- Developed shorelines in urban growth areas designated for higher density uses make up shorelines in this environment. Shoreline ecological functions are typically already impacted in these areas. The majority of uses and modifications are allowed to some extent in this environment. Future development will typically be infill of remaining lots and redevelopment.
- 3) Natural (6.3%) –This shoreline environment objective is to protect and improve, wherever possible, the ecological functions. Areas designated are relatively ecologically intact with minimally degraded ecological functions. In Snohomish County proposed uses include conservation, passive recreation and parks. Development is significantly restricted compared to other environments, pier and docks are prohibited and residential development is limited to Single family only under a conditional use permit. 70% of the proposed natural designated shorelines are located on public land.
- 4) Resource (69%) – The majority of the comprehensive plan resource zoned areas and county shorelines fall under this designation. The intent of the Resource environment is to recognize the continuation and planning for the areas two predominant shoreline uses; agriculture and forestry, while implementing standards to minimize further ecological degradation. . Snohomish County includes entire floodplains within shoreline jurisdiction. This greatly contributes to the resource environment being the predominant shoreline classification under the SMP update. A majority of uses and modifications are permitted with more intensive uses classified as conditional uses.
- 5) Rural Conservancy (19.5%) – This environment allows low intensity development while maintaining existing ecological functions. The majority of uses are allowed but with certain restrictions. Existing rural residential areas are included in this environment. Future residential subdivisions are required to cluster development and retain shoreline areas in undeveloped open space. SMP integrated CAO buffers of 150 feet are required for most new development. Commercial uses are allowed in comprehensive plan designated areas.
- 6) Municipal Watershed Utility (3.2%) – The utility environment is meant to protect public water supply, flood control and power generation. The designation only applies to Spada Lake. Activities are restricted to infrastructure needed to maintain the PUD’s water supply reservoir and to limited recreation as a secondary use.
- 7) Aquatic – The aquatic environment is intended to protect shoreline ecological functions and manage activities water ward of the ordinary high water mark. The proposed SMP limits allowed uses to water dependent portions of allowed adjacent upland shoreline uses. Although aquaculture activities are allowed under certain parameters. Activities in designated critical saltwater and freshwater habitat are restricted. Many uses and modifications require a conditional use permit.

(2) *Snohomish County Shoreline Master Program update (locally adopted October 13, 2010)*

Cumulative Impact Evaluation (3):

Addressing no net loss of ecological functions is a critical element in any SMP update. WAC 173-26-201(2)(c) (Protection of Shoreline Ecological Functions) requires that: “*Master programs shall contain policies and regulations that assure at minimum, no net loss of ecological functions necessary to sustain shoreline natural resources.*” A cumulative impacts analysis documents how an SMP update addresses no net loss of ecological functions.

Upon completion of the final draft SMP in 2010, Snohomish County produced a Cumulative Impact Analysis as part of the SMP supplemental EIS. The analysis intended to assess potential impacts resulting from anticipated future development allowed by the updated SMP.

Snohomish County relies mainly on proposed SMP regulations and the integrated CAO to address future impacts and achieve no net loss of ecological functions over the long term. The CAO standards are based in large part on best available science as defined in GMA and have been reviewed and revised for compliance with SMA and guidelines requirements. Shoreline environment specific regulations and significantly more stringent stabilization and pier/dock standards are key SMP elements. The County also relies on their comprehensive plan non regulatory incentives, intergovernmental coordination, and enforcement in their multi-faceted approach to managing shorelines.

150 Foot Shoreline Buffers: The County has chosen to incorporate into the SMP the CAO 150 foot buffers. (SCC 30.62A). The buffer is a requirement for the majority of shoreline uses and applies to marine and freshwater shorelines. For water dependent uses a minimum 50 foot structural setback is applied where appropriate. CAO vegetation and habitat preservation requirements (SCC 30.62A & 30.62B) also add additional protection for existing intact shoreline buffers. The Snohomish County 2007 CAO is supported in part by critical areas best available science. These standards are a significant upgrade from the current SMP which only had structural setback requirements ranging for 25- 100 feet for each shoreline environment mainly for residential and commercial development. County critical areas regulations apply to all marine and freshwater shorelines.

Floodplains Inclusion within Shoreline Jurisdiction: Another key feature of the County SMP update is the inclusion of the 100 year designated FEMA floodplain within shoreline jurisdiction. The current SMP also includes County floodplains. From a regulatory perspective Snohomish County prefers to maintain this shoreline management continuity. Given that the new SMP update is a significant upgrade from the existing program; it is expected that future degradation of ecological functions will be reduced and avoided in some instances within the 100 year floodplains of the Snohomish and Stillaguamish basins under the new program. Activities such as commercial and residential development and modifications such as filling will be regulated under the new SMP's more stringent standards.

