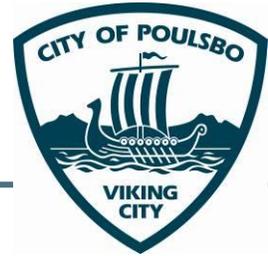


City of Poulsbo

PLANNING AND BUILDING DEPARTMENTS



October 6, 2011

Commissioner Arnie Bockus
Commissioner Tony DeCarlo
Commissioner Glenn Gilbert
Port Manager Kirk Stickels
Port of Poulsbo
P.O. Box 732
Poulsbo, WA 98370

Re: Port of Poulsbo Letter of September 21, 2011 – Shoreline Master Program

Dear Commissioners and Port Manager:

Thank you for your letter of September 21, 2011, which provided the Port's comments and concerns about the City's Shoreline Master Program (SMP) update. To provide more clarity on a number of the issues and questions raised in your letter, I have addressed these in my responses below:

1. *"Ports and their associated water dependent facilities (such as the Poulsbo Marina) are preferred users of the shorelines and should be treated as such in the proposed SMP update. In general, it appears from the SMP updates that the City does not perceive the Port's facility in this manner."*

The Shoreline Master Program Guidelines (WAC 173-26), section 201(2)(d) – Preferred Uses, provides the required prioritization of uses in the shoreline area, so that the local government may determine allowable uses and resolve use conflicts.

Consistent with the Guidelines, the City's first priority for preferred uses is to "reserve appropriate areas for protecting and restoring ecological functions to control pollution and prevent damage to the natural environment and public health. In reserving areas, local governments are directed to consider areas that are ecologically intact from the uplands through the aquatic zone of the area, aquatic areas that adjoin permanently protected uplands, and tidelands in public ownership. Local governments should ensure that these areas are reserved consistent with constitutional limits."

The second priority for preferred uses is to "reserve shoreline areas for water-dependent and associated water-related uses. Harbor areas, established pursuant to Article XV of the state Constitution, and other areas that have reasonable commercial navigational accessibility and necessary support facilities such as transportation and utilities should be reserved for water-dependent and water-related uses that are associated with commercial navigation unless the local governments can demonstrate that adequate shoreline is reserved for future water-

dependent and water-related uses and unless protection of the existing natural resource values of such areas preclude such uses.”

The Planning Department believes that the requirements of the preferred use guidelines have been correctly incorporated into the draft SMP, with all due care taken to prevent port and harbor areas from being encroached upon by incompatible uses, including non-water-dependent and non-water-related uses. Please note that port districts are not given individual status as “preferred users”, and that port districts (and port master plans) are required to comply with all City regulations, including the SMP, to the same extent as all other shoreline property owners or users.

2. *“The Port should be included as a participatory member on the SMP update process to provide critical input as one of the major users of the Poulsbo waterfront.”*

From the beginning of the update process in June 2009, the Planning Department has provided the Port with all draft documents and on numerous occasions has requested the Port’s input. Our suggestions have included having Port Commissioners and/or staff attend meetings, participate in workshops, make presentations to the Planning Commission and City Council, and provide comments on draft documents. Every effort has been made to obtain the Port’s early, continuous, and substantive participation in the SMP update.

3. *“The Port would like to schedule a meeting with the City to review in detail how the proposed code will impact the major elements of the current (Port) Master Plan. This would include a detailed discussion of process, review, cost of permits, schedule for approval and type of approval...”*

The SMP update includes a number of state-required inventory, analysis and recommendations documents, as well as updated Poulsbo Municipal Code (PMC) shoreline regulations. The update does not include any changes to the existing administrative requirements of shoreline permit processing, such as timelines, fees, and designated reviewers. If such changes are proposed in future, the Planning Department will contact the Port to set up a meeting on these issues.

4. *“It is not clear that there are very many permitted uses that will qualify for a shoreline exemption other than simple repair and maintenance. There needs to be additional flexibility in this SMP for typical uses that are preferred and encouraged shoreline uses.”*

WAC 173-27-040, Developments exempt from substantial development permit requirements, indicates the types of shoreline development and uses that the Department of Ecology allows to be exempted from the shoreline permit process. The categories are very limited and are intended to be narrowly construed. The City does not have the authority to exempt other types of development and uses from the shoreline permit requirements. Even when a permit exemption is possible, the development or use must still comply with all SMP requirements.

