

CITY OF POULSBO – SHORELINE MASTER PROGRAM UPDATE

SHORELINE MANAGEMENT STRATEGY 6/24/10

I. INTRODUCTION

The City of Poulsbo's Shoreline Management Strategy (SMS) is intended to be a guidance document for the following actions: development of SMP policies, goals, and regulations; identification of shoreline preservation and restoration opportunities; recommendations for specific actions needed to accomplish identified shoreline management objectives; and, ensure that the SMP meets the requirements of the state Shoreline Management Act (Act). The SMS is required by the Department of Ecology as part of each local jurisdiction's SMP update.

The SMS is derived from four primary sources: the Inventory & Characterization report, the Environment Designations, the Vision document (including the results of community workshops and the online survey), and the Shoreline Management Recommendations. The SMS is also intended to be consistent with and complementary to the City's current development regulations.

The City's shoreline jurisdiction includes all Liberty Bay shorelines within the City limits and the tidally-influenced (estuarine) portion of Dogfish Creek north of Lindvig Way. The City has also "predesignated" all of the shorelines within its unincorporated Urban Growth Area, and the SMP will address these shorelines as well as those located within the City limits. However, in the absence of an interlocal agreement with Kitsap County, the City will not have any regulatory authority in the predesignated areas until they are annexed.

II. EXISTING REGULATIONS AND CONDITIONS

A. Shoreline Management Act requirements

Washington's Shoreline Management Act, RCW 90.58, was adopted in 1972. The purpose of the Act is to "prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines." It has three broad policies: encourage water-dependent uses on the shoreline; protect shoreline natural resources; and, promote public access.

The Act establishes the concepts of *preferred uses* and *priority uses* in shoreline areas. RCW 90.58.020 indicates that *preferred" uses* are those "which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shorelines." This section further states that *priority uses* include single family residences, ports, shoreline recreational uses, water

dependent industrial and commercial developments and other developments that provide opportunities for the public to access the shoreline environment. To the maximum extent possible, the shorelines should be reserved for "water-oriented" uses, including "water-dependent", "water-related" and "water-enjoyment" uses, as defined in the Act.

The overarching policy is that "the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally.

RCW 90.58.020 and .100 provide goal and policy direction for the SMP, including:

- Protect the natural character and the resources and ecology of the shoreline;
- Increase public access and recreational opportunities;
- Mitigate and restore for habitat impacts to ensure no net loss of habitat function;
- Maintain the public right of navigation;
- Prioritize water-dependent and single-family residential uses and development;
- Coordinate shoreline management with other relevant local, state and federal regulations;
- Prevent and minimize flood damage;
- Protect private property rights;
- Protect and restore sites with historic, cultural or educational value.

B. Public Trust Doctrine

The Shoreline Management Act also implements the common law Public Trust Doctrine. The Public Trust Doctrine is a legal principle derived from English Common Law. The essence of the doctrine is that the waters of the state are a public resource owned by and available to all citizens equally for the purposes of navigation, conducting commerce, fishing, recreation and similar uses and that this trust remains relevant even when the underlying land is in private ownership. The doctrine limits public and private use of tidelands and other shorelands to protect the public's right to use the waters of the state. The Public Trust Doctrine does not allow the public to trespass over privately owned uplands to access the tidelands. It does, however, protect public use of navigable water bodies below the ordinary high water mark.

Local governments must consider public trust doctrine concepts when developing comprehensive plans, development regulations and shoreline master programs. There are few "bright lines," however, as the Public Trust Doctrine is common law, not statutory law. The extent of its applicability can only be determined by state court decisions.

C. Current City regulations and plans

There are a number of local tools used to implement the goals and policies of the Act. When approved, the SMP will be adopted as an element of the City's Comprehensive Plan. Development regulations such as the Zoning Ordinance and Critical Areas Ordinance support the SMP in regulating development along the City's shorelines. Capital improvement plans, such as sewer, water, parks and transportation, also help the City maintain a balance of providing public services and access on the shoreline, while ensuring environmental protection.

