ATTACHMENT A: FINDINGS AND CONCLUSIONS
FOR PROPOSED PERIODIC REVIEW OF BUCKLEY
SHORELINE MASTER PROGRAM

SMP Submittal accepted August 16, 2019 Ordinance No. 15-19
Prepared by Department of Ecology on October 1, 2019

Brief Description of Proposed Amendment
The City of Buckley (City) has submitted Shoreline Master Program (SMP) amendments to Ecology for approval to comply with periodic review requirements.

FINDINGS OF FACT

Need for amendment
The proposed amendments are needed to comply with the statutory deadline for a periodic review of the City Shoreline Master Program pursuant to RCW 90.58.080(4). The City prepared a checklist that documents proposed revisions. The amendment brings the SMP into compliance with requirements of the Shoreline Management Act (Act) or state rules that have been added or changed since the last SMP amendment, ensures the SMP remains consistent with amended comprehensive plans and regulations, and incorporates revisions deemed necessary to reflect changed circumstances, new information, or improved data.

SMP provisions to be changed by the amendment as proposed
As part of this periodic review cycle, the City is proposing several changes extraneous to the regulatory content of the SMP including reformatting and numbering, fixing typographical errors, updating the table of contents, removing redundancies, reorganizing and general cleanup to resolve internal inconsistencies and language ambiguities and increase the user-friendliness of the document.

Other general changes throughout the document remove references to city code and quoted excerpts from Washington Administrative Code, add language clarifying the need for qualified professionals to draft reports and a requirement that reports document how a proposal ensures no net loss of ecological function.

In addition to the numerous changes identified above proposed changes are summarized by chapter:

Chapter 1 Introduction: Revisions include numerous edits for clarity and a correction in Section 1.10 to the language establishing the SMP effective date.

Chapter 2 Definitions: Revisions include language adopting definitions by reference from RCW 90.58; WAC 173-18, 173-20, 173-22, 173-26, and 173-27. Definitions are also added, deleted or modified as described below:

The following definitions were added: Parking; Utilities, Accessory.
The following definitions were deleted: Document of record; Priority habitat; Priority species; Provisions; Residential Development; and Transmit.

The following definitions were modified: Development; Flood; Forest practices; Master program; Mitigation sequencing; Nonconformities; Permit; Shorelands; Shorelines of statewide significance; and Substantial development.

Chapter 3 SMP Goals: Revisions include the addition of 3.4.E referencing relief provisions allowed under WAC 173-27-215 when a restoration project causes a landward shift in the location of the ordinary high water mark and the consideration of takings law when implementing public access requirements.

Chapter 4 Shoreline Jurisdiction and Environment Designations: Revisions include additional language in Section 4.1 clarifying the city’s intent to limit shoreline jurisdiction to the minimum allowed by law and new language in 4.4.3 to ensure no net loss of ecological function.

Chapter 5 General Policies and Regulations: Revisions proposed include numerous edits for clarity, new language acknowledging takings and due process considerations when requiring public access, reference to the relief provisions from SMP standards in WAC 173-27-215 when properties are impacted by a shift in shoreline jurisdiction resulting from restoration projects, and a requirement that all reports demonstrate that proposals will ensure no net loss of ecological function.

Chapter 6 Shoreline Uses and Modifications: Revisions include numerous edits for clarity, new language in Section 6.11 clarifying that timber cutting is not “development,” new language addressing telecommunication facilities to Table 6-1 and Section 6.22 Utilities, and an allowance for utilities to exceed the height limitations under certain circumstances.

Chapter 7 Administrative and Non-Conforming Development revisions include revising the chapter title, updating the city decision maker from the Board of Adjustment to the hearing examiner, adding language addressing special procedures for Washington State Department of Transportation projects, revising Section 7.2.2 to update exemptions and add exceptions and exclusions to the requirement for a shoreline substantial development permit and local review, and revising and renaming Section 7.3 to Nonconformities to more fully address the range of nonconforming uses and development. Minor revisions to the enforcement section cite to WAC 173-27 and RCW 90.58.

