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

SMP Submittal accepted July 12, 2019, Resolution No. 2470
Prepared by Department of Ecology on January 6, 2020

Use of this Document
Ecology’s Findings and Conclusions (Attachment A), including reference to Attachment B (Required Changes), provide the factual basis for Ecology’s decision on the City of Marysville’s (City) proposed amendment to their Shoreline Master Program (SMP). Attachments C and D are supplemental materials provided by the City.

Introduction
The City submitted Shoreline Master Program (SMP) amendments to Ecology for review to comply with periodic review requirements pursuant to RCW 90.58.80 (4)(b).

The City’s SMP guides shoreline development in and adjacent to the City’s shoreline, which consists of Quilceda Creek, Steamboat Slough, Ebey Slough and the Qwuloolt Estuary Marsh. The Urban Conservancy shoreline environment makes up the majority of the Creek and Marsh shoreline areas. Ebey Slough has high intensity uses near the City’s downtown and an Urban Conservancy shoreline in the southeast corner of the City. Shoreline redevelopment is anticipated in the City’s downtown and along the eastern fringe of the Ebey Slough.

FINDINGS OF FACT

Need for amendment
The proposed amendments are needed to comply with the statutory deadline for a periodic review of the City’s Shoreline Master Program pursuant to RCW 90.58.080(4).

SMP provisions to be changed by the amendment as proposed
The City prepared a periodic review checklist that documents proposed amendments. 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 update. The City comprehensively updated their SMP in 2006. The periodic review will help to ensure that the SMP remains consistent with any City amendments to their comprehensive plan or regulations, which could be incorporated into the proposed SMP amendment as necessary to reflect changed circumstances, new information, or improved data.

The proposed SMP amendments focused on following elements:

Administrative Updates: As part of the periodic review amendment; a number of changes were made to SMP administrative section MC 16.10.90 (Shoreline Administration and Procedures) for consistency with updated State shoreline laws. The administration regulations were also incorporated into the city land use code as MCC 22E.050.
**Definitions:** As part of the periodic review amendment, a number of definitions were updated in Chapter 7 for consistency with updated State shoreline laws. The definitions were also incorporated into the city land use code as MCC 22E.020.

**Environment Designation Provisions (Ch.3):** A new Aquatic Urban shoreline environment designation for Ebey Slough was added to recognize urban uses near the City’s downtown waterfront. The SMP shoreline environment designation map was revised to recognize this new designation and the recently created Qwuloolt Estuary Marsh as Urban Conservancy.

**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. Outreach included a public workshop held on March 12, 2019 and joint (state/local) review hearing. See below on page 3 for additional details.

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

The City reviewed changes to their comprehensive plan or 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).

As a part of this review the City submitted an analysis of current critical areas regulations (CAR) (MMC 22E.010) wetland buffers entitled: “Existing Wetland Buffer Justification within Shoreline Jurisdiction” August 2019 (Attachment C) and illustrative buffer figures (Attachment D). The City determined that their current CAR (Ord. 3073 § 1, 2017) provides the necessary protections for wetlands within the shoreline jurisdictions even though it represents a deviation from the current Ecology wetland guidance. The 2017 CAR version being incorporated into the SMP includes updated requirements for the use of the 2014 Wetland Rating System, but is otherwise mostly consistent with the version currently in the SMP.

The City wetland buffer study analyzed application of the City’s current CAR buffers (MMC 22E.010) onto shoreline areas adjacent to Ebey Slough, Steamboat Sloughs and Quilceda Creek, to determine the level of protection provided when considering other existing critical areas regulations and the unique topographic characteristics within the study area. These conditions are shown to limit opportunities for future development within shoreline jurisdiction. The report included a GIS analysis identifying undeveloped parcels and considering future development after applying the City’s current CAR standards, including stream, wetland and steep-slope buffers.

The analysis was also compelling in its description of the geographic setting for the wetlands. Wetland associated with Quilceda Creek and Ebey Slough (southeast of city center)
are designated geologic hazard areas under the City CAR regulations, with slopes greater than 25%; The analysis demonstrates that the existing 200’ stream buffer on Quilceda Creek, in combination with the presence of steep slopes (greater than 25%) along Ebey Slough and Quilceda Creek, make future development infeasible, ensuring protection of wetlands adjacent to and associated with shoreline waterbodies within the City. Specifically, the CAR limits development adjacent to steep slope areas through requiring an additional 25 feet of buffer in instances where the buffer slope is greater than 25% (measured from the top of bank) beyond the CAR requirements. Also, since many of the undeveloped parcels were determined to have developable areas outside of the prescriptive buffers, those lands must be developed using avoidance of buffer impacts (see Fig. 1 & p. 3 & 4 of City of Marysville Buffer Justification memo). Subdivision of larger parcels would also be subject to the avoidance criterion since the act of subdividing would negate options for variances and necessarily include sufficient area that is unencumbered by buffers. Limitations on CAR buffer averaging and restrictions to further administrative buffer reductions, also provide further assurance of wetland protection.

Based on this analysis Ecology agrees that there is a low risk of wetland impacts because the wetlands are adequately protected through stream buffer overlays and physical limitations to future development within shoreline jurisdiction through presence of steep topography adjacent to shoreline waterbodies. Although the current CAR regulations do not meet buffer widths outlined in the Ecology 2016 Wetlands Guidance for Critical Areas Ordinance Updates, there is a low risk to the shoreline environment in this situation. Ecology concurs with the City’s approach for protecting shoreline wetlands under the current critical areas regulations. The updated code for the CAR regulations (MMC 22E.010) demonstrated adequate wetland protection and will need to be incorporated into the SMP to satisfy SMA obligations. Updated CAR referencing within SMP Chapter 4 section 3 (Critical Areas) will address this issue.