The Washington State Growth Management Act requires every county and city to adopt policies and development regulations that designate and protect critical areas (RCW 36.70A.060(2)). Critical areas are defined in RCW 36.70A.030(5) as:

- Wetlands
- Areas with a critical recharging effect of aquifers used for potable water
- Frequently flooded areas
- Geologically hazardous areas
- Fish and wildlife habitat conservation areas (including shorelines)

These five critical areas are defined and regulated through the City's Critical Areas Ordinance (CAO), and are mapped in the City's Comprehensive Plan. In March 2010, the Washington State Legislature passed legislation (EHB 1635), confirming that a local government's CAO requirements may apply in the shoreline zone until the local government has adopted an updated SMP. It is anticipated that many of the shoreline protection requirements of the 2007 CAO will be incorporated into the SMP, either directly or by reference.

D. Existing shoreline habitat conditions (Inventory & Characterization, Environment Designations)

In March 2010, the City and its consultant, Grette Associates, completed an Inventory and Characterization (I&C) report and Environmental Designations for the City's shorelines. The report was intended to provide baseline information on the existing ecosystem and shoreline processes within the City's jurisdiction. It also identifies opportunities for shoreline protection and restoration, as well as public access and shoreline land uses, and indicates where there are specific data gaps and limitations in the City's information. The I&C report is a required element of the SMP update and is intended to provide a foundation for monitoring, preservation and mitigation to meet the Act's requirement of "no net loss" of shoreline habitat functions and values.

The 2003 SMP Guidelines (WAC 173-26, Part III) is the first SMP rule in Washington State to incorporate the no net loss requirement. The Department of Ecology's SMP Handbook indicates that "no net loss" means that "over time, the existing condition of shoreline ecological functions should remain the same as when the SMP is implemented. Simply stated, the no net loss standard is designed to halt the introduction of new impacts to shoreline ecological functions resulting from new development." WAC 173-26-186(8) directs that master programs "include policies and regulations designed to achieve no net loss of those ecological functions."

Environment Designations are applied to all of the City's different shoreline areas based upon habitat characterization and land use. In the City's jurisdiction, these include: Shoreline Residential, Urban Conservancy, High Intensity, Natural, and Aquatic. An Environmental Designations map (at end of this document) and explanatory text was prepared and included with the Shoreline Management Recommendations summary.

E. Local identified priorities (Community Vision)

As part of the update process, the Planning Department established a community visioning and input process, to help develop an overall vision for the City's shorelines and establish a framework for future policy work. Specifically, the community visioning process was intended to provide:

- An opportunity for the City to explain the SMP update process and encourage citizen participation.
- A forum for public review of, and education about draft documents that have been prepared such as the shoreline inventory, maps, jurisdiction, and environmental characterizations.
- A forum for the City to gain first-hand information about the local shoreline from the perspective of those who live, recreate or work within shoreline jurisdiction.

A visioning report was prepared based on the results of the community visioning workshops and responses to an online survey. The report includes a vision statement, guiding principles and key goals.

III. RECOMMENDED ACTIONS

A. Environment Designations

The Environment Designations map is attached at the end of this document.

