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## Chapter 16.08

### SHORELINE MASTER PROGRAM

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## ARTICLE I. GENERAL MASTER PROGRAM PROVISIONS

### 16.08.010 Authority.

This chapter is adopted as part of the shoreline master program for the city. It is adopted under the authority of Chapter 90.58 RCW and Chapter 173-26 WAC.

### 16.08.020 Scope of shoreline master program.

The requirements of this chapter apply to uses, activities and development within the city of Poulsbo's shoreline jurisdiction, including shorelands and aquatic areas, as defined in Section 16.08.050. All uses, activities and development within the shoreline jurisdiction, including those exempt from the requirements to obtain a shoreline permit, shall comply with Chapter 90.58 RCW, the Shoreline Management Act, Chapter 173-27 WAC or its successor, and the policies and regulations of the Poulsbo shoreline master program.

### 16.08.030 Purpose.

The Poulsbo shoreline master program has the following purposes:

- A. To ensure no net loss of shoreline ecological functions;
- B. To protect the waters of the state and the fish and wildlife that depend on those waters from adverse impacts;
- C. To protect the public's right to access and use the surface waters of the state, and to access and use the shorelines where public lands and rights-of-way exist;
- D. To encourage water-oriented and residential uses of the shoreline that are in the best interest of the public;
- E. To provide a coordinated plan for the shorelines in accordance with local, state and federal requirements to prevent adverse impacts from unplanned development of the state's shorelines;
- F. To carry out the Shoreline Management Act, Chapter 90.58 RCW, and implementing regulations adopted by the state;
- G. To help fulfill the city's responsibilities under the public trust doctrine;
- H. To protect the rights of property owners within the shoreline jurisdiction.

### 16.08.040 Definitions.

NOTE FOR NEXT SECTION. Definitions were added or amended for one of the following reasons: 1. To be consistent with the WAC, as recommended by Ecology, or 2. If the term is used within the text, staff determined that a definition was needed. for ease of administration.

The definitions in this section shall be used when administering the regulations in this chapter. The definition of any word or phrase not listed in this section which is in question when administering the regulations in this chapter shall be defined from one of the following sources in order of preference, with A. being the most preferable, and so on:

- A. Shoreline Master Program.
  - 1. "Accessory use" or "accessory structure" means a use or structure that is subordinate to the principal use of the subject site or the principal building on the site, serving a purpose customarily associated with and incidental to the primary use or structure.
  - 2. "Activity" or "activities" means any action within the shoreline jurisdiction that makes use of or impacts shoreline resources or functions.

3. ~~4. “Agriculture” means activities involved in the production of crops and livestock for economic use. The definition includes, but is not limited to, operation and maintenance of farm and stock ponds or drainage ditches, irrigation systems, changes between agricultural activities or crops, and normal operation, maintenance or repair of existing serviceable structures, facilities, or improved areas. Forest practices are not included in this definition.~~
- ~~“Agricultural activities” means agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation.~~<sup>1</sup>
4. ~~“Alteration” means any human induced change in an existing condition of a shoreline and/or its buffer. Alterations include but are not limited to grading; filling; channelizing; dredging; clearing (vegetation); draining; constructing structures; compaction, excavation, or any other activity that changes the character of a site. any human activity which results or is likely to result in a significant impact upon the existing condition of a site. Alterations include, but are not limited to grading, filling, dredging, draining, channelizing, applying any hazardous substance, discharging pollutants except stormwater, paving, constructing, applying gravel, modifying surface water management purposes, cutting, pruning, topping, trimming, relocating, or removing vegetation or any other human activity which results or is likely to result in a significant impact to existing vegetation, hydrology, wildlife, or wildlife habitat. Alterations do not include walking, fishing, or any other passive recreation or other similar activities.~~<sup>2</sup>
5. ~~3.~~ “Aquaculture” means the ~~cultivation~~ **culture or farming** of fish, shellfish and/or other aquatic animals or plants, including the incidental preparation of these products for human use. This definition does not include approved native habitat restoration or native species restoration activities on the tidelands or bedlands of Liberty Bay: ~~or the harvest of wild geoduck associated with the state managed wild stock geoduck fishery.~~<sup>3</sup>
6. ~~5.~~ “Aquatic” means those areas waterward of the ordinary high-water mark.
7. ~~“Average grade level” means the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure footprint: In the case of structures to be built over water, average grade level shall be the elevation of the OHWM. Calculation of the average grade level shall be made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure.~~<sup>4</sup>
8. ~~6.~~ “Boat repair and service, major” means nonroutine boatyard type activities for maintenance and repair, such as hull repair, refinishing and surface preparation, cleaning or scraping of ablative or soft-sloughing bottom paints, refinishing projects that exceed twenty-five percent (annually) of the deck and superstructure, and/or which have the potential to impact the shoreline environment, water and/or air quality.
9. ~~7.~~ “Boat repair and service, minor” means routine in-slip or dockside maintenance and repair, such as cleaning, internal engine work, replacement of running gear, rigging, or small refinishing projects that are limited to less than twenty-five percent (annually) of the deck and superstructures (not the hull, sides or bottom), and which do not impact the shoreline environment, water and/or air quality.

<sup>1</sup> Added to be consistent with WAC

<sup>2</sup> Term used within text; staff added common SMP definition

<sup>3</sup> Updated to be consistent with WAC

<sup>4</sup> Update to be consistent with WAC

10. ~~8.~~ “Boating facility” means an establishment for public or private use with aquatic and/or upland development, that provides moorage, boat haulout, boat launches, docks, and/or boat repair and maintenance and related services to the general boating community, such as but not limited to marinas. For the purposes of this chapter, the definition does not include docks or other development associated with residential uses such as single-family or multifamily development.
11. “Breakwater” means protective structures usually built offshore to protect harbor areas, moorages, navigation, beaches and bluffs from wave action. Breakwater designs may be fixed (e.g., rubble mound or rigid wall), open-pile or floating.<sup>5</sup>
12. ~~9.~~ “Buoy” means a floating object anchored to provide a mooring location away from shore, to provide navigational direction or other maritime information, to serve as a marker or separator between differing uses or ownership, or to transmit signals.
13. “Bulkhead” means a vertical or nearly vertical erosion protection structure placed parallel to the shoreline at or near the OHWM consisting of concrete, timber, steel, rock, or other permanent material not readily subject to erosion.<sup>6</sup>
14. ~~10.~~ “Clearing” means the destruction or removal of vegetative cover and/or trees, including but not limited to root material removal and/or topsoil removal.
15. ~~11.~~ “Commercial use” means retail and service commercial establishments, and office uses.
16. ~~12.~~ “Critical saltwater habitat” means spawning and holding areas for forage fish, such as herring, smelt and sand lance; shellfish beds; mudflats, intertidal habitats with vascular plants, and areas with which priority species have a primary association, as designated in the city comprehensive plan’s fish and wildlife habitat conservation areas map or subsequently adopted document; or as otherwise defined in WAC 173-26-221(2)(ii) or its successor.
17. ~~13.~~ “Critical areas” include the following areas and ecosystems: (a) wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) geologically hazardous areas; and (e) frequently flooded areas.
18. “Cumulative impact” means the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.<sup>7</sup>
19. ~~14.~~ “Destroy” or “destruction” means significant damage to more than fifty percent of a structure, or damage that renders a structure uninhabitable or unusable for its intended purpose, from a sudden, unforeseen event such as a fire or windstorm.
20. ~~15.~~ “Developable” means a property that is currently undeveloped or with little development, but which may reasonably be expected to develop or to have additional development in future, given its size, location, site restrictions and zoning.
21. ~~16.~~ “Development” means an action consisting of one or more of the following: (a) the construction or exterior alteration of structures; (b) dredging; (c) drilling; (d) dumping; (e) filling; (f) removal of any sand, gravel or minerals; (g) bulkheading; (h) driving of piling; (i) placing of obstructions; (j) any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to Chapter 90.58 RCW at any state of water level; or (k) creation of new lots. “Development” does not include dismantling or removing structures if there is no other associated development or re-development.<sup>8</sup>

<sup>5</sup> Term used within text; PC recommended added common definition

<sup>6</sup> Term used within text; staff added common definition

<sup>7</sup> Term used within text; staff added common definition

<sup>8</sup> Update to be consistent with WAC

22. ~~17.~~ “Dock” means a structure that floats on the surface of the water, without piling supports, but which is attached to land or an over-water structure. Typically used for boat moorage, swimming, public access, and other activities that require access to deep water.
23. ~~18.~~ “Dredging” means the removal of earth, sediment, sand and/or gravel from the bottom of a water body below the OHWM.
24. ~~19.~~ “Dune” or “dunes” means mounds or hills of sand along a shoreline that have been formed by wind action. (There are no dunes within the city’s shoreline jurisdiction.)
25. ~~20.~~ “Ecological functions” are the work performed or role played by the physical, chemical and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline’s natural ecosystem.
26. “Emergency” means an unanticipated and/or imminent threat to public health, safety, or the environment that requires immediate action within a time too short to allow full compliance with the SMP. Emergency construction is defined as that necessary to protect property and facilities from the elements. All emergency construction shall be consistent with the SMA and the SMP.<sup>9</sup>
27. “Enhancement” means alteration of an existing resource to improve or increase its characteristics and processes without degrading other existing functions. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention, or wildlife habitat. Enhancement results in a positive change in ecological function but does not result in an increase in the area of the feature. Examples are planting vegetation, controlling non-native or invasive species, and modifying site elevations to positively alter hydro- periods.<sup>10</sup>
28. “Estuary” means the zone or area of water in which freshwater and saltwater mingle and water is usually brackish due to daily mixing and layering of fresh and saltwater.<sup>11</sup>
29. “Exempt development” means development listed in WAC 173-27-040 as exempt from the definition of “Substantial Development,” and, therefore, exempt from the Substantial Development permit process of the SMA. An activity that is exempt from the substantial development provisions of the SMA must still be carried out in compliance with policies and standards of the SMA and the SMP. Conditional use and/or variance permits may still be required even though the activity does not need a Substantial Development permit (RCW 90.58.030(3e)).<sup>12</sup>
30. “Fair Market Value” means the open market bid price for conducting the work, using the equipment and facilities, and purchase of the goods, services, and materials necessary to accomplish the development. This would normally equate to the cost of hiring a contractor to undertake the development from start to finish, including the cost of labor, materials, equipment and facility usage, transportation, and contractor overhead and profit. The fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment, or materials.<sup>13</sup>
31. “Feasible” means an action, such as a development project, mitigation, or preservation requirement can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results; provides a reasonable likelihood of achieving its intended purpose; and does not physically preclude achieving the project’s primary intended legal use. In cases where this SMP requires certain actions, unless they are infeasible, the burden of proving infeasibility is on the applicant. In determining an action’s infeasibility, the City may weigh the action’s relative public costs and public benefits, considered in the short- and long-term time frames.<sup>14</sup>

<sup>9</sup> Term used within text; staff added common definition

<sup>10</sup> Term used within text; staff added common definition

<sup>11</sup> Term used within text; staff added common definition

<sup>12</sup> Added to be consistent with WAC

<sup>13</sup> Added to be consistent with WAC

<sup>14</sup> Added to be consistent with WAC

32. ~~21.~~ “Fill” is the addition of earth, sediment, sand, gravel, earth-retaining structure or other material to an area waterward of the ordinary high-water mark, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land.
33. ~~22.~~ “Float” means a structure designed to float on the water which provides opportunities for recreation or moorage similar to a dock or pier, but which is not built on pilings or attached to land or another structure except by an anchor or similar nonstructural connection.
34. ~~23.~~ “Floating home” means a floating structure designed substantially as a permanently located residence by means of permanent utilities, anchoring design, and lack of adequate self-propulsion to operate as a vessel; or any similar floating structure not originally designed as a permanently located residence, but which is being used for such a purpose.
35. ~~24.~~ “Floodplain” is synonymous with the one-hundred-year floodplain and means the land susceptible to inundation with a one percent chance of being equaled or exceeded in any given year. The limit of this area shall be based upon Federal Emergency Management Agency flood maps or other reasonable method that meets the objectives of the Shoreline Management Act.
36. ~~25.~~ “Floodway” means the channel of a river and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the surface elevation more than a specified height. The limit of this area shall be based upon Federal Emergency Management Agency flood maps or other reasonable method that meets the objectives of the Shoreline Management Act.
37. ~~26.~~ “Forest land” means all land that is capable of supporting a merchantable stand of timber and is not being actively used, maintained, developed or converted in a manner that is incompatible with timber production.
38. ~~27.~~ “Forest practices” means any activity conducted on or directly pertaining to forest land, and the growing, processing or harvesting of timber. This definition does not include activities such as tree marking and surveying.
39. ~~28.~~ “Geological report” means a geotechnical report with the exception of engineering recommendations and shall be prepared either by a licensed geotechnical engineer or by a geologist.
40. ~~29.~~ “Geotechnical report” means a scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or geologists who have professional expertise about the regional and local shoreline geology and processes.
41. ~~30.~~ “Grading” is the movement or redistribution of the soil, sand, rock, gravel, sediment or other material on a site that alters the natural contour of the land.
42. [“Groin” means a wall-like structures built seaward from the shore to build or preserve an accretion beach by trapping littoral sand drift on the updraft side.<sup>15</sup>](#)
43. ~~31.~~ “Hard armoring” or “hard shoreline stabilization” means structural shoreline stabilization and reinforcement measures that are solid with hard surfaces, such as concrete, pilings, rock revetments, gabions, concrete groins, retaining walls, bulkheads and similar nonnatural approaches to shoreline stabilization.