Appendix B Shoreline Critical Area Regulations revisions include corrections to the table of contents, formatting and citations. The following summarizes substantive changes proposed in Appendix B: Revisions and updates to critical area maps and map location, revisions to the wetland provisions to incorporate Ecology’s recent updates to the wetland rating system and the addition of definitions to the frequently flooded areas section and updating the reference to the Flood Insurance Study.
Amendment History, Review Process
The City prepared a public participation program in accordance with WAC 173-26-090(3)(a) to inform, involve and encourage participation of interested persons and private entities, tribes, and applicable agencies having interests and responsibilities relating to shorelines. As part of the implementation of the public participation plan the city held on open house January 28, 2019 to gather early feedback on the scope of the amendment. The city also posted documents related to the periodic review using the city website to keep interested persons abreast of newly drafted materials related to the periodic review amendment.

The City used Ecology’s checklist of legislative and rule amendments to review amendments to Chapter 90.58 RCW and department guidelines that have occurred since the master program was last amended, and determine if local amendments were needed to maintain compliance in accordance with WAC 173-26-090(3)(b)(i).

The City reviewed changes to the comprehensive plan and development regulations to determine if the shoreline master program policies and regulations remain consistent with them in accordance with WAC 173-26-090(3)(b)(ii).

The City considered whether to incorporate any amendments needed to reflect changed circumstances, new information or improved data in accordance with WAC 173-26-090(3)(b)(iii).

The City consulted with Ecology and solicited comments throughout the review process.

The City held a joint local/state comment period on the proposed amendment following procedures outlined in WAC 173-26-104. The comment period began on February 13, 2019 and continued through March 18, 2019. A public hearing before the Planning Commission and Ecology was held on March 18, 2019.

The City provided notice to local parties, including a statement that the hearings were intended to address the periodic review in accordance with WAC 173-26-090(3)(c)(ii). The City published notice of the hearing on February 13, 2019 in the Enumclaw Courier Herald Newspaper.

Ecology distributed notice of the joint comment period to state interested parties and affected Indian tribes on February 5, 2019.

Three organizations submitted comments on the proposed amendments. The City submitted to Ecology its responses to issues raised during the comment period on April 4, 2019. Changes were made in response to comments, as follows:

Appendix B.6.2.D.2: Reference to “Local Native American Indian tribe” was replaced with “affected Indian tribe”.

Appendix B.1.2.B, Additions of locations of originals, full-sized maps, or website addresses or programs are listed as sources for the maps contained in Appendix B.
Appendix B.1.18.B: An exception for utility work in easements was added to the noticing requirements.

The proposed SMP amendment was received by Ecology for initial state review and verified as complete on May 1, 2019.

Ecology prepared an initial determination that the amendment is consistent with the policy of the SMA and applicable guidelines if the City made required changes. A written statement of initial concurrence was sent to the City on July 11, 2019. In response to the initial determination, the city agreed to all of the changes identified in the concurrence; however, only one of the changes was incorporated into the SMP amendment when the City adopted their ordinance.

With passage of Ordinance #15-19, on July 23, 2019, the City authorized staff to forward the proposed amendments to Ecology for final approval.

The proposed SMP amendment was received by Ecology for state review and verified as complete on August 15, 2019.

**Consistency with Chapter 90.58 RCW**
The proposed amendment has been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4) and (5). The City 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 includes review for compliance with the SMP amendment criteria found in WAC 173-26-201(1)(c) along with review of the SMP Periodic Review Checklist completed by the City.

**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 (DNS) for the proposed SMP amendments. Ecology did not comment on the DNS.

**Other Studies or Analyses supporting the SMP amendment**
Ecology also reviewed supporting documents prepared for the City in support of the SMP amendment. These documents include a public participation plan and a periodic review checklist.