- In the “Shoreline Residential”(SR) designation, which includes single- and multi-family areas along Fjord Drive, Front Street , and east of Viking Ave, new development and redevelopment shall be compatible with surrounding residential land uses, and to the maximum extent feasible shall be consistent with the “priority use” provisions of RCW 90.58.020. Public access and public views shall be preserved, and enhanced when possible.
- In the “High Intensity” (HI) designation, which includes the downtown waterfront and an area near the head of Liberty Bay, the City shall give priority to water-dependent uses and public water access when development or redevelopment along the shoreline is proposed. Non-water-dependent uses, such as restaurants and hotels, should be oriented to the water when possible, and if appropriate provide public views and public access. New stand-alone parking lots that do not directly support a water-dependent or water-related use shall be prohibited. Parking structures may be allowed within the HI shoreline area as part of a larger structure containing retail, office, service and/or residential uses that are consistent with the above provisions for the HI designation.
- The “Urban Conservancy” (UC) designation applies to several shoreline properties located at the west side of the intersection of Lindvig Way and Bond Rd, adjacent to the Dogfish Creek estuary. The intention is to preserve the natural landforms (including unstable bluffs on Front St) and shoreline vegetation as much as possible, while promoting public shoreline access, views and recreation. The City may wish to consider expanding Fish Park through acquisition from willing shoreline property owners and/or development of a public access and path system through the UC corridor and adjacent shoreline/shorelands. The Lindvig/Bond properties may also provide opportunities for shoreline habitat restoration.
- The “Natural” (N) designation includes the City’s Fish Park, American Legion Park and Nelson Park, and two stretches of shoreline extending 0-125 feet from the ordinary high water mark along Front St and east of Viking Ave, which currently have little development and will be conserved under the City’s shoreline buffer requirements. The City has been involved in long-term acquisition and

restoration of the Dogfish Creek estuary habitat and functions (Fish Park). Nelson Park has some developed areas near Lindvig Way but has a large area of natural shoreline habitat. These areas shall continue to be preserved and restored, and public access and views in a low-intensity setting shall be encouraged where habitat impacts will not result. The City should explore opportunities to acquire access from willing landowners within other Natural areas where there are opportunities for public access and connection of existing and proposed public shoreline paths.

- “Aquatic” (A) includes all lands waterward of the ordinary high water mark. Restrictions on in-water and over-water structures and uses of aquatic lands and state waters (including areas designated as critical saltwater habitat) are discussed in following sections of this document.

B. Shoreline Management Recommendations

The Shoreline Management Recommendations (SMR) are recommended actions for translating the I&C findings into proposed SMP policies, regulations, environment designations, and restoration opportunities for areas within the City of Poulsbo’s shoreline jurisdiction. An SMR is required by the Department of Ecology as part of each local jurisdiction’s SMP update, and the City’s SMR was submitted to DOE with the draft I&C report. The SMR format for characterization of issues is used below, with additional information provided to fulfill the requirements of the Act. WAC 173-26-221(2)(c) provides the detailed SMP measures that are required to be addressed in the City’s SMP.

1. Archaeological and Historic Resources

There are no identified archaeological sites or historic sites located along Poulsbo’s shoreline, according to the definitions in RCW 27.53.030. However, the following standards shall be incorporated into the City’s SMP as regulation:

- Developers and property owners shall immediately stop work and notify the local government, the state Office of Archaeology and Historic Preservation, and the Suquamish Tribe if archaeological resources are uncovered during excavation, and shall comply with relevant state and federal law regarding protection of archaeological sites and resources and required permits for activities affecting them, including RCW 27.53 (Archaeological Sites and Resources)
- If in the future any sites are listed on the Washington Heritage Register or the National Register of Historic Places, any proposed development or redevelopment of such sites shall be coordinated with the State Historic

Preservation Office and shall be consistent with federal and state laws regarding historic preservation.

- The location of archaeological or historic resources on the shoreline, if any are identified in the future, shall be depicted on a map that will be included in the SMP.

2. Critical Areas Regulations

The City proposes to incorporate the majority of shoreline regulations currently contained in the City's Critical Areas Ordinance (CAO) into the SMP by reference, as well as expand/amend these regulations as necessary in order to comply with WAC 173-26-221(2)(c).

At present, the CAO requires a 100 foot shoreline no-development buffer (with exceptions for water-dependent uses) and an additional 25 foot structural setback. It is anticipated that this buffer/setback will remain unchanged in the SMP, and therefore the shoreline zone will be regulated as two distinct areas: (1) the first 125 foot from the ordinary high water mark (OHWM), where no or little development will be allowed, and (2) 125 foot-200 foot from the OHWM, where appropriate development may be allowed.