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<sup>15</sup> Term used within text; PC recommended added common definition



- ~~44.~~ ~~32.~~ “Hazard tree” or “hazardous tree” means any tree that has been determined to be a present hazard to persons or property by the city arborist or another certified arborist, according to the tree hazard evaluation standards established by the International Society of Arboriculture
- ~~45.~~ “Height” for the purposes of this chapter is measured from average grade level to the highest point of a structure: Provided, that television antennas, chimneys, and similar appurtenances shall not be used in calculating height, except where such appurtenances obstruct the view of the shoreline of a substantial number of residences on areas adjoining such shorelines, or the applicable master program specifically requires that such appurtenances be included: Provided further, that temporary construction equipment is excluded in this calculation.<sup>16</sup>
- ~~46.~~ ~~33.~~ “Industrial use” means a land use that involves the production, processing, manufacturing, or fabrication of goods or materials. This definition does not include commercial retail, storage, installation or use of goods or materials manufactured elsewhere, such as boat repair or marine equipment storage.
- ~~47.~~ “Invasive” means a vegetative or animal species not native to a region and marked by a tendency to spread, especially with proclivity to replace healthy native species.<sup>17</sup>
- ~~48.~~ ~~34.~~ “In-stream structure” means a structure located partially or completely waterward of the ordinary high-water mark of a stream other than the estuary of Dogfish Creek.
- ~~49.~~ ~~35.~~ “In-water structure” means a structure located partially or completely waterward of the ordinary high-water mark of Liberty Bay or the estuary of Dogfish Creek, of which structure all or a portion is partially or completely submerged during the diurnal tidal rhythm.
- ~~50.~~ “Jetties” means structures generally built singly or in pairs perpendicular to the shore at harbor entrances or river mouths to prevent the shoaling or accretion of littoral sand drift. Jetties also protect channels and inlets from storm waves and cross currents.<sup>18</sup>
- ~~51.~~ ~~36.~~ “Liveaboard” or “liveaboard vessel” means a vessel used as an over-water or in-water residence in Liberty Bay for a period exceeding two months in any one calendar year.
- ~~52.~~ ~~37.~~ “Lot coverage” means that percentage of the total lot area covered by structures, including all projections except eaves, driveways and concrete patios. Lot coverage does not include subsurface structures.
- ~~53.~~ ~~38.~~ “Marina” means a public or private boating facility providing boat moorage facilities to the general boating community, such as boat slips and docks. A marina may also include boating-related services such as fuel or boat repair, and other uses consistent with the provisions of this chapter.
- ~~54.~~ ~~39.~~ “Mean high water” means the average elevation of all high waters recorded at a particular point or station, based on data obtained from the most recent tidal epoch recorded by the NOAA Liberty Bay tidal station, or that of an official successor agency.
- ~~55.~~ ~~40.~~ “Mining” means the removal of naturally occurring materials from the earth for economic uses pursuant to Chapter 78.44 RCW and Chapter 332-18 WAC.
- ~~56.~~ ~~41.~~ “Mitigation sequencing” means that where mitigation is required, mitigation measures per WAC 173-26-201(2)(e), or as subsequently amended, shall be applied in the following sequence of steps listed in order of priority, with (a) being the top priority: (a) avoiding the impact altogether by not taking a certain action or parts of an action; (b) minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts; (c) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (d) reducing or eliminating the impacts over time by preservation and maintenance operations; (e) compensating for the impact by replacing,

<sup>16</sup> Added to be consistent with WAC

<sup>17</sup> Term used within text; staff added common definition

<sup>18</sup> Term used within text; PC recommended added common definition



enhancing, or providing substitute resources or environments; and (f) monitoring the impact and the compensation projects and taking appropriate corrective measures.

57. ~~42.~~ “Mixed use” means the development of a tract of land, building or structure with a variety of complementary and integrated uses, such as, but not limited to: residential, commercial (office, retail), marina, public uses and/or recreation.
58. “Modification” means an action that modifies the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a breakwater, dock, boat launch ramp, or other shoreline structures. A shoreline modification also can consist of other activities such as dredging and filling. <sup>19</sup>
59. ~~43.~~ “Moorage” or “moorage facility” means a marina, open water moorage and anchorage area, pier, dock, mooring buoy, slip, or any other similar fixed moorage site.
60. “Mooring buoy” means a floating object anchored to the bottom of a water body that provides tie up capabilities for vessels. <sup>20</sup>
61. ~~44.~~ “Nonconforming structure” means an in-water, over-water or upland structure which was lawfully constructed or placed prior to the effective date of the applicable shoreline master program, or amendments thereto, but which does not conform to present shoreline development regulations or standards of the program. An example of a nonconforming structure is a structure that does not meet shoreline development standards such as yard setbacks, parking requirements, lot coverage, density or height. A nonconforming structure may also contain a nonconforming use or uses.
62. ~~45.~~ “Nonconforming use” means an in-water, over-water or upland use which was lawfully established prior to the effective date of the applicable shoreline master program, or amendments thereto, but which does not conform to present shoreline use regulations or standards of the program. Examples of a nonconforming use are: (a) a use located anywhere in the shoreline jurisdiction that is not permitted or conditionally permitted in the relevant shoreline environment; (b) a use located in a shoreline buffer that is permitted or conditionally permitted in the relevant shoreline environment, but that does not comply with the water-related, water-dependent or public access/recreation standard for uses within a buffer; or (c) a use in the aquatic environment that is not water-related, water-dependent, or public access/recreation. A nonconforming use may also be located within a nonconforming structure.
63. ~~46.~~ “No net loss” means no net loss of shoreline ecological functions as defined in WAC 173-26-186(8) or its successor.
64. “Normal maintenance” means those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. <sup>21</sup>
65. “Normal repair” means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment and achieves not net loss of ecological functions. <sup>22</sup>
66. “Normal residential appurtenance” means development necessarily connected to the use and enjoyment of a single-family residence and located landward of the perimeter of an associated

<sup>19</sup> Term used within text; staff added common definition

<sup>20</sup> Term used within text; staff added common definition

<sup>21</sup> Added to be consistent with WAC

<sup>22</sup> Added to be consistent with WAC

wetland and landward of the ordinary high-water mark. Normal residential appurtenances include a garage, deck, shed, ADA ramps, patios, antennas, solar arrays, driveway, utilities solely servicing the subject single-family residence, fences, and grading which does not exceed 250 cubic yards.<sup>23</sup>

67. ~~47.~~ “Ordinary high water mark” or “OHWM” is the mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the Department of Ecology; provided, that in any area where the OHWM cannot be found, the OHWM adjoining salt water shall be the line of mean higher high tide and the OHWM adjoining fresh water shall be the line of mean high water.
68. ~~48.~~ “Over-water structure” means a structure located partially or completely waterward of the ordinary high-water mark of which no portion (excluding accessory support such as piers, pilings or floats) is submerged during the diurnal tidal rhythm.
69. ~~49.~~ “Pier” means a structure supported by pilings that projects over, and is raised above, the water but is attached to land or to a structure, and that is typically used for boat moorage, swimming, fishing, public access, float plane moorage, or similar activities requiring access to deep water.
70. ~~50.~~ “Public” means a structure, facility, use or service that is available to be used or occupied by the public.
71. ~~51.~~ “Preferred uses” are those uses, in the following order of preference, which (a) recognize and protect the statewide interest over local interest; (b) preserve the natural character of the shoreline; (c) result in long-term over short-term benefit; (d) protect the resources and ecology of the shoreline; (e) increase public access to publicly owned areas of the shoreline; (f) increase recreational opportunities for the public in the shoreline; and (g) provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary; consistent with the provisions of RCW 90.58.020, or as subsequently amended.
72. ~~52.~~ “Primary structure” or “principal structure” means the structure associated with the principal use of the property. In some circumstances, such as multibuilding commercial or multifamily residential development, there may be more than one primary structure on a property. This definition shall not include nonhabitable, accessory structures such as storage sheds, greenhouses, swimming pools, and parking lots.
73. ~~53.~~ “Priority uses” include (a) protection and restoration of ecological functions to control pollution and prevent damage to the natural environment and public health; (b) water-dependent and associated water-related uses; (c) water-related and water-enjoyment uses; (d) single-family residential uses; (e) non-water-oriented uses in locations where the above described uses are inappropriate or where non-water-oriented uses demonstrably contribute to the objectives of the Shoreline Management Act, consistent with the provisions of WAC 173-26-201(2)(d), or as subsequently amended.
74. ~~54.~~ “Priority species” means species requiring protective measures and/or management to ensure their persistence at genetically viable population levels. Priority species include state-listed or state-proposed endangered, threatened or sensitive species and candidate species.
75. ~~55.~~ “Public access” means the ability of the general public to reach, touch and enjoy the water’s edge, to travel on the waters of the state, and to view the water and shoreline from adjacent locations.

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<sup>23</sup> Added to be consistent with WAC

76. ~~“Qualified professional” or “professional” means a person with experience and training in the pertinent scientific discipline, and who is a qualified scientific expert with expertise and/or certification appropriate for the relevant subject. A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology, or related field and, unless otherwise specified in this SMP, must have at least five years of related work experience.~~<sup>24</sup>
77. ~~56.~~ “Recreational development” or “recreational facilities” means private and public facilities designed and used to provide recreational opportunities to the public and/or to private communities, including facilities in public parks.
78. ~~57.~~ “Rebuild” for the purposes of this chapter means the reconstruction of a structure that has been damaged by more than fifty percent, or destroyed, by a sudden, unforeseen event such as a fire or windstorm.
79. ~~58.~~ “Redevelop” or “redevelopment” for the purposes of this chapter means the deliberate replacement of more than fifty percent of an existing structure, or demolition of the structure, with development of a new and/or remodeled structure or structures in its place.
- ~~59. “Repair” for the purposes of this chapter includes routine or minor maintenance, and repair of minor damage to up to fifty percent, to an existing structure.~~<sup>25</sup>
80. ~~60.~~ “Residential development” or “residential land use” means one or more buildings or portions thereof which are used to provide a place of abode for human beings, including single-family detached homes, two- and three-family attached homes (duplex and triplex), multifamily residences, assisted living, row houses, townhomes, and similar housing, together with accessory uses and structures normally common to residential uses and permitted by city code. This definition does not include hotels, motels, bed and breakfast facilities, transient housing, boarding houses or camping facilities.
81. ~~61.~~ “Restore” or “restoration” for the purposes of this chapter means major repairs to a structure beyond the scope of normal maintenance, or repairs to more than fifty percent of a structure where damage does not meet the level of “destruction.”
82. ~~62.~~ “Shorelands” means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high-water mark. Also referenced as “uplands” for the purposes of this chapter.
83. ~~63.~~ “Shoreline administrator,” for the purposes of this chapter, shall mean the city planning director or his/her assignee.
84. ~~64.~~ “Shoreline buffer” means an area immediately adjacent to the shoreline as measured from the OHWM, which is ~~required~~ to remain predominantly undisturbed undeveloped and in its natural state to protect the shoreline environment and essential habitat elements for fish and/or wildlife, ~~unless otherwise but may be modified and reduced to accommodate allowed uses when indicated in this chapter, and when conducted so that no net loss of critical area or shoreline ecological functions occurs.~~ Shoreline buffers and setbacks extend both above and below ground.<sup>26</sup>
85. ~~65.~~ “Shoreline building buffer setback” means an area immediately adjacent to a shoreline buffer within which no buildings or other structures may be constructed, unless otherwise indicated in this chapter. The buffer setback protects the shoreline buffer during development activities, use, and routine maintenance occurring adjacent to the buffer.
86. ~~66.~~ “Shoreline master program” or “SMP” means the city’s combined comprehensive plan policies, development regulations, and permit process system that addresses development and uses, which is based on state laws and rules but is tailored to the specific geographic, economic

<sup>24</sup> Term used within text; staff added common definition

<sup>25</sup> Delete definition, new definition “normal repair” added on page 9 (consistent with WAC)

<sup>26</sup> Term used within text; staff added common definition

and environmental needs of the community. The local SMP is essentially a shoreline-specific combined comprehensive plan, zoning ordinance, and development permit system.

- 87. ~~67.~~ “Shoreline stabilization” means actions taken to address erosion impacts to property and dwellings, businesses, or structures caused by natural processes, such as current, flood, tides, wind, or wave action, including both structural and nonstructural methods.
- 88. ~~68.~~ “Shorelines” means all of the water areas of the state and their associated shorelands, together with the lands underlying them, except (a) shorelines of statewide significance.
- 89. ~~69.~~ “Shorelines of statewide significance” are those areas of Puget Sound and the Strait of Juan de Fuca and adjacent salt water north to the Canadian line and lying seaward from the line of extreme low tide.
- 90. ~~70.~~ “Sign” means any device, structure, fixture or placard using, containing or displaying graphics, symbols or written copy for the purpose of advertising or identifying any establishment, product, occupant, service or related information, including signs placed in windows or painted upon building facades.
- 91. ~~71.~~ “Significant tree” for the purposes of this chapter shall mean a tree that is at least ten inches in diameter measured at four feet from the ground.
- 92. ~~72.~~ “Soft shoreline armoring” or “soft shoreline stabilization” means nonstructural or nonrigid stabilization measures such as vegetation and beach enhancement, upland drainage control, and gravel placement.
- 93. ~~73.~~ “Structure” means a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels.
- 94. ~~74.~~ “Transportation facilities” means public or private roads and streets that are used by cars and similar motorized vehicles. This definition does not include private driveways.
- 95. ~~75.~~ “Unpermitted structure” means a structure that was not lawfully constructed or placed according to the shoreline master program or other city regulations in effect at the time of its construction or placement.
- 96. ~~76.~~ “Unpermitted use” means a use that was not lawfully established according to the shoreline master program or other city regulations in effect at the time of its establishment.
- 97. ~~77.~~ Upland Area or Uplands. See “Shorelands.”
- 98. ~~78.~~ “Utilities, accessory” means on-site utilities that serve a primary use on the site, such as a water, sewer or gas line to a residence or business, and shall be considered part of the primary use.
- 99. ~~79.~~ “Utilities, primary” means facilities which produce, store, collect, treat, carry, discharge, or transmit water, storm drainage, natural gas, sewage, electricity, phone or cable communications, or similar services.
- 100. ~~80.~~ “Vessel” means ships, boats, barges, or any other floating craft which are designed and used for navigation and do not interfere with the normal public use of the water.
- 101. ~~81.~~ “Viewshed” for the purposes of this chapter means a view of the Liberty Bay shoreline and surrounding shorelands, as seen by the human eye along a continuous vantage from designated public rights-of-way and public parks in the shoreline jurisdiction.
- 102. ~~82.~~ “View corridor” for the purposes of this chapter means a city-approved, designated open area on one or more properties that extends from a public right-of-way or public park within a designated viewshed to the shoreline, to provide public views of the shoreline. Private views of the shoreline from or across either public or private property are not protected.
- 103. ~~83.~~ “Water-dependent use” means a use which cannot exist in a location that is not adjacent to the water and which is dependent on the water by reason of the intrinsic nature of its operation.