Below is a summary of future shoreline development by shoreline type;

Marine: Future uses along County marine shorelines will be predominately a continuation of residential development. Agricultural activities will also continue in the Stillaguamish estuary and along Skagit Bay. The SMP update does not allow hard shoreline stabilization for protecting new primary structures. Piers and docks are an allowed use but are uncommon on high bluff marine shorelines and marine areas with extensive intertidal zones like Port Susan. Most activities are prohibited in defined critical saltwater habitat.

Rivers & Streams

Agriculture and Forestry will continue to be the predominant uses along undeveloped county rivers and stream and associated floodplains. While the SMP has standards for both these activities; existing agriculture is largely exempt under the SMA and forest practices are mainly regulated under the State Forest Practices Act. New agriculture must comply with SMP standards. The lower river floodplains in the County will continue to be predominately agriculture. Forestry, passive recreation and wilderness preservation on national forest shorelands in the eastern part of the County will continue to be the most prevalent shoreline uses along rivers and stream in eastern Snohomish County.

Urban development will also continue to expand in the floodplains but is limited by flood hazard standards and urban growth areas. Most new residential development is anticipated to occur in the Rural Conservancy environment. Particularly in the SW part of the county along the Snohomish, Skykomish, Sultan, Pilchuck Rivers and larger creeks such as Woods and Swamp. New residential development near rivers and streams will be also limited by SMP prohibition on hard shoreline stabilization for new primary structures. Required 150 foot buffer/ setbacks provide further protection.

Lakes

Single family residential development (SFR) will continue to in fill previously platted lakeside lots, especially on more developed county lakes (Stevens, Roesiger). New SFR development will be subject to 150 buffer setback requirements under the SMP update, which is more restrictive than the current 25 foot setback for more developed lakes. New piers and docks are permitted, but size restrictions, deck grating requirements and construction materials limitations will help reduce impacts to near shore habitat and water quality. Overwater structures are also not allowed in designated critical freshwater habitat. Stabilization restrictions described above and limitations on use of in-water fill to ecological restoration, public access and water dependent uses are significant SMP upgrades for ecological protection. Vegetation conservation requirements will also help preserve existing native vegetation and habitat.

(3) Snohomish County Supplemental Draft Environmental impact Statement of the Proposed Shoreline Master Program, Appendix C, Cumulative Impact Analysis, June 2010.

Shoreline Restoration Plan (4)

Snohomish County prepared an August 2010 shoreline restoration planning element. The plan is a multifaceted approach towards restoring shoreline ecological functions. It has incorporated various present and future key restoration efforts including Water Resource Inventory Areas Salmon Conservation Plans, County capital improvement restoration projects in addition to on-going education and stewardship programs. The plan also describes present and future capital improvements and salmonid habitat projects, timelines, potential funding sources and monitoring programs, in addition to program implementation, which includes prioritizing projects.

Given all the restoration efforts on going and planned across the County; consolidating all these efforts into the shoreline restoration plan was a logical approach to improving ecological functions.

The plan fulfills WAC 173-26- 201 (2) (f) (Restoration Planning) SMP guideline requirements.

(4)Snohomish County, Shoreline Management Program, Restoration Element, August 2010.

Key SMP Required and Recommended Changes Relevant to Decision

Required Change #1: Tracking all Shoreline Exemptions within existing County database system.

This is a critical component for tracking no net loss as outlined in WAC 173-26-191 (2) (a) (iii) (D) (Documentation of Project Review Actions and Changing Conditions in Shoreline Areas), and tracking Cumulative Impacts under WAC 173-26-201.3.d.iii. It's difficult to evaluate updated SMP standards for achieving no net loss of ecological functions unless all shoreline development activities are tracked and

documented. Snohomish County currently tracks development activities mainly through required local permits. If a development activity does not require a local permit then it is not documented within the County tracking system. Presently, the County only tracks shoreline exemptions per WAC 173-27-50 (Letter of exemption- Projects that require review and approval by federal agencies).

This required change only applies to activities listed in WAC 173-27-040 (Developments Exempt from Substantial Development Permit Requirement).

Originally proposed as County Council SMP amendment #16A as Tracking of Exempt Activities. County Council rejected amendment #16A.

Related Public comment #8 (People for Puget Sound), # 31 (Futurewise), #58 (Everett Shoreline Coalition).