- There shall be no net reduction of critical area ecological functions within the 200 foot shoreline area.
- Development or uses that are allowed within the 125 foot shoreline buffer and setback area, or within the waters of Liberty Bay shall not result in any net loss of critical areas habitat or ecological functions within the relevant areas.
- The critical areas protection measures provided in PMC 16.20 (Critical Areas Ordinance) shall be incorporated into the SMP by reference, and shall be applied within the shoreline jurisdiction, with the exception that the SMP may establish more stringent regulations which shall take precedence over CAO shoreline regulations, some of which are listed below:

Streams

The estuarine (tidal) portion of Dogfish Creek is subject to the Shoreline Management Act and shall have a buffer that extends either (1) 150 foot on both sides of the creek, with an additional 25 foot structural setback on both sides, or (2) 25 foot on each side of the 100-year floodplain as shown on FEMA's official flood maps for the City of Poulsbo, whichever is greater. The non-estuarine portion of Dogfish Creek does not meet the state standard for a regulated shoreline (i.e., mean annual flow equal to or greater than 20 cubic feet per second).

Wetlands

- There shall be no grading, filling, draining, flooding, dredging, or mining within shoreline wetland areas.
- No land uses or development shall be permitted that result in significant adverse impacts to the physical, chemical or biological characteristics of a shoreline wetland that cannot be mitigated.
- Wetland mitigation outside of the shoreline zone for impacts to shoreline wetlands shall not be permitted.

Geologically Hazardous Areas

- New development or the creation of new lots that would cause foreseeable risk to people or improvements from geologically hazardous conditions during the life of the development shall not be permitted.
- New development that would require structural (hard) shoreline stabilization over the life of the development shall not be permitted, with exceptions for limited instances where stabilization is necessary to protect existing land uses, and where no alternative locations are available and no net loss of ecological functions will result.
- Structural shoreline stabilization measures may be allowed to protect existing primary residential structures, and public facilities such as roads, public parking and water and sewer utilities, in strict conformance with the requirements of WAC 173-26-231, if no other feasible alternatives are identified, but only if no net loss of ecological functions will occur.
- Alteration or development of unstable slopes on the Liberty Bay shoreline shall not be allowed , except for permitted shoreline armoring activity. Unstable slopes are those defined in the City's CAO as Geologically Hazardous Areas or Areas of Geologic Concern. Development shall be set back from steep slopes in accordance with the City's CAO regulations.

Saltwater Habitat

Saltwater habitat is synonymous with the area included in the "Aquatic" environment designation for the waters of Liberty Bay.

"Critical saltwater habitat" is defined in WAC 173-26-221(2)(ii), and includes spawning and holding areas for forage fish, such as herring, smelt and sandlance; shellfish beds; mudflats, intertidal habitats with vascular plants, and areas with which priority species

have a primary association. Areas of critical saltwater habitat within Liberty Bay are identified on Exhibit F of the SMP Inventory and Characterization.

- New or expanded docks, piers, floats, boat launch ramps, and haulouts associated with upland residential property or other non-water-dependent uses shall not be permitted.
- New or expanded docks, piers, boat launch ramps, floats, mooring buoys, and haulouts associated with a water-dependent use (such as a marina) shall require a Shoreline Conditional Use Permit. Among other conditions, the applicant shall be required to provide adequate parking to serve the new or expanded facilities.
- New construction of buildings waterward of the ordinary high water mark shall be limited to buildings that support water-dependent uses, and it shall be demonstrated that it is essential to have the building in or over the water in order for the water-dependent use to function correctly. However, no new over-water public or private boathouses shall be permitted.
- There shall be no new construction or construction-related disturbance within aquatic areas identified as critical saltwater habitat, including spawning and holding areas for forage fish, with limited exceptions for public access, use and recreation, which shall be mitigated to ensure no net loss of ecological function of the affected habitat area. New development and/or a new land use within critical saltwater habitat shall require a Shoreline Conditional Use Permit.
- Development proposed on uplands adjacent to critical saltwater habitat areas shall provide evidence that the development will not impact those areas.
- When projects are proposed within the shoreline zone and the subject property includes tidelands or submerged lands (whether in ownership or lease), the project application shall include provisions for protection, enhancement and restoration of critical saltwater habitat, as appropriate to the condition of the specific habitat area.
- Dredging or filling of tidelands and aquatic lands shall not be permitted, with the exception of ecological restoration projects, and maintenance dredging for private and public water-dependent uses (such as marinas and float plane runways) and public navigation in accordance with state and federal permitting requirements.
- When an existing bulkhead or other hard armoring is proposed to be repaired or replaced, alternative methods to typical shoreline armoring, such as native vegetation and other natural shoreline features, shall be considered.