**Summary of Issues Identified by Ecology as Relevant to Its Decision**
Ecology is required to review all SMPs to ensure consistency with the Shoreline Management Act (SMA) and implementing rules including WAC 173-26, State Master Program Approval/Amendment Procedures and Master Program Guidelines. WAC 173-26-186(11)
specifies that Ecology “shall insure that the state’s interest in shorelines is protected, including compliance with the policy and provisions of RCW 90.58.020.”

Based on review of the proposed amendments to the SMP for consistency with applicable SMP Guidelines requirements and the Shoreline Management Act, and consideration of supporting materials in the record submitted by the City, the following issues remain relevant to Ecology’s decision on the proposed amendments to the City’s SMP, with Findings specific to each issue identifying amendments needed for compliance with the SMA and applicable guidelines:

**Shoreline Jurisdiction**

Ecology has identified a change necessary to the City’s proposed amendment to Buckley SMP 4.1, Shoreline Jurisdiction, for consistency with RCW 90.58.030(2)(d). See Attachment B, Item 1. The proposed revision incorrectly identifies the floodway as optional jurisdiction.

Minimally the City must regulate all SMA waterbodies and the associated shorelands areas, or “lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters…”.

The City currently regulates the minimum SMA jurisdictional area consistent with RCW 90.58.030(2)(d) and is proposing no change to the jurisdictional extent of the Buckley SMP.

**Finding.** Ecology finds that the City of Buckley must regulate shorelines of the state and associated shorelands consistent with RCW 90.58.030(2)(d), which at a minimum, includes the floodway and the adjacent land extending landward two hundred feet therefrom. Ecology finds that the proposed changes to the description of shoreline jurisdiction found in the Buckley SMP 4.1, Shoreline Jurisdiction, is less than the minimum jurisdiction, by incorrectly identifying the floodway as an optional area to regulate under the SMP, making it inconsistent with RCW 90.58.030(2)(d).

Ecology finds that the proposed change should be modified to identify the entire 100-year floodplain as optional jurisdiction consistent with RCW 90.58.030(2)(d)(i).

**Critical Areas**

Ecology has identified a change necessary to the City’s proposed amendment to Buckley SMP 5.2.1, Critical Areas, for consistency with RCW 90.58.030(2)(d)(ii), see Attachment B, Change 2. The proposed revision clarifies that for critical areas and buffers extending outside of shoreline jurisdiction, they will be regulated by the city’s critical areas ordinance, found in the Buckley Municipal Code. Those portions of critical areas and buffers located within SMA jurisdiction shall be regulated by the SMP and the critical areas regulations found in SMP Appendix B.

The statute, RCW 90.58.030(2)(d)(ii), provides the City the option to extend shoreline jurisdiction to land necessary for buffers to protect critical areas so that the entire critical area and associated buffer is subject to the SMP. Buckley did not choose this option, and only regulates the minimum jurisdiction with the SMP and all other critical areas and the associated
buffers with the BMC. Buckley is not proposing any changes to the jurisdictional extent of the SMP.

**Finding.** Ecology finds the City chose the minimum jurisdiction to not include lands necessary to protect critical areas. As a result, only the portion of a critical area located inside of shoreline jurisdiction will be subject to the Buckley SMP, and those portions of the critical area and associated buffer extending beyond shoreline jurisdiction will be regulated by the BMC. Further, Ecology finds the City has chosen to develop two distinct sets of regulatory and procedural requirements for regulating critical areas: Appendix B of the SMP for critical areas in shoreline jurisdiction; and, BMC Chapter 12 for critical areas outside shoreline jurisdiction.

Ecology finds the proposed language excludes critical areas straddling shoreline jurisdiction from the SMP and inaccurately identifies which set of regulations to use in the circumstance that a critical area extends outside of shoreline jurisdiction.

Ecology finds that the proposed change should be modified to correctly identify which set of regulations applies to portions critical areas that straddle the jurisdictional extent of the SMA.