104. ~~84.~~ “Water-enjoyment use” means a recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides recreational use or aesthetic enjoyment of the shoreline for a large number of people with the water or shoreline for leisure and enjoyment as a general character of the use and which, through location, design and operation, assure the public’s ability to interact with the water or shoreline. In order to qualify as a water-enjoyment use, the use must be open to the public and most if not all of the water or shoreline-oriented space in the facility must be devoted to the specific aspects of the use that foster shoreline or water interaction.
105. ~~85.~~ “Water-oriented use” means a use that is water-dependent, water-related or water-enjoyment, or a combination of such uses.
106. ~~86.~~ “Water-related use” means a use that is not intrinsically dependent on a shoreline location but whose economic viability is dependent upon a shoreline location because of a functional requirement for a shoreline location, such as the arrival or shipment of materials by water, or because the use provides a necessary service supportive of a water-dependent commercial activity.
107. ~~87.~~ “Wetlands” or “wetland areas” means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

- B. Chapter 90.58 RCW;
- C. Chapter 173-26 WAC;
- D. ~~Chapter 173-27 WAC;~~<sup>27</sup>
- E. ~~D.~~ Poulsbo Municipal Code (PMC);
- F. ~~E.~~ Legal definitions from case law or a law dictionary;
- G. ~~F.~~ The common dictionary.
- H. Acronyms and Abbreviations<sup>28</sup>

<u>1.</u>	<u>A</u>	<u>Aquatic Environment</u>
<u>2.</u>	<u>BMPs</u>	<u>Best Management Practices</u>
<u>3.</u>	<u>City</u>	<u>City of Poulsbo</u>
<u>4.</u>	<u>SCUP</u>	<u>Shoreline Conditional Use Permit</u>
<u>5.</u>	<u>SSDP</u>	<u>Shoreline Substantial Development Permit</u>
<u>6.</u>	<u>Ecology</u>	<u>Washington State Department of Ecology</u>
<u>7.</u>	<u>GMA</u>	<u>Growth Management Act</u>
<u>8.</u>	<u>HI</u>	<u>High Intensity Environment</u>
<u>9.</u>	<u>N</u>	<u>Natural Environment</u>
<u>10.</u>	<u>OHWM</u>	<u>Ordinary High-Water Mark</u>

<sup>27</sup> Add reference to WAC 127-27 for applicable definitions

<sup>28</sup> PC Recommended addition of an acronym section

<u>11.</u>	<u>PMC</u>	<u>Poulsbo Municipal Code</u>
<u>12.</u>	<u>RCW</u>	<u>Revised Code of Washington</u>
<u>13.</u>	<u>SEPA</u>	<u>State Environmental Policy Act</u>
<u>14.</u>	<u>SMA</u>	<u>Shoreline Management Act</u>
<u>15.</u>	<u>SMP</u>	<u>Shoreline Master Program</u>
<u>16.</u>	<u>SR-1</u>	<u>Shoreline Residential 1 Environment</u>
<u>17.</u>	<u>SR-2</u>	<u>Shoreline Residential 2 Environment</u>
<u>18.</u>	<u>UC</u>	<u>Urban Conservancy Environment</u>
<u>19.</u>	<u>WAC</u>	<u>Washington Administrative Code</u>
<u>20.</u>	<u>WDFW</u>	<u>Washington State Department of Fish and Wildlife</u>

**16.08.050 Shoreline jurisdiction.**

The following areas of Liberty Bay and Dogfish Creek are within the city’s shoreline jurisdiction. ~~The exact~~ ~~The following areas of Liberty Bay and Dogfish Creek are within the city’s shoreline jurisdiction.~~ The exact location and extent of these shoreline jurisdiction areas will be determined in the field by a qualified professional according to the requirements of this chapter at the time of permit application. <sup>29</sup>

- A. Liberty Bay. That portion of Liberty Bay adjacent to any upland area within the city limits and extending to the midpoint of Liberty Bay.
- B. Dogfish Creek. That portion of Dogfish Creek from the mouth of Liberty Bay to the extent of saltwater influence (end of estuary).
- C. Uplands. Those shorelands extending two hundred feet landward from the ordinary high-water mark (OHWM) of the jurisdictional areas identified in subsections A and B of this section.
- D. As allowed by RCW 90.58.030(2)(f)(ii) and WAC 173-26-221(2)(a), the city has chosen to not expand its shoreline jurisdiction to include critical area buffers that are located outside of the shoreline jurisdiction. These areas will continue to be regulated by Chapter 16.20, Critical Areas.

~~**16.08.060 Shoreline master program regulations.**~~ <sup>30</sup>

~~The following regulations shall constitute the Poulsbo shoreline master program regulations:~~

- ~~A. This chapter, Shoreline Master Program (July 11, 2012).~~
- ~~B. Chapter 16.09, Shoreline Administration and Procedures (July 11, 2012).~~
- ~~C. The following sections of Chapter 16.20, Critical Areas (Ordinance 2007-24), shall be implemented in shoreline critical areas and their buffers according to the requirements of this chapter, and are included in Appendix A. Provisions of Chapter 16.20 that are not included in Appendix A, including definitions and regulations, and that are not consistent with the Shoreline Management Act, Chapter 90.58 RCW, and the Shoreline Master Program Guidelines, Chapter 173-26 WAC, shall not apply in the shoreline jurisdiction:
 
  - ~~1. Section 200, Wetlands.~~
  - ~~2. Sections 16.20.310(A) and (D) through (H).~~
  - ~~3. Sections 16.20.315(A), (D) and (F).~~
  - ~~4. Sections 16.20.320(A), (C), (F), (G), and (H).~~
  - ~~5. Section 400, Geologically Hazardous Areas.~~
  - ~~6. Section 600, Frequently Flooded Areas.~~
  - ~~7. Section 700, Special Reports.~~~~
- ~~D. The following sections of Title 18, Zoning:
 
  - ~~1. Chapter 18.08, Definitions.~~~~

<sup>29</sup> Edited for ease of administration and clarity

<sup>30</sup> Removed section. Text was confusing, complicated, and unnecessary. Covered in next section - 16.08.060



- ~~2. Sections 18.16.040(A) through (F) and (H), RL district lot requirements.~~
- ~~3. Section 18.20.040, RM and RH lot and density requirements; except for lot coverage.~~
- ~~4. Section 18.20.050, RM and RH lot and density requirements.~~
- ~~5. Section 18.80.24, commercial districts lot requirements, except for building coverage.~~
- ~~6. Sections 18.32.030(A), (B), (E) and (F), park zone development standards~~

~~Other city regulations that also apply within the shoreline jurisdiction include, but are not limited to: floodplain management, Chapter 15.24, grading and clearance, Chapter 15.35, environmental policy guidelines (SEPA regulations), Chapter 16.04, subdivision ordinance (Title 17), zoning ordinance (Title 18).~~

~~Citations in this chapter of city regulations shall be interpreted as referring to the most current version of such rules and codes, regardless of the adoption date of this chapter.~~

#### **16.08.060070 Relationship to other policies and regulations.**

- A. The shoreline regulations contained in this chapter shall apply to all areas within the city's shoreline jurisdiction, in addition to zoning, land use, critical areas, and development regulations, and other regulations established by the city.
- B. In the event of any conflict between the regulations in this chapter and any other city, state or federal ordinance, statute, rule or regulation, the most stringent regulation shall control, unless that regulation is preempted or unless this chapter indicates otherwise.
- C. Nothing in this chapter or action taken thereunder shall adversely affect Suquamish tribal treaty rights to which the United States government is a party.
- D. Citations in this chapter of state rules and codes shall be interpreted as referring to the most current version of such rules and codes or their successors, regardless of the adoption date of this chapter.
- ~~E. Shoreline Master Program policies, found in the Natural Environment chapter of the City's Comprehensive Plan, establish intent for the shoreline regulations. <sup>31</sup>~~
- ~~F. Critical areas within the shoreline jurisdiction shall be protected according to the requirements of the critical areas ordinance, Chapter 16.20. If there are any conflicts between the critical areas ordinance and this chapter, the more stringent requirement shall apply. <sup>32</sup>~~

#### **16.08.070080 Shoreline maps and boundaries.**

- A. Shoreline Maps. The set of maps entitled City of Poulsbo Shoreline Master Program Inventory and Characterization Exhibits, including the official shoreline master program map series, as adopted by ordinance, are the graphic representations of general environmental characteristics and general development along the city's shorelines that are regulated by this chapter. This set of maps is hereby adopted as part of this chapter. The referenced maps are to be used for general planning purposes only and may not be substituted for survey data.
- B. Shoreline Jurisdiction. The shoreline jurisdiction as depicted on the city's adopted shoreline maps, as referenced in subsection A of this section, is intended to depict the approximate location and extent of known shorelands. In determining the exact location of the city's shoreline jurisdiction, the criteria contained in RCW 90.58.030(2) shall be used. The extent of shoreline jurisdiction on any individual lot, parcel or tract shall be determined by a field investigation and survey and is the sole responsibility of the applicant. The location of the ~~ordinary high water mark OHWM and the 200-foot Shoreline Jurisdiction~~ shall be included in shoreline permit application submittals to ~~demonstrate~~ determine the ~~extent location~~ of the shoreline jurisdiction. <sup>33</sup>
- C. Interpretation of Shoreline Environment Designations. The following criteria shall be used to interpret the boundaries of shoreline environment designations:

<sup>31</sup> Add reference to shoreline policies found in the Comprehensive Plan (NE Chapter)

<sup>32</sup> Clarify applicability of critical areas in shoreline jurisdiction (moved from 16.08.110)

<sup>33</sup> Edited for ease of administration and clarity



1. Property Lines. Where a shoreline environment designation boundary is indicated as approximately following a property line, the property line is the shoreline environment designation boundary.
2. Streets. Where a shoreline environment designation boundary is indicated as following a public or private street, the edge of the private street or public right-of-way nearest to the shoreline is the shoreline environment designation boundary. Where a right-of-way or private street is vacated, the area comprising the vacated right-of-way or private street will acquire the classification of the property to which it reverts.
3. Undesignated Properties. Any shoreline areas not mapped and/or designated at the time of adoption of this SMP shall be assigned an urban conservancy designation until redesignated through a shoreline master program amendment.
4. Where a shoreline environment designation boundary on an upland property is based on the shoreline buffer, the designation boundary shall be measured landward from the OHWM.
5. For the aquatic environment of Liberty Bay, the boundary of the aquatic environment designation coincides with the furthest extent of the city's jurisdiction as provided in RCW 35.21.160.

**16.08. ~~080090~~ Interpretations.**

- A. General. The planning director may issue interpretations of any provisions of this chapter as necessary to administer the shoreline master program policies and regulations. The planning director shall base his/her interpretations on:
1. The defined or common meaning of the words of the provision; and
  2. The general purpose of the provision as expressed in the provision; and
  3. The logical or likely meaning of the provision viewed in relation to the Washington State Shoreline Management Act, including the purpose and intent as expressed in Chapter 90.58 RCW and the applicable guidelines as contained in Chapter 173-26 WAC, and the natural environment shoreline policies of the Poulsbo comprehensive plan.
- Any formal written interpretations of shoreline policies or regulations shall be submitted to the Department of Ecology for review.
- B. Effect. An interpretation of this chapter will be enforced as if it is part of this code. Formal interpretations by the planning director shall be kept on file by the planning department and shall be available for public review, and shall periodically be incorporated into this chapter during required updates of the SMP.

**16.08. ~~090100~~ Liberal construction.**

As provided for in RCW 90.58.900, the Shoreline Management Act is exempted from the rule of strict construction; the Act and this chapter shall therefore be liberally construed to give full effect to the purposes, goals, objectives, and policies for which the Act and this chapter were enacted.

**16.08. ~~100110~~ Severability.**

The Act and this chapter comprise the basic state and city law regulating use of shorelines within the city. In the event provisions of this chapter conflict with other applicable city policies or regulations, the more restrictive shall prevail. Should any section or provision of this chapter be declared invalid, such decision shall not affect the validity of this chapter as a whole.

## ARTICLE II. REGULATIONS APPLYING TO ALL SHORELINE DEVELOPMENT, USES AND ACTIVITIES

### 16.08. ~~110120~~ General. <sup>34</sup>

The following standards in this section apply to all development, uses and activities within the shoreline jurisdiction zone that are commenced, constructed, altered or expanded after the effective date of this shoreline master program.

A development, activity or use that meets the exemption criteria of WAC 173-27-040(2), RCW 98.58.030(3)(e), 90.58.140(9), 90.58.147, ~~90.58.355~~ or 90.58.515, and is a permitted development, activity or use in the relevant shoreline environment, shall be exempt from the requirement to obtain a shoreline substantial development permit, following issuance of an exemption letter from the planning director pursuant to Section 16.09.060. An exempted development or use shall comply with all other requirements of this master program, the zoning code, and other relevant provisions of the city code, as well as federal and state law.

- A. All development, activities and uses within the shoreline jurisdiction shall require a shoreline substantial development permit, shoreline conditional use permit, and/or a shoreline variance, unless exempted according to the requirements of Sections 16.09.040, 16.09.050 and 16.09.060.
- B. All shoreline uses and development shall be located and designed in a manner that ensures no net loss of shoreline ecological functions and minimizes adverse impacts to natural shoreline resources and wildlife habitat, including fish and aquatic habitat.
- C. All shoreline development and uses impacting ecological functions shall be mitigated according to the mitigation sequence established in WAC 173-26-201(2)(e), except as otherwise specified in this chapter. This mitigation sequence requires that potential impacts shall first be avoided if possible; if avoidance is not possible, the anticipated impact shall be minimized; and any impacts that remain after reviewing for avoidance and minimization shall be mitigated offset through compensatory mitigation.
- D. Shoreline development and uses shall be approved according to the following priority: water-dependent, water-related, water-enjoyment, non-water-oriented.
- ~~E. In addition to the requirements of this chapter, critical areas within the shoreline jurisdiction shall be protected according to the requirements of the critical areas ordinance, Chapter 16.20. If there are any conflicts between the critical areas ordinance and this chapter, the more stringent requirement shall apply. <sup>35</sup>~~
- E. ~~F.~~ Where specific regulations for a proposed development, activity or use are not provided, the development, activity or use shall utilize best management practices to minimize any adverse impacts to water quality and natural shoreline resources.
- F. ~~G.~~ Disruption of natural shoreline resources, including clearing and grading, tree removal, and erosion protection, shall be the minimum necessary to accommodate the approved use or activity.
- G. ~~H.~~ In evaluating permit applications for proposed development, activities or uses along the shoreline, the city shall consider the long-term and regional effects of the proposal on natural shoreline resources and the ability of future generations to enjoy and use the shoreline. Any negative long-term and regional effects shall be mitigated in accordance with the mitigation sequencing requirements of Section 16.08. ~~140130~~. Failure to comply with the mitigation sequencing requirements may result in permit denial.
- H. ~~I.~~ New development shall be located and designed to avoid the need for future shoreline stabilization to the extent feasible.
- I. ~~J.~~ New development must have adequate access, utilities and public services.