Required Change #2: Limiting allowances for Critical Areas Buffer Reductions
(25% buffer reduction threshold)

Add the following Critical Areas Regulation exception to SCC 30.67.060 (2):

When buffer reduction provisions of SCC 30.62A.320 (1) (f) or (g) are utilized for a project proposal, the maximum allowed reduction is 25 percent of the standard buffer width contained in SCC 30.62A.320 (1) (a). Buffer width reductions in excess of 25 percent of the standard buffer width require a shoreline variance permit.

Critical areas best available science shows that significant buffer degradation occurs when buffer reductions exceed 25%. A 2010 decision by the Western Washington Growth Management Hearings Board (*RE Sources v. City of Blaine, Case No. 09-2-0015, Final Decision and Order, March 29, 2010, pg. 18*) established a threshold for buffer width reductions of 25 percent as supported by best available science. Any greater reduction would require a shoreline variance.

Wetland management tools and regulations used by Ecology (and its Federal agency partners) use a risk-based approach to managing wetland buffers (Wetland Mitigation in Washington State). Buffer reductions in excess of 25% reduce the acceptable level of protection to wetlands. For example, a buffer width that provides a moderate risk level of protection, if reduced by more than 25%, shifts the risk to a high level of risk. Ecology considers a high risk approach an inadequate level of protection to wetlands.

Incorporation of this required change is needed to be consistent with SMP Guideline requirements related to Environmental Impact Mitigation (WAC 173-26-201 (2) (e), No Net Loss requirements of WAC 173-26-186 (8)

This maximum buffer reduction threshold has been accepted by other local jurisdictions adopting SMP updates.

Originally proposed as County Council SMP amendment #6. County Council rejected amendment #6.

Required Change #3: Regulating Isolated Wetlands

Add the following Critical Areas Regulation exception to SCC 30.67.060 (2):

The provisions in SCC 30.62A.630 (1) (c) (i) & SCC 30.62B.530 (1) (c) (i) do not apply within shoreline jurisdiction.

The provisions in: *SCC 30.62A.630 (1) (c) (i) (Special Agricultural Activities) (Activity exempt from wetland regulation under section 404 (f) of the federal Clean Water Act) and, SCC 30.62B.530 (1) (c) (i) (Special Agricultural Conditions) (Activity exempt from wetland regulation under section 404 (f) of the federal Clean Water Act)* exempt agricultural activities in wetlands listed in section 404(f) of the Clean Water Act as exempt from wetland regulation.

The Growth Management Act and the Shoreline Management Act both require local governments to designate and protect wetlands using the same definition. Snohomish County has correctly adopted that definition.

However, the SMP update continues to propose to exempt wetlands in agricultural areas if “*the activity is exempt from wetland regulation under Section 404(f) of the federal Clean Water Act.*”. The Growth Management Act does not acknowledge (or allow for) the wetland exemptions in the federal Clean Water Act, namely exemptions for Prior Converted Croplands or hydrologically isolated wetlands. The same is true for the Shoreline Management Act. In 2006 The Central Puget Sound Growth Management Hearings Board ruled against the City of Kent on its efforts to limit the designation of wetlands with a definition different from that in the Growth Management Act. This exemption fails to accurately designate wetlands under RCW 70A.170, does not protect wetlands as required by RCW 36.70A.172 (1) and the SMA and SMP guidelines, and is not guided by the goals of RCW 36.70A.020 (9) and (10).

The Growth Management Act, RCW 36.70A.030 (21), requires local governments to protect all wetlands that meet the definition of biological wetlands consistent with the best available science. This includes wetlands that are Prior Converted Croplands (PCCs). These wetlands provide important hydrologic functions and may provide important habitat functions. There is no scientific basis for excluding them from regulation. Wetlands that are designated as PCCs by the Corps of Engineers should be rated according to the wetland rating system and protected accordingly. The County has not documented a justification for not properly designating and protecting these wetlands.

Ecology recognizes the continued agricultural use of farmed wetlands. These areas are however still recognized as wetlands under the State Shoreline Management Act. While existing agriculture is exempt under the SMA; new agricultural activities are regulated under local SMP's and the SMA.

Originally proposed as County Council SMP amendment #9. County Council rejected amendment #9.

Required Change #4: Modify Boat House regulations SCC 30.67.515 (1) Boathouses private noncommercial.

Proposed standards don't meet no net loss of ecological functions WAC 173-26-186 (8). Shoreline aesthetics and views are also common issues addressed in shoreline management, WAC 173-26- 241 (3) (c)(iii) & (vii).