Replacement structures should be designed, located, sized and constructed to assure no net loss of ecological function.

Liveaboard vessels are prohibited outside of approved locations within marina, yacht club or port facilities. New liveaboard vessel dock spaces or mooring facilities are prohibited on state lands leased after the effective date of this SMP. The addition of new liveaboard vessel dock spaces or mooring facilities within an aquatic area owned by a marina, yacht club or port authority shall be subject to a Shoreline Conditional Use Permit.

- Floating homes shall continue to be prohibited in all City jurisdictional waters of Liberty Bay.
- Boats temporarily moored outside of marinas or port jurisdiction areas on state lands shall comply with state regulations regarding buoy construction and limitations on extended mooring. Private buoys for permanent moorage are not permitted on private tidelands or state aquatic lands.
- Proposed new, expanded or altered state-designated harbor lines or harbor areas shall require a Shoreline Conditional Use Permit. A harbor area expansion shall not adversely impact the public right of navigation, and permanent provision for public temporary moorage within the new or expanded harbor area shall be a condition of approval.
- No in-water or over-water development shall interfere with the public right of navigation in waters of the state.

3. Flood Hazard Reduction

- The creation of new lots that would be entirely located within the 100 year floodplain adjacent to the shoreline or streams within the shoreline jurisdiction, or that would not have an area located outside of the 100 year floodplain sufficient for building without a Shoreline Variance, shall not be permitted.
- New development or redevelopment within the 100 year floodplain adjacent to the shoreline and streams within the shoreline jurisdiction shall not be permitted, except for ecological restoration projects. Limited exceptions may be made for public utility and transportation structures where no other feasible alternative exists or the alternative would result in unreasonable and disproportionate costs, and where impacts can be mitigated to ensure no net loss of habitat values and function.
- Restoration of Dogfish Creek's natural function and flow within the shoreline zone shall be a priority restoration effort.

4. Public Access and Views

- The City shall protect existing opportunities for the public to access and enjoy the Liberty Bay shoreline and waters, and to view the shoreline and waters from public property such as parks, public roads, and public bicycle/pedestrian trails.
- The City shall protect the public's right of navigation in waters of the state and shall protect open-water areas on state lands in Liberty Bay to ensure that the public has the maximum feasible area to enjoy water-dependent uses. Protection measures include prohibiting new private docks and mooring buoys and over-water construction; regulating location and design of water-dependent uses and in-water construction to protect public views, access and enjoyment; and encouraging dedication and development of new public access and viewpoints.
- The City shall develop, either as a stand-alone document or as part of an overall public access, trails or recreational plan, a plan that identifies specific public access needs and opportunities to provide public access. The plan shall seek to increase the amount and diversity of public access to the shorelines consistent with the natural shoreline character and topography, private property rights, public rights of access, and public safety.
- New shoreline development or major redevelopment by public entities, including local governments, port districts, state agencies and public utility districts, shall include public access as part of each development project, unless such access is shown to be incompatible due to reasons of safety, security or environmental impacts.
- Dedication and improvement of public access in all non-residential shoreline developments, and for subdivisions of land into more than four parcels, shall be required unless such access is shown to be incompatible due to reasons of safety, security or environmental impacts.
- The City shall protect existing views of the shoreline from public property and designated public view corridors through measures such as: (1) identification and protection of protected public view corridors, and (2) development of alternative standards for maximum shoreline building height limits, overall building coverage, building setbacks, compatibility with adjacent development, stepped multi-story construction and/or floor area ratio requirements. However, where there is an irreconcilable conflict between water-dependent shoreline uses or physical public access, and maintenance of views from adjacent properties, the water-dependent uses and physical public access shall have priority unless there is a compelling reason to the contrary.