<sup>34</sup> Edited for ease of administration and clarity

<sup>35</sup> Moved E (critical areas) to 16.080.060

- J. ~~K.~~ When development, activities or uses are proposed on a property or properties that are partially located in the city’s shoreline jurisdiction, the relevant shoreline permit or exemption application and any other required applications shall address the entire property or properties and the complete development proposal, both inside and outside of the shoreline jurisdiction. The applicant shall address protection of shoreline resources from nonshoreline activities and development, impacts of proposed nonshoreline land uses on protected critical areas and buffers, including the area within the shoreline buffer and setback area, and indicate any potential incompatibilities between proposed nonshoreline and shoreline uses.
- K. ~~L.~~ Proposals for new and expanded shoreline development and uses shall be evaluated for cumulative impacts to shoreline values and functions, per WAC 173-26-201(3)(d)(iii).
- L. A development, activity or use that meets the exemption criteria of RCW 90.58.355 and WAC 173-27-044 are not subject to any local government review and are not required to obtain a shoreline substantial development permit or exemption.<sup>36</sup>

**16.08. ~~120130~~ Federal and state approvals.**

- A. All work at or waterward of the OHWM may require permits or approvals from one or more of the following state and federal agencies: U.S. Army Corps of Engineers, Washington Department of Fish and Wildlife, Washington Department of Natural Resources, or Washington Department of Ecology. It is an applicant’s responsibility to determine which federal or state permits may apply to a development proposal, and to obtain them.
- B. Nothing in this chapter shall relieve an applicant from applying for and obtaining any necessary permits or approvals described in subsection A of this section. If an applicant does not provide documentation verifying that all such permits and approvals have been received prior to issuance of a permit or exemption under this chapter, the city may condition such permit or exemption upon the applicant obtaining all other required permits or approvals, and may require that such permits or approvals must be obtained before a city building permit will be issued.
- C. If there are any conflicts between local, state and federal requirements or conditions, the more stringent requirement or condition shall apply and shall be documented in the city’s approved shoreline permit, unless otherwise indicated in this chapter.

**16.08. ~~130140~~ Mitigation and sequencing requirements.**<sup>37</sup>

- A. Development and activities are required to mitigate impacts to shoreline habitat and other environmental impacts, to meet the standard of “no net loss” of shoreline ecological functions as directed in WAC 173-26-186(8) or its successor. To ensure that proposed actions are consistent with the no net loss provision by avoiding, minimizing, restoring, and mitigating compensating for adverse impacts, an applicant for a development or activity where impacts are anticipated (including but not limited to all over-water uses or shoreline modifications) shall complete a mitigation an analysis utilizing mitigation sequencing as defined in Section 16.08.040 during design, construction and operation, in a manner consistent with WAC-173-26-201(2)(e) or as subsequently amended.
- B. If an analysis of mitigation sequencing analysis reveals that unavoidable impacts will result from the proposed development or activity, a habitat mitigation plan shall be prepared according to the requirements of WAC 173-26-201(2)(e) and 197-11-660 to ensure no net loss of shoreline habitat values and functions or impacts to priority species. If critical areas will be impacted, the requirements of the city’s critical areas ordinance (Chapter 16.20 PMC), ~~as indicated in Section 16.08.060,~~ shall also be addressed in the mitigation plan.
- C. Failure to demonstrate that the mitigation sequencing standards have been met, including the standard of not net loss of shoreline ecological functions, may result in permit denial, or the city may restrict or

<sup>36</sup> Added “L”, per recommendation by Ecology staff and consistent with WAC 173-27-044

<sup>37</sup> Edited for ease of administration and clarity

reduce development or land uses, or impose additional conditions. Additionally, the city may request that the applicant submit studies by qualified professionals, or that submitted studies, mitigation analysis and/or habitat mitigation plan be peer-reviewed by qualified professionals, at the applicant's expense in order to determine compliance with these standards.

**16.08. ~~140150~~ In-water construction and development activities.**

The following standards shall apply to in-water work, including, but not limited to, installation of new structures, repair of existing structures, restoration projects, and aquatic vegetation removal.

- A. In-water structures and activities shall be sited and designed to avoid the need for future shoreline stabilization and nonmaintenance dredging, with special emphasis on protection of critical saltwater habitat and species, and submerged aquatic vegetation.
- B. Removal of existing structures shall be accomplished so that materials from the structure do not enter or remain in the water.
- C. Waste material and unauthorized fill, such as construction debris, concrete, bricks, asphalt, metal, tires and any other similar material upland or below the OHWM shall be removed.
- D. No toxic or deleterious materials, including but not limited to petroleum products, hydraulic fluid, cement, tires, or chemicals, are allowed to enter or leach into the water during in-water construction. Sedimentation and turbidity during construction shall comply with state and federal water quality requirements and any associated permit conditions. Appropriate spill clean-up materials must be on site at all times, and any hazardous material or oil spills must be contained and cleaned immediately, and reported immediately to the Department of Ecology and to the city, as specified in Section 16.08. ~~160150~~(C)(6).
- E. In-water work shall be conducted in a manner that minimizes turbidity and causes little or no siltation to adjacent areas. A sediment control curtain and/or other appropriate best management practice (BMP) shall be used in those instances where siltation can reasonably be expected. Work shall be conducted using BMPs for the protection of water quality, including the use of debris booms, silt curtains or other control measures, singly or in combination, which shall be maintained and operated to provide compliance with required state and federal water quality standards.
- F. Any trenches, depressions or holes created below the OHWM shall be backfilled.
- G. Fresh concrete or concrete by-products shall not be allowed to enter the water at any time during in-water installation. All forms used for concrete shall be completely sealed to prevent the possibility of fresh concrete from entering the water.
- H. Alteration or disturbance of the bank and bank vegetation shall be limited to that necessary to perform the in-water work. All disturbed areas shall have appropriate erosion control measures installed, and shall be restored according to an approved mitigation plan.
- I. If at any time as a result of in-water work, water quality problems develop, immediate notification shall be made to the Department of Ecology and to the city.
- J. Materials used for over-water decking, in-water construction, or other structural components that may come into contact with water shall comply with regulations of responsible agencies (e.g., Department of Fish and Wildlife or Department of Ecology) to avoid leaching of toxic chemicals.

**16.08. ~~150160~~ Water quality.**

- A. The location, design and management of shoreline development and activities shall not degrade the quality or quantity of surface and groundwater on or adjacent to the site. All federal and state water quality and effluent standards shall be met.

- B. Submittal Requirements. All proposals for development activity or construction, including clearing, grading and fill, shall submit for approval a stormwater site plan, unless exempted by the public works official. The stormwater site plan shall include:
1. Provisions for temporary erosion control measures; and
  2. Provisions for stormwater detention, water quality treatment and stormwater conveyance facilities, in accordance with the city's adopted stormwater management manual in effect at the time of permit application.
- C. Standards.
1. New or expanded shoreline development shall comply with the standards established in the city's adopted stormwater management manual in effect at the time of permit application.
  2. New or expanded shoreline development and activities shall apply best management practices (BMPs) consistent with the city's adopted stormwater management manual, to minimize any increase in surface water runoff and to control, treat and release surface water runoff so that receiving properties, wetlands or streams, and Liberty Bay are not adversely affected. All types of BMPs shall be regularly maintained for continual functioning as intended.
  3. Low impact development techniques shall be considered and implemented to the greatest extent practicable, consistent with the city's adopted stormwater management manual.
  4. If a new stormwater outfall or discharge pipe to Liberty Bay is demonstrated to be necessary, it shall be designed so that the outfall and energy dissipation pad is installed above the OHWM, unless otherwise demonstrated to be infeasible.
  5. In addition to providing stormwater quality treatment facilities as required in this section, for new or expanded shoreline development and activities the developer and/or property owner shall provide source control BMPs designed to treat or prevent stormwater pollution arising from specific activities expected to occur on the site.
  6. No release of oils, hydraulic fluids, fuels, paints, solvents or other hazardous materials or chemicals shall be permitted into Liberty Bay. If water quality problems occur on a site, including equipment leaks or spills, work operations shall cease immediately and the Department of Ecology shall be immediately notified. The responsible party shall initiate a full and rapid response to contain and clean up a leak or spill. The public works department and other agencies with jurisdiction shall be contacted immediately to coordinate spill containment and cleanup activities. It shall be the responsibility of the property owner to fund and implement the containment and cleanup activities. The person or company responsible for a spill of oil or hazardous substances into state waters may be required by the state or city to fund a natural resource damage assessment, pay a penalty for violation of state or city laws or rules, and/or reimburse the state's or city's expenses to respond and investigate the incident.
  7. See Sections 16.08.150140(D), (G) and (J) regarding restricted materials that may not come into contact with the water of Liberty Bay and Dogfish Creek estuary.
  8. The application of pesticides, herbicides or fertilizers shall comply with the following standards:
    - a. The application of pesticides, herbicides or fertilizers within the shoreline setback shall utilize Best Management Practices for Landscaping and Lawn/Vegetation Management Section of the 2005 Stormwater Management Manual for Western Washington, or its successor as adopted by the city, to prevent contamination of surface and ground water and/or soils, and adverse effects on shoreline ecological functions and values.
    - b. Pesticides, herbicides and fertilizers shall be applied to upland areas in a manner that minimizes their transmittal to adjacent water bodies. The direct discharge of these chemicals into adjacent water bodies is prohibited. Spray application of pesticides shall not occur within one hundred feet of open waters, including wetlands, streams and any channel that leads to open water except when approved by the city.

- c. The use of pesticides, herbicides or fertilizers within the shoreline jurisdiction, including applications of herbicides to control noxious or invasive aquatic vegetation, shall comply with the regulations of responsible state and federal agencies, including any permitting requirements.

D. On-Site Sewage Systems.

1. All new development within the shoreline jurisdiction shall connect to the city sewer system.
2. If an existing shoreline residence is located within two hundred feet of a city sewer line that can accept new residential connections, the residential structure may not be expanded unless it is connected to the city sewer system.
3. If the Kitsap County health district certifies that an on-site sewage system is failing or is inadequate for the property it serves, development on the entire property shall be connected to city sewer if a city sewer line is within two hundred feet of any building on the property that is connected to the on-site sewage system. Replacement or repair of a failing or inadequate system shall only be allowed if city sewer is not available within two hundred feet, and the health district confirms that a new on-site system will function correctly based on such factors as the property's size, soils, and topography.

### ARTICLE III. SHORELINE DEVELOPMENT, USES AND ACTIVITIES

#### 16.08. ~~160170~~ Shoreline environment designations.

Local governments are required, under the Washington State Shoreline Management Act of 1971 through WAC 173-26, to develop and assign a land use categorization system of shoreline areas as a basis for effective Shoreline Master Programs. The intent of designating shoreline environment is to encourage development that will enhance the present or desired character of the shoreline. To accomplish this, segments of shoreline are given an environment designation based on existing development patterns, natural capabilities and limitations, and the aspiration of the local community.<sup>38</sup>

Environment designations are applied to all of the city's shoreline areas based upon habitat characterization, land use, and location of shoreline buffers. Within the city's jurisdiction, these include: shoreline residential-1 (SR-1), shoreline residential-2 (SR-2), high intensity (HI), urban conservancy (UC), natural (N) and aquatic (A), as shown on the city's adopted shoreline maps. The shoreline environment designations do not change or replace the underlying zoning of the affected properties, although they provide more specific requirements and limitations for shoreline uses and modifications in a manner similar to a zoning overlay. Management policies for each environment are in the city's adopted shoreline master program policies and the comprehensive plan. The environment designations are as follows:

- A. Shoreline Residential (SR). The shoreline residential environment is intended to accommodate residential development consistent with the city's shoreline management standards; protect ecological functions and natural habitat, and restoration when feasible; and provide public access and recreational uses, where appropriate. The shoreline residential environment is divided into two subdesignations: shoreline residential-1 (SR-1) and shoreline residential-2 (SR-2).

The Shoreline Residential-1 environment primarily includes those areas of the shorelands waterward of the established shoreline buffer, and/or on the water side of "buffer interruptions" such as major roads.

The Shoreline Residential-2 environment primarily includes those areas of the shorelands outside of the established shoreline buffer, and/or on the upland side of "buffer interruptions," such as major roads. Within these areas, new residential development is permitted according to the applicable shoreline and zoning development standards, with an emphasis on transition from the preservation-oriented focus of SR-1 to adjacent residential development located outside of the shoreline jurisdiction.

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<sup>38</sup> Clarifying purpose language and edited for ease of administration and clarity



Shoreline Residential-1 includes the following areas:

1. In the Fjord Drive planning segment, the areas of the shoreline residential environment located on the west (waterward) side of Fjord Drive.
2. In the Front Street planning segment, areas of the shoreline residential environment that are located either west (waterward) of the shoreline buffer line or on the west (waterward) side of Front Street.
3. In the western planning segment, the areas of the shoreline residential environment located east (waterward) of the one-hundred-foot shoreline buffer line.