Most SMP updates are prohibiting boathouses. The proposed King County SMP update does not permit any covered moorage structures, including boathouses. Lakes Stevens proposed SMP update only allows temporary boatlift canopies. WA State DFW has permitted boathouses with translucent canopies, skylights and no sidewalls on Hydraulic Project Approval permits.

Proposed changes do not prohibit all boathouses; but provides dimensional and mitigation standards that will help minimize overwater coverage while still allowing modest sized covered moorage. They are also more in line with recent WDFW approved covered moorage standards.

Public Comment #20 (Futurewise): Boathouse size and placement.

Required change #8: Require four foot pier/dock width standard for first 30 feet from the ordinary high water mark of any lake identified as salmonid habitat. SCC 30.67.515 (k) & (F) (II), (Pier and Dock Requirements for Lake Shorelines).

US Army Corps of Engineers (ACOE) Regional General Permit-3 (Pier and Dock standards for Lake Washington and Sammamish) limit pier and dock walkway width to 4 feet. Both lakes have significant salmonid habitat. King County has a similar four foot requirement for all lakes.

Ecology finds that the ACOE RGP 3/2010 Programmatic Pier/Dock standards provide development standards based on scientific and technical information consistent with WAC 173-26-201 (2) (a). These standards have been evaluated by the ACOE, NOAA's National Marine Fisheries Service, the U.S. Fish and Wildlife Services, Washington Department of Fish & Wildlife and the Muckleshoot Indian Tribe through a formal Biological Evaluation (ACOE, 2010), and are shown to minimize ecological impacts consistent with ESA consultation requirements and the SMP-Guidelines at WAC 173-26-201 (2) (e).

Incorporation of this standard is needed to be consistent with SMP Guideline requirements related to Environmental Impact Mitigation (WAC 173-26-201 (2) (e), No Net Loss requirements of WAC 173-26-186 (8) and Shoreline Modification (General Principles) 173-26-231 (2) and specific provisions for Piers and Docks in WAC 173-26-231 (3) (b).

Required Change #10: Manure lagoon setback for new agricultural activities SCC 30.67.505 (1) (b) (iii)

Manure lagoons are not water dependent or water oriented uses. The proposed 30 foot setback would impact shoreline ecological functions and is inconsistent with no net loss of ecological functions requirements of WAC 173-26-186 (8). A 150 setback would help reduce future shoreline impacts and is also consistent with SMP/CAO buffers/setbacks in SMP sec. 3.2.3.3 (Bulk Regulations) and SCC 30.62A (Wetlands and Fish & Wildlife Habitat Conservation Areas). SCC 30.62A has been incorporated into the SMP update. This provision would only apply to new agricultural manure lagoons.

Aquaculture: WAC 173-26 was updated in March 2011 mainly to address Geoduck aquaculture operations and associated impacts. The County SMP was locally adopted on October 13, 2010 before these new code provisions took effect. Ecology staff however, found some inconsistencies in the proposed SMP standards especially relating to use of terminology such as facilities, activities and harvesting. Required changes # 13-18 are necessary to clarify regulatory intent related to aquaculture. Both the required changes and recommended changes # 4-10 are needed to clarify aquaculture terminology and to make the SMP aquaculture standards internally consistent with other key SMP provisions and related SMP Guidelines elements such as WAC 173-26-221(2)(c)(iii)(A)(Critical Saltwater Habitats- Applicability).

Summary of Other Key Issues Raised During The Public Review Process:

Public Comment #75 Tulalip Tribes: The Snohomish County proposed SMP update fails to acknowledge the Tulalip Indian Reservation and Tulalip Tribal Government. This does not reflect the cooperative government to government relationship established in the 1998 MOU. See recommended additions on Page 3 of the June 1, 2011 SMP comment letter.

Snohomish County Response: The County has been and currently is working with the tribes to update the MOU and resolve issues related to salmon habitat restoration and preserving agricultural lands.

With the exception of the issue over tidelands in the tribes' recommendation #2 (see further discussion below), adding the proposed language in recommendations #1, 2 and 3 is supported by the county.

In addition, the County will identify the Tulalip Indian Reservation on the shoreline maps.

Ecology Response: Ecology supports the County approach for identifying the Tulalip Tribes shoreline ownership issues, and addressing recommendations concerning tribal recognition on page 3 of the June 1, 2011 Tulalip Tribe SMP comment letter. Ecology recommended change number #1 directly acknowledges the recognition of tribal trust land and tidelands adjacent to the Tulalip Reservation on applicable SMP Shoreline environment designation maps.