- Private views from individual residences or from structures or land uses that are non-residential and non-public to the shoreline are not protected by the SMP.

Water-dependent and water-enjoyment uses shall be the priority development types in the shoreline zone. New commercial development within the shoreline zone shall contain a majority of water-oriented commercial uses, and this requirement shall be maintained through permanent development conditions. Permitted uses shall comply with the “preferred use” and “priority use” criteria of RCW 90.58 to the greatest extent feasible.

- Public access and use improvements, including trails, stairs, parking, docks, and picnic or play areas, shall not result in a net loss of shoreline ecological habitat and functions.
- New parking facilities in the shoreline zone shall be allowed only as necessary to support an authorized water-dependent or water-oriented use.

5. Shoreline Vegetation Conservation

Existing, native shoreline vegetation will be preserved primarily through the City’s existing development regulations, including the Clearing and Grading Ordinance, Zoning Ordinance, and Critical Areas Ordinance. Additionally, the SMP’s shoreline buffer and setback requirements, restrictions on in-water and over-water construction, and prohibitions on bluff alteration will contribute to preservation of native shoreline vegetation. Restoration of native shoreline vegetation may be a component of specific shoreline restoration projects, such as the ongoing Dogfish Creek estuary restoration.

- When projects are proposed that will result in an unavoidable loss of native shoreline vegetation within an Aquatic area or within a designated shoreline buffer area, mitigation shall be required to ensure no net loss..
- When projects are proposed within the shoreline zone, the project application shall include provisions for enhancement and restoration of native shoreline vegetation on areas of the subject property lying from 0 to 125 ft of the ordinary high water mark.

6. Water Quality

- The SMP shall reference appropriate goals and policies from the City’s water and stormwater management plans, and encourage low-impact development stormwater management methods where appropriate.
- New development and major redevelopment proposals shall be required to demonstrate that there will no new adverse impacts to water quality or stormwater quantity that would result in a net loss of shoreline ecological functions.

- All new development within the shoreline zone shall connect to the City sewer system.
- The habitable area of existing shoreline residential properties may not be enlarged unless they are connected to the City sewer system.
- If the Kitsap County Health District certifies that an onsite sewage system tank or drainfield is failing or is inadequate for the property it serves, the property shall be connected to City sewer if a City sewer line is within 200 feet. Replacement or repair of a failing or inadequate onsite sewage system shall only be allowed if City sewer is not available within 200 feet of the affected property. The Replacement or repair permit shall be conditioned that when City sewer becomes available within 200 feet, the property shall be connected at that time.
- The City shall work with the Port of Poulsbo to develop a plan for reducing Liberty Bay water quality impacts from recreational boaters, liveaboards, and boat operations and maintenance.

7. Critical Saltwater Habitat and Species Protection

The shorelines of Liberty Bay contain identified populations of protected species, including harbor seals, sand lance, smelt, and hardshell clams; These areas are considered critical saltwater habitat. Additionally, an eagle use area and buffer is identified on the west side of Liberty Bay, and populations of anadromous fish including bull trout, chinook and chum salmon and rainbow trout may frequent Liberty Bay and its streams.

- There shall be no new development within critical saltwater habitat for identified populations of protected aquatic species, with limited exceptions for public access, use and recreation, which shall be mitigated to ensure no net loss of ecological function of the affected habitat area. New development and/or a new land use that is allowed within critical saltwater habitat shall require a Shoreline Conditional Use Permit.
- Repair and reconstruction of existing structures within critical habitat may be permitted; however, any adverse impacts to priority habitat shall be mitigated to avoid any net loss of habitat value or function.
- Development within areas identified as anadromous fish habitat, or eagle use and buffer, shall comply with all state and federal regulations for protection of listed species and their habitat, and avoidance of take.