Shoreline Residential-2 includes the following areas:

1. In the Fjord Drive planning segment, the areas of the shoreline residential environment located on the east side of Fjord Drive.
  2. In the Front Street planning segment, areas of the shoreline residential environment that are located either east of the shoreline buffer line or on the east side of Front Street.
  3. In the estuary planning segment, the areas of the shoreline residential environment located on the east side of Bond Road.
  4. In the western planning segment, the areas of the shoreline residential environment located west of the one-hundred-foot shoreline buffer line.
- B. High Intensity (HI). The high intensity (HI) shoreline environment provides for those areas of existing moderate commercial and mixed commercial/residential development. This environment allows for optimum use of shoreline areas that are presently developed with commercial uses, while seeking opportunities to protect habitat and ecological functions from further degradation. The identified HI areas include the downtown waterfront and an area near the head of Liberty Bay.
- C. Urban Conservancy (UC). The urban conservancy (UC) shoreline environment preserves existing natural landforms and native shoreline vegetation as much as possible, while promoting public shoreline access, views and recreation along with continuance of existing developed uses. The 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.
- D. Natural (N). The natural (N) shoreline environment is established to protect and restore shoreline areas that are relatively free from human influence, undeveloped, and/or include intact or minimally degraded shoreline functions that are sensitive to proposed impacts from development. N areas within the city include the majority of Fish Park, and areas of Muriel Iverson Waterfront Park, Net Shed Park, American Legion Park and Nelson Park, that are within zero to one hundred feet of the ~~ordinary high water mark~~ OHWM of Liberty Bay and/or the estuarine portion of Dogfish Creek.
- E. Aquatic (A). The aquatic (A) shoreline environment includes the water and lands waterward of the ordinary high-water mark within the city's jurisdiction, including public and private tidelands, state submerged lands, and areas designated as critical saltwater habitat, and the estuarine portion of Dogfish Creek.

**16.08. ~~170180~~ Shoreline use table.** <sup>39</sup>

- A. The shoreline use table below indicates appropriate shoreline uses in each of the city's environmental designations, subject to restrictions indicated in Sections 16.08. ~~190180~~ through 16.08. ~~320310~~, and is applicable to the following:
1. New development uses or activities. This does not include normal maintenance or repair.
  2. Redevelopment according to Section 16.08.040(~~5876~~) of a conforming structure of the same size and within the same footprint as the existing structure. If redevelopment of a nonconforming structure is proposed, the nonconformance regulations in Article VI of this chapter shall apply.

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<sup>39</sup> Overall, edited for ease of administration and clarity



3. Expansion of an existing development use or activity above that existing as of the effective date of this master program.
  4. A change of use between categories of uses as indicated in A. through J. in the shoreline use table.
- B. The following requirements apply to all proposed uses, activities and developments:
1. Uses, activities or development not listed in this section or Section 16.08.~~190180~~ shall be considered “unclassified” and shall be reviewed and processed as conditional uses.
  2. If there is any conflict between the shoreline use table and the written provisions of this chapter, or between this chapter and other city regulations, the more stringent requirement or regulation shall apply unless otherwise indicated in this chapter.
  3. Permitted or conditionally permitted uses or development are allowed only where the underlying zoning also allows such uses or development. For more specific requirements or restrictions pertaining to each use, refer to Title 18 (Zoning).
  4. Accessory uses must be subject to the same shoreline permit process as its primary use, unless explicitly stated otherwise. An accessory use must not be established on a property independent of its primary use.
- C. Shoreline modifications are addressed in Article V, Shoreline Modifications.
- D. Types of Uses. For the purposes of this chapter, there are five kinds of use: The table is coded according to the following legend:
1. P = Permitted, when meeting requirements for that use and shoreline environment; may be subject to shoreline substantial development permit, minor shoreline development permit or shoreline exemption requirements. See Chapter 16.09 for substantial development permit, ~~and~~ minor development permit, and shoreline exemption requirements.
  2. C or MC = Conditional use or minor conditional use, when approved by the city and the Department of Ecology. See Chapter 16.09 for conditional use and minor conditional use permit requirements.
  3. V = Development may be allowed with a shoreline variance in order to permit reasonable use of the property, through a shoreline buffer and/or setback reduction or other reduction in dimensional standards, per WAC 173-27-170, in addition to any other required shoreline permit or exemption.
  4. X = Prohibited; the use is not eligible for a variance or conditional use permit.
  5. N/A = Not applicable in the specific environment, due to the intrinsic nature of the use. For example, a boat slip can only be located in an aquatic environment.

SHORELINE USE TABLE						
Refer to Section 16.08. <del>190180</del> for uses prohibited in all shoreline environments. Refer to Chapter 16.09 for permit application and processing requirements. For any use not addressed in this table or in Section 16.08. <del>190180</del> : refer to subsection (B)(1) of this section.						
	<i>Environment Designations</i>					
	SR-1	SR-2	HI	UC	N	A
<i>Shoreline Uses</i>						
A. Aquaculture	N/A	N/A	N/A	N/A	C <sup>1</sup>	N/A- MC <sup>1</sup>
<b>B. Commercial (not including marinas, ports and boating facilities)</b>						
Commercial use; meets the requirements of Section 16.08. <del>260250</del>	X	X	P	C	X	C <sup>2</sup>

SHORELINE USE TABLE						
Refer to Section 16.08. <del>190180</del> for uses prohibited in all shoreline environments.						
Refer to Chapter 16.09 for permit application and processing requirements.						
For any use not addressed in this table or in Section 16.08. <del>190180</del> : refer to subsection (B)(1) of this section.						
	<i>Environment Designations</i>					
	SR-1	SR-2	HI	UC	N	A
Commercial use; does not meet the requirements of Section 16.08. <del>260250</del>	X	X	X	X	X	X
Accessory commercial—water-related, water-enjoyment or non-water-oriented	MC	MC	P	C	X	X
<b>C. Habitat restoration activities<sup>3</sup></b>	P	P	P	P	P	P
<b>D. Marinas (public and private), and other boating facilities<sup>4</sup></b>						
In-water boat slips, boat moorage	N/A	N/A	N/A	N/A	N/A	P <sup>5</sup>
Major boat repair and service	X	X	C	X	X	X
Minor boat repair, inspection and service	C	X	P	X	X	P
Liveaboard vessels	N/A	N/A	N/A	N/A	N/A	C <sup>5</sup>
<b>E. Mixed use (combination of commercial, residential and/or other types of uses)</b>						
Mixed use; meets the requirements of Section 16.08. <del>250240</del>	X	X	P	C	X	X
Mixed use; does not meet the requirements of Section 16.08. <del>250240</del>	X	X	X	X	X	X
<b>F. Park and recreational facilities, including but not limited to docks and boat launches</b>	C	C	P	P	P	C
<b>G. Parking lots and parking structures, more than four vehicles</b>						
Parking lot, associated with an approved multifamily residential development	P	P	N/A	P	N/A	N/A
Parking lot, associated with an approved water-dependent or water-related use	C	C	MC	C	X	N/A
Parking garage, as part of an overall structure containing water-oriented development, or a combination of water-oriented and non-water-oriented development	X	X	C <sup>6</sup>	X	X	N/A
<b>H. Public services, transportation and utilities</b>						
New or expanded public or private roads	C	C	C	C	C	N/A
Public or private primary utilities	C	C	C	C	C	C
Public or private transmission lines	C	C	C	C	C	C
<b>I. Residential</b>						
Single-family residential <sup>40</sup>	<del>V</del> <u>P</u> <sup>9</sup>	P	X	X	X	X
Duplex and triplex residential	V	P	X	X	X	X
Multifamily residential, four or more units <sup>41</sup>	<del>V</del> <u>MC</u>	P	X	X	X	X
<del>Normal residential appurtenance Detached structures (ADU, garage, shed, etc.) that are accessory to existing or approved</del>	<del>V</del> <u>P</u>	<del>MC</del> <u>P</u>	X	X	X	X

<sup>40</sup> Staff recommended change to allow development of single-family homes within the SR-1 environment

<sup>41</sup> Removed MC as a permit pathway as there is no place in the text that would allow multifamily development with a minor conditional use permit

### SHORELINE USE TABLE

Refer to Section 16.08. ~~190180~~ for uses prohibited in all shoreline environments.  
 Refer to Chapter 16.09 for permit application and processing requirements.  
 For any use not addressed in this table or in Section 16.08. ~~190180~~: refer to subsection (B)(1) of this section.

	<i>Environment Designations</i>					
	SR-1	SR-2	HI	UC	N	A
<del>residential development</del> <sup>42</sup>						
<u>Accessory dwelling unit</u> <sup>43</sup>	P	P	P	X	X	X
<b>J. Scientific, historical, cultural, and educational research activities</b>	MC	MC	MC	MC	MC	MC

- 1 Applications for aquaculture will be considered on a case-by-case basis, as reviewed against Policy NE-8.23 in the city's comprehensive plan and Section 16.08.320.
- 2 ~~Permitted or e~~Conditionally permitted only adjacent to upland environments designated HI.
- 3 If habitat restoration is associated with a shoreline permit for a development plan or mitigation for development/use impacts, the proposed habitat restoration shall be reviewed as part of the shoreline permit for the development/use. Also refer to Section 16.09.120.
- 4 Also see Article V of this chapter, Shoreline Modifications, for specific requirements for structures within marinas and boating facilities, such as docks and boat launches, and for shoreline modification activities such as dredging.
- 5 ~~Permitted or e~~Conditionally permitted only (1) adjacent to upland environments designated HI, or (2) associated with an existing permitted ~~or conditionally permitted~~ development in the aquatic and adjacent upland environments, or (3) associated with a development plan to be approved through a shoreline permit and/or land use permit for the aquatic and adjacent upland environments.
- 6 Development associated with the parking garage shall meet the requirements of WAC 173-26-241(3)(d)(i) and (ii) and Section 16.08. ~~300290~~.
- 7 For properties within the SR-2 environment and C-1/downtown zoning district see Section 16.08. ~~260250~~.
- 8 For properties within the SR-2 environment and C-1/downtown zoning district see Section 16.08. ~~250240~~.
- 9 Single-family development footprint shall not exceed 2,500 square feet, including appurtenances.<sup>44</sup>

**16.08. 180190 Shoreline uses prohibited in all environments.**

The following uses are prohibited in all shoreline environments:

- A. Agriculture.
- B. Airplane runway (other than authorized runway in Liberty Bay), storage or service facilities.
- C. Helicopter landing, storage or service facilities.
- D. Floating homes.
- E. Forest practices.
- F. Industrial uses.
- G. Mining.
- H. Radio, electric, telephone and satellite communication towers and relay towers.
- I. Recycling centers, landfills, and utility production and processing.

<sup>42</sup> Staff recommended change is consistent with WAC and other jurisdictions

<sup>43</sup> Staff recommended change is consistent with other jurisdictions

<sup>44</sup> Limit for single-family in SR-1 environment consistent with other jurisdictions and supported by Ecology

**16.08.190200 Shoreline development and use standards—All environments and uses.<sup>45</sup>**

The following standards in this section apply to all development, uses and activities within the shoreline jurisdiction zone that are commenced, constructed, altered or expanded after the effective date of this shoreline master program:

- A. Shoreline Buffers and Setbacks.
1. For the shorelines of Liberty Bay, the shoreline buffer extends one hundred feet from the OHWM. For the Dogfish Creek estuary, the buffer shall be one hundred ~~fifty~~ feet (tidewater/estuarine stream buffer Type 3 stream buffer), ~~as measured from the OHWM or top of bank of that portion of Dogfish Creek within the shoreline jurisdiction, whichever is greater~~. In general, activities and structures that are not for a water-dependent, water-related, public recreation or public access use are not permitted within a shoreline buffer.
  2. The buffer building setback for Liberty Bay and the Dogfish Creek Estuary extends twenty-five feet from the outer edge of the buffer. In general, development activities may be permitted in a shoreline buffer building setback, but structures that are not for a water-dependent or public access use may not be located within it.
  3. Buffer and buffer building setback areas shall be measured from the OHWM and shall extend landward on the horizontal plane.
  4. Uses and development that may be allowed within the A environment or shoreline setback buffer and buffer building areas include water-dependent or water-related development and uses, public access and recreation facilities, and reasonable use of a highly constricted shoreline property, subject to other restrictions in this chapter and the city code.
  5. When a shoreline buffer contains an existing legally established public road or private access road, the Director may allow development on the landward side of the road without a shoreline permit, provided that the development will not have a detrimental impact to the shoreline. The applicant may be required to provide a report to describe the impacts. In determining whether a report is necessary, the City shall consider the hydrologic, geologic, and/or biological habitat connection potential and the extent and permanence of the buffer interruption. <sup>46</sup>
- B. When calculating lot size, lot coverage, yard setbacks or density, any land area located waterward of the OHWM, such as tidelands, shall not be included.
- C. Where strict compliance with the shoreline buffer or buffer building setback would result in a regulatory taking of the property based on its zoning and environment designation, a shoreline variance application to reduce the size of the buffer or buffer building setback may be submitted pursuant to the requirements of Section 16.09.170. However, land located entirely waterward of the OHWM, such as tidelands, has no vested development rights, and shall not qualify for relief from those provisions of the shoreline master program regulations preventing development on such areas of land, including but not limited to, those provisions regarding shoreline variances.
- D. Public viewsheds and designated public view corridors, as identified according to Section 16.08.360, shall be protected and preserved in all shoreline environment designations.
- E. Parking.
1. New development shall provide the required amount of off-street parking and loading as required by the city zoning standards, or as otherwise indicated in this chapter.
  2. When an existing structure is expanded, additional residential units are added, and/or its use is changed per Section 16.08.~~180~~170(A), additional off-street parking and loading shall be provided for the increased gross floor area and/or additional units as required by the city zoning standards, or as otherwise indicated in this chapter.

<sup>45</sup> Edits for ease of administration and clarity

<sup>46</sup> Recommended by staff. Similar to text within the Critical Areas Ordinance.

- F. Mooring or anchoring (with or without a buoy) on state lands outside of designated harbor areas shall comply with the requirements of WAC 173-26-241(3)(c)(viii) or its successor, and other relevant state law pertaining to time limitations for temporary moorage.
- G. New shoreline development or redevelopment by public entities, including local governments, port districts, state agencies, and public utility districts, shall include public access unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline environment.
- H. New construction of structures waterward of the OHWM shall be limited to locations outside of critical saltwater habitat per WAC 173-26-221(2)(iii)(C) and structures that are permanently limited to water-dependent uses, and it shall be demonstrated that it is essential for the water-dependent use to have the structure located in the critical saltwater habitat area, either in or over the water, in order for the water-dependent use to function correctly. Also see Article V of this chapter, Shoreline Modifications.
- I. No new development or redevelopment shall be permitted within the stream channel or floodway of Dogfish Creek unless it meets the following exceptions: public access for recreational purposes per Section 16.08.~~290280~~(D); public utilities, public roads and associated development per Section 16.08.~~310300~~; or habitat restoration and enhancement activities per Section 16.08.470. Existing structures within the stream channel or floodway that do not meet these exception criteria may be maintained but not expanded, and removed or destroyed structures may not be replaced. Such structures are not eligible for a shoreline variance for expansion or replacement, or for any other exceptions under the nonconforming structures regulations of this chapter. Also see Article VI of this chapter, Nonconformances.