5. *“Overwater structures are defined as not allowed uses. The Port presently has an overwater structure near the existing restroom building which will likely require modification as*

part of their master plan. We recommend that this structure be exempted from the proposed new requirements.”

In order that the Planning Department may address this concern, please provide information on the existing and proposed building, including its location and use, and any approvals that were issued for it.

6. *“Boat repair and service is not an allowed use. How will this affect any boat repair work that may be required on vessels moored at the marina?”*

In the current draft regulations, boat repair and service is proposed to be a conditional use in the SR-1 and HI environments. As discussed at the Planning Commission meeting of September 13, distinctions between “minor” and “major” boat repairs will be made in the final draft of the definitions and regulations to indicate allowable in-water activities and repairs. This will be reflected in the shoreline use table for the A environment.

7. *“Yacht club, marina or boating club support facilities is not an allowed use in the aquatic area. The Port currently has a floating conference room and office building within this area. How will these regulations affect the use and modification of these facilities?”*

The floating conference room and office building (multi-use building) was approved in 1988 (Planning File No. 08-01-88-1). As a legally permitted building, its continued use and maintenance would not be affected by the new SMP regulations. If modifications to the building’s use or structure are proposed, additional review would be required. To advise the Port in more detail, the Planning Department would need more information on the proposed modifications.

8. *“The Port has an existing restroom building which is within 125 feet. The Port has in its Capital Improvement Plan to make improvements to this facility, which could result in adjustments to the footprint and height of the structure. These potential improvements should not be precluded as a part of this SMP, nor should it require a variance or special permit approval. This is the only piece of upland space available to the Port to support their water dependent operations.”*

In order that the Planning Department may address this concern, please provide more details on the proposed improvements and the proposed changes to the use of the existing restroom building.

9. *“Section C.3. Requirement that adjacent uplands provide support (parking facilities, etc) of any new slips. The parking and support facilities should not have to be on adjacent uplands. The Port does not own the adjacent uplands at the marina. This code requirement should be deleted. If a proposal can be supported with adequate parking within a reasonable distance, then why does it also have to own the uplands?”*

Draft section 16.08.260.C states, “The maximum allowable number of slips or moorages in any one marina or port facility shall be determined based on the following factors...The ability of the land upland of the OHWM to accommodate the necessary support facilities, such as but not limited to access, traffic and vehicle

and boat trailer parking.” There are no requirements that the Port own the uplands, or that the uplands used for parking must be directly adjacent to the marina.

10. *“Section C1.4. Why is a demand analysis (for new boat facilities) required? The need for additional moorage is determined by the Port and not the City. The City is responsible to ensure it complies with SMP and Ecology goals and not to decide if there is sufficient demand.”*

WAC 173-26-231(3)(b) states: “Pier and dock construction shall be restricted to the minimum size necessary to meet the needs of the proposed water-dependent use... New pier or dock construction, excluding docks accessory to single-family residences, should be permitted only when the applicant has demonstrated that a specific need exists to support the intended water-dependent uses. If a port district or other public or commercial entity involving water-dependent uses has performed a needs analysis or comprehensive master plan projecting the future needs for pier or dock space, and if the plan or analysis is approved by the local government and consistent with these guidelines, it may serve as the necessary justification for pier design, size, and construction.”

11. *“Section E. Liveaboards. This section should state that liveaboards are restricted to permitted marinas and not allowable outside of those areas. There should be no limit on the marina other than if they have the infrastructure to support them. If the demand for this water-dependent use is present and the marina has the proper infrastructure to support this demand, why would the City be so over-prescriptive on the operations of the marina?”*

Residential uses are not a preferred (water-dependent) use in aquatic areas, and are to be discouraged on state lands and waters which are primarily intended for navigation and public recreation. The Port is currently limited in its approved site plan to a maximum of 12 liveaboard slips. This is largely due to the existing lack of parking even for current marina residents. Additionally, WAC 332-30-171 limits the total percentage of liveaboards to 10% of the moorage capacity of the marina, and this draft code section reflects that limitation.

12. *“Section F. Why are covered slips not allowed? ...The existing covered slips should be allowed in perpetuity and allowed to be reconstructed. Provisions should be made to prevent requirements for complete removal in the event of a major rehabilitation of one of these structures.”*

Section F states: “New or enlarged covered slips or moorage added after the effective date of this shoreline master program are prohibited. Maintenance, repair and replacement of existing cover structures is acceptable; however, a covered structure that is removed for more than six months shall be considered a discontinued use and shall not be replaced.”