C. Nonconforming Structures and Land Uses

In general, structures and land uses that are nonconforming to use regulations or setbacks in the shoreline zone will be subject to the same regulations for nonconforming structures and uses outside of the shoreline zone, which are provided in the City's Zoning Ordinance. However, certain additional regulations are required by the Department of Ecology and will be applied in all shoreline areas, and additional, more specific requirements will be required through SMP policies. Where there is a conflict between SMA regulations, the SMP, and/or the Zoning Code, the most stringent requirement shall apply.

- No structure that houses a nonconforming use within the shoreline zone may be expanded or enlarged.
- A structure which is being used, or has been used, for a nonconforming use may not be used for a different or more intensive nonconforming use. Any change of use must be in compliance with the adopted SMP and Zoning Code.
- A nonconforming use shall be considered abandoned if it is discontinued for more than six months, and may not be resumed.
- If the structure containing a nonconforming use is damaged to an extent not exceeding 50% of its replacement cost, it may be restored and the nonconforming use may be resumed, provided that (1) the applicant shall apply for permits needed to restore the structure within six months of the date the damage occurred, and (2) the restoration shall be complete within two years of permit issuance. If the damage exceeds 50% of the replacement cost, or if the applicant does not meet application and construction timeframe requirements, the nonconforming use may not be resumed.
- A nonconforming structure that is to be moved or relocated within the shoreline zone shall be brought into conformance with SMP and zoning regulations in effect on the date of the proposed move.
- A structure which is nonconforming because of its location within the 125 foot shoreline buffer and setback area, but which is being used for a conforming use, may be expanded with a Shoreline Variance if (1) the expansion does not extend further waterward, (2) no other nonconformities will be created or be increased, and (3) no net loss of shoreline habitat values or functions will occur.

D. Conditional Uses and Variances

A request for a Shoreline Conditional Use Permit or a Shoreline Variance shall be subject to the criteria of WAC 173-27, and to the regulations in the City's Zoning

Ordinance, Subdivision Ordinance and Critical Areas Ordinance. Where a conflict exists between regulations, the more restrictive shall apply.

An undeveloped legal shoreline lot that is substandard with respect to lot size, or because all or most of its buildable area is located within the 125 foot buffer and setback area, may have development allowed through a Shoreline Variance, provided that concerns of public health, safety and welfare are met, and that the proposed development complies with the requirements below.

The following requirements for Shoreline Conditional Use Permits and Shoreline Variances apply in all shoreline areas:

- Uses which are otherwise permitted, but which would significantly impair or alter the public's access to or use of the waters Liberty Bay, shall require a Shoreline Conditional Use permit.
- Uses which by their intrinsic nature may have a significant ecological impact on shoreline ecological functions or shoreline resources at a particular location, whether or not the impacts can be mitigated, shall require a Shoreline Conditional Use permit.
- New development and/or a new land use in critical saltwater habitat shall require a Shoreline Conditional Use permit.
- Development of an undeveloped legal shoreline lot that is nonconforming (i.e., a lot which because of its size, configuration, presence of critical areas or other reason cannot meet Zoning Code, CAO and/or SMP requirements for setbacks and buffers) shall require a Shoreline Variance. All development regulations and requirements that can be met without a Shoreline Variance Reasonable Use Permit shall be met. Development allowed through a Shoreline Variance shall be the minimum allowed for reasonable use.
- Nonconforming lots within the shoreline zone shall not be further subdivided.
- A conforming shoreline lot shall not be made nonconforming through subdivision, boundary line adjustment, segregation or other method of lot alteration.
- Any habitat impacts resulting from development permitted under a Shoreline Conditional Use Permit or a Shoreline Variance shall be mitigated to ensure no net loss of shoreline habitat or ecological function.