**16.08.~~200210~~ Land division and boundary line adjustments.**

The creation of new lots or altered lots through subdivision or boundary line adjustment shall comply with the following requirements, in addition to the requirements of Title 17:

- A. New lots are prohibited in the following circumstances when the lot would not be able to accommodate development or provide a sufficient buildable area consistent with the zoning and environment designation of the lot:
  1. Where a new lot would not have sufficient buildable area outside geologically hazardous areas;
  2. Where a new lot would be entirely located within the [Aquatic](#), [Natural](#), [Urban Conservancy](#) or [Shoreline Residential-1](#) environment, or would not have sufficient buildable area located outside of these environments;
  3. Where a new lot would require a critical areas permit or variance to obtain a sufficient buildable area;
  4. Where a new lot would be located entirely within the one-hundred-year floodplain adjacent to the shoreline or streams within the shoreline jurisdiction, or would not have a sufficient buildable area located outside of the one-hundred-year floodplain.
- B. In the [Shoreline Residential-2](#) and [High Intensity](#) environments, new lots shall contain sufficient buildable area located outside of the shoreline buffer and [buffer building](#) setback to accommodate development consistent with the environment designation and zoning.
- C. The alteration of existing lots through a boundary line adjustment shall not create new nonconformities or increase existing nonconformities.
- D. New shoreline subdivisions resulting in more than four parcels shall comply with the requirements of WAC 173-26-221(4)(d)(iii).
- E. Public View Corridors.

1. For new subdivisions with a designated public view corridor, the view corridor shall be established on the overall property as part of the subdivision review process, and shall be indicated in a plat condition to be recorded with the subdivision.
2. All lots within a public view corridor that has been designated as part of a development approval pursuant to Section 16.08.360 shall have notice on title that the lot may be subject to development restrictions for view corridor protection.

**16.08.210220 Lot coverage by buildings and structures.**

The following maximum lot coverage limitations apply to new development, redevelopment and expansion of existing development after the effective date of this master program, for permitted and conditionally permitted land uses within the specified environments, unless alternative lot coverage standards are established for a water-dependent or water-related use through a shoreline conditional use permit or shoreline variance. These limitations do not apply to redevelopment of a structure of the same size and within the same footprint as the existing structure, with the exception of over-water structures, the redevelopment of which shall be limited to water-dependent uses. Development within the zero-to-one-hundred-twenty-five-foot area, which includes the one-hundred-foot shoreline buffer and twenty-five-foot building setback, may be subject to shoreline buffer and setback and reasonable use limitations.

- A. Shoreline Residential-1 environment: From zero to one hundred twenty-five feet from the OHWM, maximum lot coverage shall be thirty-five percent. In all other areas, maximum lot coverage shall be fifty percent.
- B. Shoreline Residential-2 environment: Maximum lot coverage shall be fifty percent.
- C. High Intensity environment: From zero to one hundred twenty-five feet from the OHWM, maximum lot coverage shall be fifty percent. From one hundred twenty-five to two hundred feet from the OHWM, maximum lot coverage shall be eighty percent if the property is within the downtown core and fifty percent in all other areas.
- D. Urban Conservancy environment: From zero to one hundred twenty-five feet from the OHWM, lot coverage shall not be increased beyond that existing at the time of adoption of this shoreline master program. In all other areas, maximum lot coverage shall be fifty percent.
- E. Natural environment: From zero to one hundred twenty-five feet from the OHWM, maximum lot coverage shall be fifteen percent or as otherwise determined through a shoreline variance. In all other areas, maximum lot coverage shall be twenty-five percent, unless the development proposal is for a water-dependent use approved through a shoreline conditional use permit, in which case the maximum lot coverage shall be thirty-five percent.
- F. Aquatic environment: Not applicable; allowable development in the Aquatic environment shall be determined through a shoreline conditional use permit.

**16.08.220230 Height regulations.**

The following height regulations apply to new development and expansion of existing development after the effective date of this master program. These limitations do not apply to the redevelopment of a structure as existing on the date of adoption of this master program within the HI environment or a primary structure within the Shoreline Residential-1, Shoreline Residential-2, Urban Conservancy, or Natural environments, which may be rebuilt to the pre-redevelopment height. Within the Aquatic environment, expansion and redevelopment of existing over-water structures is limited to water-dependent uses.

- A. General. Building and structure height shall be calculated according to the definition in section 16.08.040 Chapter 18.08, and shall comply with the standards in subsections B through H of this section, ~~with the exception of chimneys, church spires, belfries, cupolas, domes, flagpoles, elevator and~~

~~stair access, vents, ducts, HVAC or other roof-mounted equipment and required screening, and similar design features and mechanical equipment.~~ <sup>47</sup>

- B. Development in all environments is also subject to the height regulations in the zoning code. Where there is a conflict between this chapter and the zoning code regarding height regulations, the more stringent requirement shall apply.
- C. Shoreline Residential-1 environment: Maximum height of a primary structure shall be thirty-five feet unless a lower height is required in a shoreline variance. Maximum height on an accessory detached structure shall be twenty feet.
- D. Shoreline Residential-2 environment: Maximum height of a primary structure shall be thirty-five feet.
- E. High Intensity environment: Within one hundred twenty-five feet of the OHWM, maximum height shall be twenty-five feet. In other areas, maximum height shall be thirty-five feet.
- F. Urban Conservancy environment: Within one hundred twenty-five feet of the OHWM, maximum height of a primary structure shall be twenty-five feet unless a lower height is required in a shoreline variance. In other areas, maximum height of a primary structure shall be thirty-five feet. Maximum height of an accessory detached structure shall be twenty feet.
- G. Natural environment: Maximum height shall be fifteen feet.
- H. Aquatic environment: Maximum height of a floating structure shall be fifteen feet. For a nonfloating over-water or in-water structure, maximum height shall be twenty feet above the mean high-water elevation.

**16.08. 230240 Residential land uses.**

- A. Single-family residences are the preferred shoreline residential use in the Shoreline Residential-1 and Shoreline Residential-2 environments per RCW 90.58.020, when developed in a manner consistent with control of pollution and prevention of damage to the natural environment. However, a multifamily development ~~with up to four units per building~~ <sup>48</sup> (development in a duplex, triplex, quadruplex or townhouse style) may be permitted within the Shoreline Residential-2 environment if consistent with the underlying zoning requirements and if no variances or conditional use permits would be required to accommodate the proposed development.
- B. In the High Intensity environment, new multifamily residential units may be permitted only as part of a mixed-use development that complies with the requirements of Section 16.08. ~~250240~~.
- C. Residential Density.
  - ~~1. In the SR 1 environment, no residential densities are established, as development of new or additional residential units in this environment is not permitted except through a shoreline variance.~~ <sup>49</sup>
  - 1. ~~2.~~ In the Shoreline Residential -1 and Shoreline Residential -2 environment, residential density shall be as established in the underlying zone. However, no minimum density is established, and the realized density shall be dependent on critical area(s) and shoreline buffer requirements, in combination with required dimensional standards (lot coverage, setbacks, height), and zoning requirements (parking, landscaping, etc.).
  - 2. ~~4.~~ In the Natural environment, residential use is not allowed, and therefore no minimum or maximum density is established.
  - 3. ~~4.~~ In the High Intensity environment, the maximum density of residential development as part of a mixed-use development per Section 16.08. ~~250240~~ is fourteen dwelling units per acre, or the

<sup>47</sup> Change in height definition consistent with WAC and recommended by Ecology

<sup>48</sup> MF is defined in the zoning ordinance

<sup>49</sup> Consistent with amendment to shoreline use table that allows single-family in SR-1 environment (with limits)



limit of the residential percentage cap in the mixed-use development standards in Title 18, whichever is more restrictive. No minimum density is established.

4. ~~5.~~ In the Urban Conservancy environment, development of new or additional residential units is not permitted except as part of a mixed-use development in areas with commercial zoning. New or additional residential units shall not be constructed in city parks. No minimum or maximum density is established.
  5. ~~6.~~ In the Aquatic environment, residential use is prohibited except for liveaboard vessels meeting the requirements of Section 16.08.~~270260~~ (E). No minimum or maximum density is established.
  - ~~8.~~ ~~7.~~ Density shall comply with applicable comprehensive plan goals and policies, zoning restrictions, and shoreline area designation standards. It may not be possible to achieve the density range for a development site due to critical area(s) and shoreline buffer requirements, in combination with required dimensional standards (lot coverage, setbacks, height), and zoning requirements (parking, landscaping, etc.).
- D. New residential buildings and structures waterward of the OHWM, including accessory structures, are prohibited.
  - E. No new or expanded development associated with a residential use or a non-water-dependent component of a commercial or mixed-use development shall be permitted waterward of the OHWM, including but not limited to docks, piers, floats, boat houses, boat lifts, boat launch ramps and haulouts.
  - F. Any new multifamily development of more than four total units on a property that is located directly on the shoreline shall be required to provide shoreline access which shall be available for public use, unless it can be demonstrated that access is infeasible due to topography (e.g., high or unstable bluffs) or other reasons of public safety, or where provision of access would result in impacts to a critical saltwater habitat area.

#### **16.08.240250 Mixed land uses.**<sup>50</sup>

A new mixed-use development, or an expansion to an existing development that will contain mixed uses, may consist of any combination of residential, commercial, marina or recreational uses as allowed in the underlying zoning category and standards, with the following requirements:

- A. All new or expanded development within the Aquatic ~~aquatic~~ environment or within the shoreline buffer and setback in any other environment must be permanently occupied and maintained by one or more water-dependent and/or water-related uses that are permitted or conditionally permitted in the aquatic environment, unless otherwise specified in subsections B through E of this section.
- B. Within the High Intensity ~~high-intensity~~ environment of the downtown planning segment, if the subject property has direct access to Liberty Bay, all new development within the shoreline buffer shall be permanently occupied and maintained as water-dependent and/or water-related uses. Outside of the shoreline buffer, an area or areas equivalent to at least twenty-five percent of the new or additional building square footage shall be permanently occupied and maintained as water-dependent and/or water-related uses. The area(s) may be located within a building and/or outdoors. Refer to Section 16.08.480 for specific requirements and exceptions for the redevelopment and expansion of nonconforming structures, or structures with nonconforming uses.
- C. Within the High Intensity ~~high-intensity~~ environment of the Front Street planning segment, if the subject property has direct access to Liberty Bay, all new development within the shoreline buffer shall be permanently occupied and maintained as water-oriented uses. Outside of the shoreline buffer, an area or areas equivalent to at least twenty-five percent of the new or additional building square footage shall be permanently occupied and maintained as water-oriented uses. The area(s) may be located within a building and/or outdoors. Refer to Section 16.08.480 for specific requirements and exceptions for the redevelopment and expansion of nonconforming structures, or structures with nonconforming uses.

<sup>50</sup> Edited for ease of administration and clarity

- D. Within the ~~shoreline residential 2~~ (Shoreline Residential-2) environment for properties within the C-1/downtown zoning district:
  - 1. Mixed-use developments, as defined in Section 16.08.040, shall be permitted;
  - 2. For properties with direct access to Liberty Bay, new development within the shoreline buffer may be allowed if permanently occupied and maintained as water-oriented uses.
- E. If the subject property in any environment is separated from Liberty Bay by another property or a public right-of-way, an area or areas equivalent to at least twenty-five percent of the new or additional square footage shall be permanently occupied and maintained as water-enjoyment and/or water-related uses. The area(s) may be located within a building and/or outdoors.
- F. If the subject property has direct access to Liberty Bay, a new mixed-use development, or an addition to an existing development that will increase the gross building floor area by more than twenty-five percent over that existing after the effective date of this master program, shall provide public access to the shoreline unless such access is demonstrated to be incompatible due to reasons of safety, security, or environmental impact. If public access cannot be provided for one or more of these reasons, the applicant shall provide one or more alternative forms of shoreline-related public benefit as approved by the planning director, such as additional ecological restoration or visual access.
- G. If a proposed mixed-use development is required to provide a dedicated public view corridor per Sections 16.08.~~240200~~(E) and/or 16.08.360 (BC), or a public access path per subsection F of this section, the area within the view corridor or public access path area may apply toward the required percentage of site or building occupancy indicated in subsections B through E of this section.

**16.08. ~~250260~~ Commercial land uses.** <sup>51</sup>

This section does not apply to public and private marinas, port or boating facilities, including boat maintenance and service facilities, which are addressed in Section 16.08.~~270260~~.

New or expanded commercial development shall meet the following requirements:

- A. All new or expanded development within the aquatic environment or the shoreline buffer and setback in any other environment must be permanently occupied and maintained by one or more water-dependent uses and/or water-related uses that are permitted or conditionally permitted in the relevant environment, unless otherwise specified in subsections B through G of this section.
- B. Within the High Intensity ~~high-intensity~~ environment of the downtown planning segment, if the subject property has direct access to Liberty Bay, all new development within the shoreline buffer shall be permanently occupied and maintained as water-dependent and/or water-related uses. Outside of the shoreline buffer, an area or areas equivalent to at least twenty-five percent of the new or additional building square footage shall be permanently occupied and maintained as water-related and/or water-dependent uses. The area(s) may be located within a building and/or outdoors. Refer to Section 16.08.480 for specific requirements and exceptions for the redevelopment and expansion of nonconforming structures, or structures with nonconforming uses.
- D. Within the ~~shoreline residential 2~~ (Shoreline Residential-2) environment for properties within the C-1/downtown zoning district:
  - 1. Commercial use, including professional office, personal service, and retail sales, as defined in Section 18.40.030, shall be permitted.
  - 2. Other commercial uses permitted in the C-1 zoning district may be allowed with the approval of a shoreline conditional use permit.
  - 3. For properties with direct access to Liberty Bay, new development within the shoreline buffer may be allowed if permanently occupied and maintained as water-oriented uses.