As indicated above, there is no proposal to require removal of existing covers or enclosures, and they may be maintained and repaired in accordance with state and local regulations. They will be treated as any other legal non-conforming use, i.e., if a structure is removed and not replaced within six months, the use is considered to be discontinued. This is consistent with the City’s existing regulations for all non-conforming uses.

DNR has provided regulations and guidelines for covered (roof but no walls) and enclosed (roof and sides covered) moorage, and these will be reflected along with updated definitions for these terms in the final draft version of the SMP regulations. Per WAC 332-30-139 – Marinas and moorages, covered moorage may be considered in highly-developed areas and in locations having a commercial environment, but enclosed moorage should be confined to areas of an industrial character where there is a minimum of aesthetic concern. DNR's habitat stewardship guidelines, which apply to state land leases, state: "New covered moorage and boat houses should not be allowed." The draft SMP regulations are consistent with these directions.

13. *"Section G.3 – Float planes. As an existing use, these requirements (for float planes) are over-prescriptive and should be removed. ...As part of their master plan, the Port intends to provide improved infrastructure for this type of use."*

With regard to float plane facilities and operations, the only mention of these facilities in the Port's 2006-2012 Comprehensive Plan is, "Examine the possibility of installation of a floating breakwater on the north boundary of the port up to 700' to the west and relocating the floatplane dock with an expansion of the guest moorage for larger size yachts or tour boats." If there are other adopted plans that address float plane moorage improvements, please provide them to the Planning Department. Without more substantive information on what the Port proposes, the Planning Department cannot comment on whether those plans would be consistent with the SMP and other regulations, and what permits would be required.

14. *"Section H.3 – Repair and service to be conducted within upland areas will have an effect on current boat repair work that is done in the marina. It appears the code intends to limit this type of activity but does so in a very broad, non-specific manner which could have big implications on the marina operations."*

Please refer to existing Zoning Code section PMC 18.48.170 – Marinas, which requires that all marina activities and operations be conducted entirely within an enclosed structure, except for fuel dispensing and vending machine sales. This code requirement has been in effect since at least 1994. The proposed SMP regulations are not more restrictive, and in fact will allow for more flexibility for certain minor repair and maintenance work, as indicated in #6.

15. *"Section J.3. No commercial activities on any vessel or overwater structure are allowed unless a special approval is made by the City. This will have an effect on the kayak rental business, boat rental, or commercial fishermen selling seafood from their vessels."*

Planning Department staff discussed this topic with the Port Manager, Kirk Stickels, on October 3. As indicated in #7 and in several places in the SMP regulations, the updated regulations will apply only to new development and uses. Existing businesses and commercial activities will not be affected. If a new business proposes to begin operating at the Port from a vessel or an overwater structure, either the business operator or the Port may be required to obtain a permit depending on the nature and potential impacts of the business.

16. *“Section B.1. Why will these require a conditional use permit for a buoy?... Typically for public facilities these are a permitted use and if the proposed development meets the minimum code requirements would be exempt from a shoreline substantial development permit.”*

Buoys are a permitted use in the land use table, not a conditional use. As indicated in draft section PMC 16.08.270, private recreational buoys are proposed to be exempt from shoreline permit requirements. However, this section should have included the qualification that the value of the buoy and installation must be less than \$5,000 in order to comply with the exemption criteria of WAC 173-27-040; this will be added to the final draft regulations. The cost threshold exemption will also pertain to non-recreational buoys. The draft regulations will also be revised to indicate that a buoy intended as a navigational aid does not require a shoreline permit regardless of value, per WAC 173-27-040. However, buoys must still comply with SMP requirements regarding placement and use. Buoys in a marina or harbor area that will be used for guest or permanent moorage will be reviewed as a change to the approved site plan that will increase the moorage capacity of the facility, and a shoreline permit will be required.

17. *“Evaluation of shoreline processes are not conducted by geotechnical engineers nor properly addressed as part of a geotechnical report. ...The use of geotechnical engineer should be changed to civil engineer or licensed geologist. Failure to make this change will result in the hiring of improper professionals...”*

WAC 173-26-231(3)(a)(iii)(B)(I) and (D) require that if a permit application is submitted for hard or soft shoreline armoring, a geotechnical report is required to justify the need for such armoring, and the draft code language complies with this requirement. However, the code does not include any specifications about the professional title or qualifications of the person or company preparing the geotechnical report, so it is unclear what the Port is referencing on that point.