**Environmental Impacts**

Ecology has identified a change necessary to the City’s proposed language in Buckley SMP 5.7.3.E, for consistency with WAC 173-26-201(2)(e)(i), see Attachment A, Change 5. The new language identifies mitigation as part of the report, but does not identify any other component of the mitigation sequence or the sequence itself. To reach no-net-loss of ecological function under SMA, WAC 173-26-201(2)(e)(i) requires that mitigation measures be applied in the following sequence of steps listed in order of priority, starting with avoidance as the first priority, then minimization of adverse impacts, then rectifying and so on. In determining appropriate mitigation, lower priority measures shall be applied only where higher priority measures are determined to be infeasible or inapplicable.

**Finding.** Ecology finds that the proposed language in the Buckley SMP lacks the specificity to meet the requirements of the mitigation sequence for consistency with WAC 173-26-201(2)(e)(i).

Ecology finds that the proposed language should be modified to clearly identify the requirement for demonstrating no-net-loss of ecological function with the mitigation sequence, not just make a conclusion of no-net-loss by proposing mitigation.

**Vegetation Conservation**

Ecology has identified a recommended change to the City’s proposed amendment to the Buckley SMP 5.5.3, Vegetation Conservation, see Attachment B, Changes 3 and 4. The proposed language identifies WAC 173-27-215, which allows local governments to streamline the permitting process for proposals located within areas subject to the SMA resulting from voluntary restoration which created a landward shift in the Ordinary High Water Mark and results in new jurisdictional areas subject to the SMA.

The proposed language may pertain to vegetation conservation, but will most likely impact several other regulations and how they apply to a project that is located in an area that is now in
shoreline jurisdiction and was not prior, due to voluntary restoration efforts. Since the master program contains a section dedicated to restoration and enhancement uses, Ecology recommends removing this language from Section 5.5.3 and placing this language in an alternate location in the SMP, Section 6.18, Shoreline Habitat and Natural Systems Enhancement Projects.

CONCLUSIONS OF LAW

After review of the complete record submitted and all comments received, Ecology concludes that the City proposed amendments 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).

Ecology concludes that the proposed amendment satisfies the criteria for approval of amendments found in WAC 173-26-201(1)(c). This includes the conclusion that approval of the SMP amendment will not foster uncoordinated and piecemeal development of the state’s shorelines (WAC 173-26-201(1)(c)(i) and will assure no net loss of shoreline ecological functions will result from implementation of the amended master program (WAC 173-26-201(1)(c)(iv)).

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 has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 and WAC 173-26-104 regarding public and agency involvement in the SMP review and amendment process, 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 has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the City SMP submittal to Ecology was complete pursuant to the requirements of WAC 173-26-090, WAC 173-26-104, and WAC 173-26-110.

Ecology concludes that it has complied with the procedural requirements for review and approval of shoreline master program amendments as set forth in RCW 90.58.090 and WAC 173-26-104, WAC 173-26-110, and WAC 173-26-120.

Ecology concludes that with this action the City has completed the required process for periodic review in accordance with RCW 90.58.080(4) and applicable state guidelines (WAC 173-26).
DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed periodic review amendments updating the SMP, are consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules, once required changes set forth in items 1, 2 and 5 of Attachment B are accepted by the City. The City may choose to adopt the recommended changes shoreline in items 2 and 3 in Attachment B. Pursuant to RCW 90.58.090(2)(e), the City must notify Ecology of the approval or denial of the recommended changes.

Ecology approval of the proposed amendments with required changes is effective 14 days from Ecology’s final action approving the amendment. Ecology’s final action will be a letter verifying receipt of written notice that the City has agreed to the required and recommended changes or approval of proposed alternative language.

As provided in RCW 90.58.090(2)(e)(ii) the City may choose to submit an alternative to the changes required by Ecology. If Ecology determines that the alternative proposal is consistent with the purpose and intent of Ecology’s original changes and with RCW 90.58, then the department shall approve the alternative proposal and that action shall be the final. Approval of the updated SMP and proposed alternative/s is effective 14 days from Ecology’s final action approving the alternative/s.