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<sup>51</sup> Edited for ease of administration and clarity

- C. Within the ~~High Intensity~~ ~~high-intensity~~ environment of the Front Street planning segment, if the subject property has direct access to Liberty Bay, all new development within the shoreline buffer shall be permanently occupied and maintained as water-oriented uses. Outside of the shoreline buffer, an area or areas equivalent to at least twenty-five percent of the new or additional building square footage shall be permanently occupied and maintained as water-oriented uses. The area(s) may be located within a building and/or outdoors. Refer to Section 16.08.480 for specific requirements and exceptions for the redevelopment and expansion of nonconforming structures, or structures with nonconforming uses.
- D. If the subject property in any environment is separated from Liberty Bay by another property or a public right-of-way, an area or areas equivalent to at least twenty-five percent of the new or additional building square footage shall be permanently occupied and maintained as water-enjoyment and/or water-related uses. The areas may be located within a building and/or outdoors.
- E. If the subject property has direct access to Liberty Bay, a new commercial development, or an addition to an existing development that will increase the gross building floor area by more than twenty-five percent over that existing after the effective date of this master program, shall provide public access to the shoreline unless such access is demonstrated to be incompatible due to reasons of safety, security or environmental impact. If public access cannot be provided for one or more of these reasons, the applicant shall provide one or more alternative forms of shoreline-related public benefit as approved by the planning director, such as additional ecological restoration or visual access.
- F. If a proposed commercial development is required to provide a dedicated public view corridor per Sections 16.08.~~210200~~(E) and/or 16.08.360(BG), or a public access path per subsection E of this section, the area within the view corridor or public access area path may be permitted to apply toward the required percentage of site or building occupancy indicated in subsections B through D of this section.

**16.08. ~~260270~~ Marinas and other boating facilities, and boat maintenance and service uses.** <sup>52</sup>

- A. The design and location of new, altered or expanded marinas and other boating service, maintenance and use facilities, and the appropriate locations for including public boat launches and public day use docks, shall comply with the following requirements:
1. The development or use shall not interfere with the public use and enjoyment of the water or create a hazard to navigation, pursuant to WAC 173-26-221(4).
  2. The development or use shall meet the requirements of Section 16.08.~~140130~~ for mitigation sequencing.
  3. The development or use shall be located only at sites with sufficient existing water depth to accommodate the proposed development, adequate navigational and vehicular access, and adequate parking.
  4. The design of the development or use shall meet all state and federal regulations for habitat and fish protection.
  5. New uses and structures shall avoid locations within critical saltwater habitat areas to the maximum extent feasible and shall comply with Section 16.08.~~200190~~(H) and WAC 173-26-221(iii)(C) for protection of critical saltwater habitat. However, they may be located within the upland shoreline buffer and buffer setback areas; provided, that no net loss to critical saltwater habitat will occur as a result of the development. Development in a critical saltwater habitat area shall require a shoreline conditional use permit per WAC 173-26-241(2)(b)(ii)(C) and Section 16.08.490.
  6. Water-enjoyment and non-water-oriented uses and structures, such as vehicle and trailer parking, equipment and material storage not associated with water-dependent uses, office and administrative buildings, and accessory commercial development, shall not be located in the

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<sup>52</sup> Edited for ease of administration and clarity

aquatic environment and shall be located outside of the shoreline buffer and buffer setback areas to the maximum extent feasible.

7. Parking within the shoreline buffer and setback may be allowed according to the requirements of Section 16.08.~~300290~~(B)(4).
8. In addition to the above requirements, proposed port development, expansions and other alterations shall be based upon and shall be consistent with a comprehensive plan for port improvements that has been officially adopted consistent with RCW 53.20.010 and 53.20.020 and any other applicable federal, state or local requirements, including consistency with the adopted Poulsbo comprehensive plan.
9. In addition to any other requirements of this chapter, all development and uses shall be consistent with the requirements of WAC 220-~~110660-330400~~, Marinas and terminals in Saltwater Areas, and with WAC 332-30-139, Marinas and Moorages.
10. All development and uses shall comply with the requirements of Article V of this chapter, Shoreline Modifications, except as otherwise expressly stated in this chapter.

B. Boat Slips and Moorages.

1. The maximum allowable number of boat slips or moorages, and the appropriate locations for such slips or moorages, in any one marina facility shall be determined based on the following factors:
  - a. The suitability of the environmental conditions, such as but not limited to: the presence or proximity of submerged aquatic vegetation, shoreline associated wetlands, critical saltwater habitat, water depth, water circulation, sediment inputs and accumulation, and wave action, aesthetics and public views, and the ability of the applicant to mitigate for environmental impacts.
  - b. The applicant shall provide an analysis to demonstrate the proposed development's compatibility with surrounding land and aquatic conditions and uses, environment designations, and zoning, including impacts to existing public viewsheds and view corridors, parking, and adjacent properties and neighborhoods. The analysis shall address the ability of the land upland of the OHWM to accommodate the necessary support facilities, such as but not limited to access, vehicle traffic, vehicle and boat trailer parking, restrooms, and waste disposal.
  - c. A demand analysis submitted by the applicant. If the applicant is a port district, the demand analysis shall be consistent with the comprehensive port improvement plan referenced in subsection (A)(8) of this section, to demonstrate anticipated need for the requested number of slips or moorages to serve the residents of the city and the port district for recreational and commercial purposes during the stated planning period.
2. Slips and moorages in a public marina shall not be converted from public recreational use to other uses, unless the applicant demonstrates that there is no anticipated need for the existing number of recreational slips or moorage to serve the public during the foreseeable future.

C. Any proposal to expand an existing harbor area, or to extend docks, piers, slips or other moorage facilities into an area previously not developed for such a purpose, shall indicate why anticipated needs indicated in subsection (B)(1)(c) of this section cannot be accommodated in existing harbor areas and/or existing docks, piers, slips or moorage areas.

D. All new, expanded or redeveloped marinas and other boating facilities shall provide public pedestrian access to the shoreline.

E. Liveaboard Vessels.

1. Liveaboard vessels are prohibited outside of marina facilities.

2. Each liveaboard vessel shall moor at a dedicated slip. Liveaboard vessels may not be anchored or moored in open water other than for temporary purposes.
  3. New liveaboard vessel slips shall not be allowed on state lands leased after the effective date of the adoption of this shoreline master program.
  4. The addition of new liveaboard vessel slips within any area owned by a marina, yacht club or port authority or leased from a private owner shall be subject to a shoreline conditional use permit. In addition to any other conditions required in the permit, the applicant shall demonstrate how the new liveaboard will comply with the requirements of WAC 332-30-171(4) and (5) related to waste disposal, and that a minimum of at least one permanent reserved parking space shall be provided for each new liveaboard vessel.
  5. Liveaboard vessels shall comprise no more than ten percent of the total nonguest or nontransient capacity of any marina, based on the number of slips and other mooring facilities.
- F. New or enlarged covered or enclosed slips, floating storage buildings for motorized vehicles or vessels, or other covered or enclosed moorage added after the effective date of this shoreline master program, including floating boat and airplane houses and hangars, are prohibited. Maintenance, repair and replacement of existing covered or enclosed structures is acceptable; however, a cover or enclosure structure that is removed for more than six months shall be considered a discontinued use and shall not be replaced.
- G. Boat Service and Repair. Businesses or facilities providing boat or boat motor service and repair (including facilities within marinas) shall be regulated as follows:
1. Storage of parts and equipment shall be entirely within an enclosed structure.
  2. If the proposed maintenance, service or repair activities meet the definition of major boat repair and service, boats shall be removed from the water and debris shall be captured and disposed in a proper manner consistent with state and federal requirements.
  3. Major boat repair and service activities shall be conducted on dry land and shall be located either totally within a building or totally sight-screened from adjoining properties and rights-of-way.
  4. Repair and service activities shall meet all applicable city regulations for noise and lighting controls, and may have conditions placed upon the facility including but not limited to size, hours of operation, location on the site, screening measures, and number of daily launches to ensure compatibility with neighboring land uses and zones.
  5. All dry land motor testing shall be conducted within an enclosed structure.
  6. An appropriate storage, transfer, containment and disposal facility for liquid materials, such as oil, harmful solvents, antifreeze and paints shall be provided and maintained.
  7. Facilities, equipment and established procedures for the containment, recovery and mitigation of spilled petroleum or hazardous products shall be provided.
  8. Floating or mobile repair structures are prohibited.
- H. Boat Launches, Piers and Docks.
1. All new, redeveloped or expanded boat launch, pier and dock facilities outside of a marina shall meet the following requirements:
    - a. The facility shall comply with the requirements of Section 16.08.~~150140~~;
    - b. The facility shall not be located within a critical saltwater habitat area;
    - c. A shoreline permit application is required, which shall include a demand analysis to evaluate the number of anticipated daily launches, parking needs, and impacts to adjacent properties and neighborhoods;

- d. The facility shall provide one or more vehicle and trailer loading areas, at least ten feet by forty feet, commensurate with projected demand;
  - e. Day use facilities shall provide signage indicating (i) the operational hours of the facility, (ii) any daily parking time limit, if applicable, and (iii) overnight parking, camping, moorage or vessel storage on the site is not permitted; and
  - f. Prior to operation, the facility shall provide the city with evidence that all required state and federal permits have been obtained.
2. In addition to the requirements in subsection (H)(1) of this section, extended use facilities shall meet the following requirements:
    - a. The facility shall provide parking for vehicles and trailers commensurate with projected demand. Parking for vehicles shall comply with zoning code dimensional standards. Parking for vehicles and trailers shall be at least ten feet by forty feet.
    - b. Signage shall be provided indicating (i) the operational hours of the facility and (ii) the applicable restrictions on parking, moorage and vessel storage time limits, camping, and any other uses as indicated in the shoreline permit conditions.
- I. Accessory Commercial Uses.
    1. Drive-in or drive-through uses are prohibited.
    2. Commercial activities shall not be conducted upon any vessel or over-water structure located within a marina or other boating facility, including locations at slips, docks, buoys or independent anchoring, unless (a) the activity is water-dependent, (b) the commercial activity will not result in significant new impacts, including but not limited to parking, traffic and noise, and (c) the city has issued a shoreline permit or shoreline permit exemption to the facility owner or operator for such activities.

**16.08.270280 Buoy.**

- A. Mooring Buoys for Private Recreational Use.
  1. A single buoy for moorage of one boat for private recreational use may be allowed in Liberty Bay, outside of designated harbor areas, for each applicant who meets the following requirements:
    - a. The applicant is the owner of an upland residence who also owns the abutting tidelands or submerged lands where the buoy is proposed to be located, or the owner of an upland residence whose property abuts state-owned shorelands, tidelands or related beds of navigable waters, and has received approval from the state to use such area for the buoy.
    - b. The buoy shall not be located in critical saltwater habitat.
  2. Private recreational mooring buoys require permit and registration approval from the Washington Department of Natural Resources, and may require permits and review from other federal and state agencies such as the U.S. Army Corps of Engineers. The applicant shall provide documentation of these approvals upon issuance to the city planning director.
  3. The location, design, use, operation and maintenance of private recreational mooring buoys and boats moored to them shall comply with the provisions of RCW 79.105.430 or its successor.
  4. A private recreational mooring buoy that complies with subsections (A)(1) through (3) of this section is not required to obtain a shoreline substantial development permit.



B. Buoy for Purposes Other Than Private Recreational Use.

1. New buoys for commercial, navigational, monitoring, or scientific uses, or purposes other than private recreational moorage for one residential owner, are required to obtain a shoreline substantial development permit.
2. New buoys require permit and registration approval from the Washington Department of Natural Resources, and may require permits and review from other federal and state agencies such as the U.S. Army Corps of Engineers. The applicant shall provide documentation of these approvals upon issuance to the city planning director.
3. A buoy may be located in critical saltwater habitat only when it has been demonstrated to be necessary for public safety for navigational purposes and there is no other feasible alternative location, or if the buoy will be used for scientific purposes directly related to study or restoration of the critical saltwater habitat.
4. If a new buoy is part of an overall development plan, aquatic use plan, master plan or other action requiring a shoreline substantial development permit and/or land use permit, the buoy and all other relevant items shall be addressed in a combined review process.)

**16.08. ~~280290~~ Park and recreational uses.**

- A. Park and recreational facilities located on the shoreline shall provide public access to the shoreline unless such access is demonstrated to be incompatible due to reasons of safety, security, or environmental impact.
- B. New recreation facilities or expansions to existing recreation facilities that include non-water-oriented, high intensity activities, such as basketball and tennis courts, baseball and soccer fields, skate parks, and dog parks, shall be located outside of the shoreline jurisdiction to the extent feasible. Children's playgrounds and tot lots shall not be considered high intensity activities. Existing recreational facilities within the shoreline jurisdiction may continue to be maintained and utilized.
- C. New parking lots or expansions to existing parking lots shall be located outside of the shoreline buffer unless allowed by the provisions of Section 16.08. ~~300290~~(B).
- D. New or expanded recreational facilities such as pedestrian and bicycle trails, shoreline access points, boardwalks, boat launches and day use docks may be permitted within the shoreline buffer and/or aquatic environment; provided, that all requirements of this chapter for the specific development type are met, as well as the following criteria:
  1. The recreational facilities shall be located and constructed to ensure no net loss of shoreline ecological functions and to minimize adverse impacts to natural shoreline resources and wildlife habitat.
  2. Recreational facilities shall not require hard shoreline stabilization methods to maintain safety and functionality over the expected lifetime of the development, and shall meet the requirements of WAC 173-26-231(3)(a)(iii).
  3. Recreational facilities that are over water or within fifteen feet of the OHWM shall not have lighting other than safety lighting, which shall be elevated at three feet high or less and shall be directed downward and away from the water and neighboring properties.
  4. A boardwalk may be permitted over water when an upland location for a trail connection or continuation is shown not to be feasible.

**16.08. ~~290300~~ Parking lots and parking garages.**

The following regulations shall apply to new or expanded parking lot facilities and parking structures constructed after the effective date of this shoreline master program:



- A. Parking lots and parking structures shall comply with the requirements in Sections 16.08.~~120110~~(B) and 16.08.~~140130~~ and the land use table in Section 16.08.~~180170~~.
- B. New parking lots or structures shall be located outside of the shoreline buffer, with the following exceptions:
  - 1. ADA-accessible parking spaces and ramps.
  - 2. Parking for shoreline access points, or day use boat launches, piers and docks, or other short-term public uses, either stand-alone or as part of an overall recreational development, up to a maximum of four parking spaces.
  - 3. Short-term parking for pickup and delivery to water-dependent or water-related uses, loading zones, and public transportation stops and pullouts.
  - 4. Parking for a water-dependent development or use where insufficient upland area is available outside of the shoreline buffer to accommodate required parking.