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 determined that a new Aquatic Urban shoreline environment designation for Ebey Slough was necessary to recognize urban uses near the City’s downtown waterfront. The SMP shoreline environment designation map was revised to recognize this new designation and the recently created Qwuloolt Estuary Marsh as Urban Conservancy. Consistent with WAC 173-26-110(3) the City provided written justification for these changes in environment designations. The City also created a purpose statement, designation criteria, and management policies for the newly created Aquatic Urban SED consistent with WAC 173-26-211.

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 March 11, 2019 and continued through April 9, 2019. A public hearing before the Planning Commission was held on March 26, 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). Affidavits of publication provided by the City indicate notice of the hearing was published on in the Marysville Globe/ Arlington Times on March 23, 2019.
Ecology distributed notice of the joint comment period to state interested parties on March 8, 2019. Area Tribes were notified on March 5, 2019 by email. No comments were received on the proposed amendments.

Ecology provided an initial determination memo describing the specific areas of concern and changes necessary on May 29, 2019. The City moved the SMP administrative section into new city code MCC 22E.050 (SMP Administrative Provisions). One minor change was recommended to reference the new section 22E.050 in the SMP table of contents. City staff updated the locally adopted SMP to reflect this reference to section 22E.050.

With passage of Resolution #2470, on June 10, 2019, the City authorized staff to forward the proposed amendments to Ecology for formal approval.

The proposed SMP amendment was received by Ecology for state review and verified as complete on July 12, 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 included 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 FEIS Addendum for a non-project action as a sub-element to the Marysville Comprehensive Plan and issued a determination on March 7, 2019 for the proposed SMP amendments. Ecology did not comment on the FEIS Addendum.

**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 SMA, and consideration of supporting materials in the record submitted by the City, the following issues remain relevant to Ecology’s decision on the City’s SMP Periodic Review and associated amendment, with specific findings identifying amendments needed for compliance with the SMA and applicable guidelines:

**Critical Areas Regulations (CAR)**
Ecology identified a change necessary to the City’s proposed amendment for consistency with WAC 173-26-221(2), WAC 173-26-201(2)(a) and (c), see Attachment B. This change updates outdated SMP critical areas regulations code referencing within Chapter 4 Use Provisions, section 4 critical areas.

**Findings.** Ecology finds that the City’s SMP Chapter 4: General Provisions, Subsection B.3 Critical Areas includes an incorporation by reference to the City’s CAR, Ordinance #2571, dated May 2nd 2005. These CAR provisions are also included directly into the SMP as an attachment. Ecology finds that the City has modified its CAR since 2005 and in the process also relocated the CAR from Chapter 19.24 MMC to Chapter 22E.010 MMC. Ecology finds the City’s Periodic Review Checklist identifies the current (December 11, 2017) version of the CAR as the provisions satisfying the following checklist items:
- Item 2016b. - Requiring the updated 2014 wetland rating system.
- Item 2011a. - Requiring wetlands be delineated using the approved federal delineation manual.
- Item 2009b. – Allowing the use of certified wetland mitigation banks.

Ecology finds that even though the City’s local adoption process and Ecology’s review of the SMP amendment included review of the December 11, 2017 version of the City’s CAR, the update to the incorporation reference and associated exclusions were not included as text amendments as part of the locally adopted ordinance. Ecology finds the required change identified with Attachment B to be consistent with the City’s intent and necessary for consistency with WAC 173-26-221(2), WAC 173-26-201(2)(a) and (c).

**CONCLUSIONS OF LAW**

After review of the complete record submitted and all comments received, the follow conclusions of law are summarized:

Ecology concludes that the City proposed amendments, as conditioned, 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 City’s proposed amendment, as conditioned, satisfies approval criteria 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
Ecology concludes that there is a low risk of wetland impacts, because the wetlands are adequately protected by the City’s current CAR regulations (MMC 22E.010) through stream buffer overlays, restrictions to further administrative buffer reductions, and physical limitations to future development within shoreline jurisdiction, through presence of steep topography adjacent to shoreline waterbodies. [City of Marysville: Existing Wetland Buffer Justification within Shoreline Jurisdiction”, August 2019 (Attachment C) and Buffer Figures (Attachment D)]

Ecology concludes that the City’s existing wetland protection standards continue to provide an alternative approach to wetland protection consistent with WAC 173-26-201(2)(a) and the SMP continues to provide a level of protect to critical areas within the shoreline as that assures no net loss of shoreline ecological functions WAC 173-26-221(2).

Ecology concludes that those SMP segments relating to shorelines of statewide significance continue to 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 90.58.100 regarding the SMP amendment process and contents.

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.

Ecology concludes that the City has complied with the purpose and intent of the amendment process and associated requirements contained in WAC 173-26-104, including conducting an open house and public hearing, 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 state procedural requirements for review and approval of SMP amendments were followed, 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 are consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules, once the required change set forth in Attachment B are accepted by Marysville.

Ecology approval of the proposed amendment, 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 change 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 all or part of the changes required by Ecology. If Ecology determines that the alternative proposal is consistent with the purpose and intent of Ecology’s original changes and with RCW 90.58, then the department shall approve the alternative proposal and that action shall be the final action on the amendment.