18. *“What is critical about the time frame associated with proving that damage could occur within 3 years (as justification for shoreline armoring)?*

The code requirement is from WAC 173-26-231(a)(iii)(D): “As a general matter, hard armoring solutions should not be authorized except when a report confirms that there is a significant possibility that such a structure will be damaged within three years as a result of shoreline erosion in the absence of such hard armoring measures, or where waiting until the need is that immediate, would foreclose the opportunity to use measures that avoid impacts on ecological functions.”

19. *“The riprap stabilization along the park (adjacent to the Port) is in need of repair and will need work in the near future to protect both the marina and the City bulkhead. ...We recommend that this reach of shoreline be exempted from this provision (to demonstrate need) based on current and historical information...”*

As indicated in PMC 16.08.400(E), normal repair and maintenance of existing hard armoring structures is allowed. This activity does not require a geotechnical report or other proof that the armoring is still needed.

20. *“This proposed code is written to require soft shore stabilization unless it can be proven with no reasonable doubt that structural stabilization is required. This contrasts with the approach to encourage the use of soft shore stabilization systems.”*

WAC 173-26-231(3)(a)(iii)(E) states: “Soft approaches shall be used unless demonstrated not to be sufficient to protect primary structures, dwellings, and businesses.” The code language complies with this requirement.

21. *“Why is this is so restrictive for (breakwaters)? ...The current SMP code is very prescriptive to the type of breakwater construction that will be allowed.”*

The requirement for open pile or floating breakwater design will be revised to state: “Breakwaters shall only use floating or open-pile designs unless such a design is demonstrated to not be practicable.” The revised requirement is consistent with WAC 220-110-330(3), Marinas in saltwater areas.

22. *“Why is a conditional use permit required for maintenance dredging?”*

The final draft regulations will be revised to clarify that a conditional use permit is required for new dredging proposals, but not for maintenance dredging of areas that have previously received state and/or federal dredging permits, such as navigational channels and marina basins.

23. *“We have significant concerns regarding the implications of the non-conforming regulations of this section combined with how the Shoreline Use Table of Section 16.08.180 pertains to the Port’s facilities. The entire Port of Poulsbo is interpreted as a non-conforming use since the majority of the marina facility is a conditional use (rather than a permitted use) within the aquatic and hi-intensity shoreline.”*

It is unclear why the Port believes that the City considers the marina to be a “nonconforming use”. A conditional use and a nonconforming use are not the same thing. Marinas have been a conditional use in the City zoning code for many years, and the existing standard of review (shoreline conditional use permit) will simply be reflected in the SMP regulations.

24. *“It is not clear how these new code regulations of section 16.08 and 16.09 will relate to a conditional use permit approval that will require a hearing examiner or administrative approval. It appears a Type III (permit) requires a hearing examiner and a Type II requires planning director (administrative). Additionally, all conditional use permits will require approval by Ecology. ...We believe there needs to be substantial changes...to reduce the amount of special regulatory approvals and length process for what would normally be a simple process of permitted uses and administrative approvals...”*

All shoreline permits are Type III permits, as indicated in PMC Title 19, and a public hearing is required for all Type III permits. If a proposed development requires a shoreline conditional use permit, it will be processed by the City in the same way as a regular shoreline substantial development permit. Although the Department of Ecology does review shoreline conditional use permits, Ecology receives and reviews all shoreline permits, not just conditional use permits. The

Planning Department does not anticipate that adoption of the updated SMP regulations will result in any substantive changes to the City's existing processes for shoreline permit application, review and approval.

25. *"If the Port has an existing use, but it is not documented by the City, and proposes to make upgrades or expansion of that use, what would be the process for approval?"*

In order to respond to this question, the Planning Department would need more information from the Port on the nature and history of this "undocumented use", as well as the nature of the proposed upgrades and expansions.

I hope this information is helpful to you. We look forward to the Port's participation during the rest of the SMP update process. If you have any questions, please do not hesitate to contact me or Keri Weaver, Associate Planner, at (360) 394-9882.

Sincerely,

Barry Berezowsky
Planning Director

cc: Mayor Becky Erickson
Poulsbo Planning Commission
Joe Burcar, Department of Ecology
Keri Weaver, Associate Planner