Public Comment #76 Tulalip Tribes: SMP is deficient in erroneously designating Tulalip Reservation Tidelands. Comment letter, Page 3-4.

Snohomish County Response: Based on county parcel and ownership data, including parcel legal descriptions that extend out over the tidelands, the County SMP maps accurately portray jurisdictional authority over tidelands on the Tulalip Indian Reservations for purposes of compliance with the SMA.

Resolution of the accuracy of the current parcel legal descriptions is an issue between the landowners and the tribes and is outside of the scope of the SMA and this SMP update. The county's SMP and shoreline maps will be updated as necessary once the ownership dispute between the tribes and the landowners has been resolved.

Public Comment #77 Tulalip Tribes: Tulalip Reservation tideland ownership adjacent to nontribal member fee lots needs to be recognized within SMP. Page 3-5.

Snohomish County Response: Tidelands within the boundaries of the Tulalip Indian Reservation and lying outside of parcel legal descriptions for non-tribal properties are under tribal jurisdiction. The county will review the maps and parcel data to ensure accurate depiction of tideland jurisdiction and add the disclaimer requested under comment # 82.

Ecology Response to comments #76 & 77: Disputed ownership of tidelands adjacent to the reservation has been a long standing issue, between the Tulalip Tribes and some nontribal landowners who own reservation in-holdings shoreline property. In their June 1, 2011 comment letter, the Tulalip Tribe references the 1855 treaty of Point Elliot reserving Tulalip Bay as part of the reservation. SMP's are land use regulatory programs that have not played roles in resolving property disputes at the Federal, State or local level. Ecology agrees with Snohomish County that resolving this issue is outside the scope of the SMP update. Any future legal resolution of tideland ownership issues should be acknowledged with appropriate changes to SMP shoreline environment designation maps and within SMP regulation SCC 30.67.220 (Shoreline Environment Designation Maps). County review of existing maps and parcel data for shoreline map accuracy is appropriate.

Floodplain Protection:

A number of public comments from Citizens for Sustainable Development were provided on floodplain protection. Issues include inadequacy of SMP to restrict development in frequently flooded areas; Inadequate county flood code; Need for more stringent restrictions on floodplain development. There also were concerns with use of floodway information. Other floodplain comments concerns the classification of past flood frequency, which is not within the scope of the SMP update.

Snohomish County flood hazard code is compliant with applicable Federal FEMA requirements. Ecology also reviewed the applicable sections of the SMP for consistency with WAC 173-26-221 (3) (Flood Hazard Reduction) and found applicable SMP standards and integrated flood Hazard code to be consistent. The County has incorporated the State SMA floodway definition in the SMP, and applies Density Fringe floodplain zoning to floodplains in the lower river valleys which restricts development. While flood hazard code is an element of any SMP with significant floodplains; local flood hazard code is usually either separate development code, or part of the critical areas code. Snohomish County's flood hazard code is SCC 30.65. The code has been directly incorporated as part of the draft SMP (SCC 30.67.060)

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 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 County completed SMP Submittal Checklist,

Consistency with SEPA Requirements: The County issued a Determination of Significance (DS) and scoping notice on July 13, 2005; a draft environmental impact statement on May 1, 2006, with a 30 day comment period ending May 30, 2006 a final environmental impact statement responding to written comments was issued on June 28, 2006. A draft supplement EIS was issued on June 21, 2010, with a 30 day comment period ending on July 23, 2010. A final supplement EIS was issued on August 25, 2010.

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 SMP amendment:

These supporting documents include:

- *2004 Public Participation Plan*
- *February 2006 Shoreline Inventory & Analysis Report*
- *June 2010 Cumulative Impacts Analysis Report*
- *August 2010 Shoreline Restoration Plan*

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that Snohomish County's SMP proposal including the required changes identified in attachment B, and recommended changes in attachment C 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 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 Snohomish County'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 Snohomish County has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

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

Ecology concludes that Snohomish 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 Snohomish County 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 County'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. This would apply to marine shorelines outside of the Snohomish and Stillaguamish estuaries and streams and lakes outside of the FEMA designated 100 year floodplain. All critical area buffers located within designated floodplains are considered within shoreline jurisdiction.

DECISION AND EFFECTIVE DATE

Based on the above, Ecology has determined the proposed Snohomish County comprehensive SMP update, with incorporation of the changes identified in Attachments B and C are consistent with the policy of the Shoreline Management Act, and the applicable guidelines and implementing rules. Ecology approval of the proposed amendment is effective 14 days after Ecology's final action approving the SMP update.