**16.08.~~300310~~ Public services, transportation facilities and utilities.**<sup>53</sup>

- A. Development under this section shall comply with Sections 16.08.~~120110~~ (B) and 16.08.~~140130~~ concerning avoidance and minimization of impacts for location, design and use of the subject facilities.
- B. New or expanded transportation facilities and primary utilities shall use existing corridors and rights-of-way whenever feasible; provided, that expansions and modifications shall not adversely impact shoreline resources and shall be otherwise consistent with this chapter. If expansion of the existing corridor will result in significant adverse impacts, then a less disruptive alternative shall be utilized.
- C. New or expanded transportation and primary utility corridors must be placed and designed to minimize negative impacts upon shoreline areas, protect ~~designated public views and~~ public access, and avoid and minimize impacts to existing conforming land uses and structures and the natural shoreline environment.
- D. New or expanded transportation and primary or accessory utility facilities must be designed and maintained to prevent erosion and to permit the natural movement of surface water, and shall not require the construction of hard armoring or other shoreline stabilization measures to maintain the facility in a safe and operable condition over the estimated life of the facility.
- E. New or expanded transportation and primary or accessory utility facilities that cross streams shall be designed ~~to allow fish passage utilizing WDFW's Water crossing Design Guidelines (2013)~~, where it has been determined by a qualified professional, the appropriate state or federal agency that fish inhabit the stream or may inhabit the stream in future, and shall minimize impact to the stream and its buffer to the maximum extent feasible.
- F. Shoreline right-of-way may be used for public access or recreational purposes.
- G. Shoreline right-of-way shall not be vacated, except in compliance with RCW 35.79.035 or its successor.
- H. New or expanded primary or accessory utilities shall not be located within the Dogfish Creek floodway or waterward of the OHWM of Liberty Bay unless no other feasible alternative exists.

**16.08.~~310320~~ Archaeological areas and historic sites.**

- A. Developers and property owners shall immediately stop work and notify the local government, the Washington State Department 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

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<sup>53</sup> Edited for ease of administration and clarity

affecting them, including Chapter 27.53 RCW (Archaeological Sites and Resources), or as subsequently amended.

- B. 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.
- C. Prior to permit issuance, applications for site work or other development in sites documented to contain archaeological resources shall require site inspection or evaluation by a professional archaeologist in coordination with the Suquamish Tribe, consistent with WAC 173-26-221(1)(c)(i).

**16.08.320 Aquaculture.**<sup>54</sup>

- A. Aquaculture shall not be permitted in areas where it would result in a net loss of ecological functions, adversely impacts eelgrass and/or macroalgae; or significantly conflict with navigation, other water-dependent uses, or normal public use of the surface waters.
- B. Aquaculture development shall conform to applicable state and federal policies and regulations, provided they are consistent with the SMA and this SMP, to ensure no net loss of ecological function.
- C. Aquaculture facilities shall be designed and located such that they do not spread disease to native aquatic life, establish new nonnative species that cause significant ecological impacts, or significantly impact the aesthetic qualities of the shoreline.
- D. Impacts to ecological functions shall be mitigated in accordance with Section 16.08.130.
- E. Structures and activities that are not water-dependent (e.g., warehouses for storage of products, parking lots) shall be located landward of the OHWM, upland of water-dependent portions of the project, and shall avoid or minimize detrimental impacts to the shoreline.

**ARTICLE IV. DESIGN REQUIREMENTS**

**16.08.330 Site and building design standards.**

On sites where shoreline views are available, commercial, multifamily residential, mixed use and recreational development that is newly constructed, redeveloped, or has its gross building floor area expanded by more than fifty percent after the effective date of this master plan is required to have the relevant new construction or expansion comply with the following design requirements, to enhance the ability of residents, visitors and the public to enjoy the physical and aesthetic benefits of the shoreline. Any other design standards that are relevant to the location, zone or use, such as those in the zoning code, shall also apply.

- A. Buildings shall be designed with windows oriented toward the shoreline.
- B. Buildings shall be designed to incorporate outdoor areas such as decks, patios or viewing platforms oriented toward the shoreline.
- C. Buildings shall be designed with entrances along the waterfront facade, and with connections between the buildings and any private or public walkways along or to the shoreline.
- D. Service areas, refuse and recycling containers, storage and equipment shall be located away from the shoreline, to the extent feasible, and shall be screened from public view from the water, adjacent properties, and public right-of-way.
- E. Buildings shall not incorporate materials that are reflective or mirrored.
- F. Within the High Intensity environment, development in the downtown core commercial overlay zone shall also comply with the downtown core design requirements in Title 18.

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<sup>54</sup> New section consistent with WAC, provides standards for administration

- G. For new construction, where feasible the location of required public view corridors shall be designed concurrently with building orientation, to maximize both public views and views from the proposed development. If there is a conflict between building orientation and the location of required or existing public view corridors, the public view corridor shall take precedence.

**16.08.340 Signage.**

The following regulations apply in addition to any other city requirements, including sign regulations in the zoning code for prohibited, exempt and temporary signs. If there is a conflict between other sign regulations and the regulations of this section, the more stringent regulation shall apply.

- A. Signs shall be located on the same property or within the same development as the business or organization being advertised. Off-site advertising signs, including commercial billboards, are prohibited.
- B. Freestanding signs may be allowed within the shoreline buffer and setback for water-dependent and water-related development and uses that are also located in the buffer and/or setback area, including on-site directory and public information signs, and for public access and park interpretative and directional signage, subject to the following requirements:
  - 1. Signs are limited to five feet in height from the ground level and twenty square feet in area.
  - 2. Signs shall not obscure or block designated public view corridors.
- C. New, expanded or replacement signs shall not be internally illuminated. Lighting shall be directed downward upon the sign face, not toward the water or neighboring properties, and shall also meet the standards of the city zoning code.
- D. New, expanded or replacement signs shall not be oriented to face Liberty Bay and/or be located in the aquatic environment, except as follows:
  - 1. For retail establishments providing fuel and oil sales for boats, where the facility is accessible from the water, one sign not exceeding twenty square feet per sign face.
  - 2. Boat traffic and directional signs associated with port and marina facilities, navigation channels and hazard warnings, and any other signage required by the U.S. Coast Guard or Federal Aviation Administration for navigational or float plane operation purposes.
  - 3. Directional and interpretative signs for public access and public recreation amenities that can be accessed from the water.

**16.08.350 Lighting.**

Exterior lighting shall be controlled using limits on height, maximum lighting levels, light shields, lighting direction and other mechanisms in order to prevent light pollution, disturbance of aquatic or shoreline wildlife, or other adverse effects that could infringe on public enjoyment of the shoreline, affect neighboring properties, or have environmental impacts.

- A. Review Requirements. All development proposing exterior lighting within the shoreline jurisdiction, except as otherwise indicated in subsection E of this section, shall submit a lighting plan for approval by the planning director. The plan shall contain the following information:
  - 1. A brief written narrative that indicates the objectives of the lighting;
  - 2. The location, fixture type, mounting height and wattage of all outdoor lighting and building security lighting, including exterior lighting mounted on docks, piers, or other in-water or over-water structures;
  - 3. If building elevations are proposed for illumination, drawings shall be provided for all relevant building elevations showing the fixtures, the portions of the elevations to be illuminated, and the illuminate levels of the elevations;

4. Photometric data, such as that furnished by the manufacturers, showing the angle of light emissions and extrapolated foot-candle readings at the property boundaries, and at the shoreline if relevant.

B. Direction and Shielding.

1. All exterior building-mounted and ground-mounted light fixtures shall be directed downward and use “fully shielded cut off” fixtures as defined by the Illuminating Engineering Society of North America (IESNA), or other appropriate measure to conceal the light source from adjoining uses, to direct the light towards the ground and away from the shoreline, and to prevent lighting from shining on the waters of Liberty Bay.
2. New and replacement exterior lighting mounted on piers, docks or other structures serving water-dependent uses at the shoreline or in the water shall be directed away from adjacent properties and the water, and be designed and located to prevent lighting from shining on the waters of Liberty Bay.
3. For properties located within the natural environment, the amount and intensity of new and replacement exterior lighting shall be limited to those areas and hours where it is needed for safety, security and operational purposes.

C. Lighting Levels.

1. For properties located adjacent to an [Aquatic](#), [Natural](#) or [Urban Conservancy](#) environment, new and replacement exterior lighting fixtures shall produce a maximum initial luminance value of one-tenth foot-candle (as measured at three feet above grade) at the site property line or environment boundary.
2. For properties in the [Shoreline Residential](#) or [High Intensity](#) environments located adjacent to residential uses, new and replacement exterior lighting fixtures shall produce a maximum initial luminance value of six-tenths foot-candle (as measured at three feet above grade) at the site boundary, and drop to one-tenth foot-candle on the abutting property as measured within fifteen feet of the property line.
3. All other new and replacement light fixtures shall not exceed a maximum initial luminance value of one foot-candle at the property boundary or at the water surface of Liberty Bay.

D. Other.

1. Wash or general illumination of a commercial or office building facade to enhance architectural features or to draw attention to the building or its uses is not permitted.
2. Spotlights, search lights, strobe lights and flashing lights are prohibited in all environments.

E. Exemptions. The following development activities are exempt from the submittal and lighting standards established in subsection A of this section:

1. Emergency lighting required for public safety.
2. Lighting for public rights-of-way.
3. Outdoor lighting for temporary or periodic events (e.g., community events at a public park, seasonal holiday lighting, etc.).
4. Sign lighting regulated by Section 16.08.340.
5. Development of the following if located outside of the shoreline buffer and setback area: a single-family residence; an accessory dwelling unit associated with a single-family residence; a development of up to four multifamily units; and appurtenant structures.
6. Lighting associated with the U.S. Coast Guard’s Navigation Safety Requirements, such as navigation aid beacons.

**16.08.360 Public viewsheds and public view corridors.**

The city does not establish, protect, or maintain views from private property. However, public views of the shorelines and water on both public and private property shall be designated and maintained to enhance the public's ability to see and enjoy the shorelines and waters of Liberty Bay.

~~A. Within the two hundred foot shoreline jurisdiction, the city has established public viewsheds from the following public streets and public properties to the Liberty Bay shoreline:~~

- ~~1. Front Street, extending from Bond Road south to Hostmark Avenue;~~
- ~~2. Fjord Drive, extending from Hostmark Avenue south to the city limit;~~
- ~~3. Lindvig Way;~~
- ~~4. East of Viking Avenue, from Lindvig Way south to the city limit;~~
- ~~5. Public parks.<sup>55</sup>~~

A. **B.** Intent. The intent of the viewshed designation is to promote an aesthetically attractive view of Liberty Bay and the shoreline environment from public parks and major public streets near the shoreline, with limited visual obstruction from buildings and other structures.

B. **C.** Applicability.

1. The requirements in subsections **(B)**(2) and (3) of this section shall apply to any property of one acre or greater in size, excluding tidelands, where views of the shoreline are available. For the purposes of this section, "property" shall mean the total area included in a development proposal, which may involve one or more lots or parcels. This section shall not apply to redevelopment of a structure of the same size and within the same footprint as the existing structure.
2. Within designated viewsheds, when a new development is proposed that requires preliminary plat, site plan, planned residential development, planned urban development or binding site plan review (such as a new commercial development, a residential development of four or more units, or a mixed use development), one or more view corridors shall be established where the corridor can meet the standard of subsection **(C)**(2) of this section.
3. Within designated viewsheds, when an existing structure is expanded or the site is redeveloped to contain more than fifty percent over the gross building square footage existing upon the effective date of this shoreline master plan, one or more view corridors shall be established where the corridor can meet the standard of subsection **(C)**(2) of this section.

C. **D.** Standards.

1. Within a new or expanded development that requires establishment of view corridors per subsections **(B)**(2) and (3) of this section, buildings and structures shall be clustered to provide and maintain a maximum-width contiguous public view corridor from the relevant street or park.
2. A view corridor shall be a minimum of twenty feet wide or thirty percent of the total average property width, whichever is greater, unless the planning director determines that this requirement would result in a regulatory taking of the property based on its zoning and shoreline environment, and accepts an alternative width.
3. Although new landscaping on properties within public viewsheds is encouraged to be designed, located and maintained for maximum retention of shoreline views, the city shall not regulate private landscaping or other private native or nonnative vegetation within a viewshed for the purposes of view preservation, except for approved view corridors.

D. **E.** View Corridor Location. When a view corridor is required, it shall be designed to meet the following location standards and must be approved by the city planning director:

<sup>55</sup> Staff recommended change in response to recent Shorelines Hearings Board Decision. Does not alter the administration of the section.

1. If the subject property does not directly abut the shoreline, the view corridor shall be designed to coincide with any existing view corridors on properties that lie between the subject property and the shoreline.
  2. The view corridor location shall be adjacent to a side property line in order to obtain the widest view corridor in combination with adjacent properties, unless an alternative location can be shown to provide a larger and more aesthetically rewarding view, and shall consider the following criteria in order of priority:
    - a. Potential impacts to critical areas.
    - b. Locations of existing view corridors.
    - c. Existing development or potential development on adjacent properties, given the topography, access and likely location of future improvements.
    - d. The availability of actual views of the water and the potential of the property for providing those views from the relevant street or park.
    - e. Location of sight-obscuring structures, parking areas or vegetation that are likely to remain in place in the foreseeable future.
  3. The view corridor shall be in one continuous piece throughout the subject property.
  4. For land divisions, the view corridor shall be established as part of the land division, either as a tract or a permanent easement across common open space which shall be maintained for public viewing benefit, recorded on the face of the plat, and located to create the largest and most aesthetically pleasing view.
  5. Where feasible and desirable, view corridors may be co-located with proposed or existing public shoreline access.
- E. **F.** Permitted Structures and Uses Within a View Corridor. The following new structures, uses and landscaping and native vegetation plantings shall be permitted within a view corridor.
1. Areas provided for public access and recreational facilities, such as pedestrian and bicycle pathways, playgrounds, viewing platforms and picnic areas.
  2. Structures, including below-grade structures, where the slope of the subject property allows unobstructed views of the shoreline over the structures from the street or park.
  3. Landscape plantings, including required landscaping in setbacks and buffers, provided it is of a size that will not obscure the view from the street or park to the shoreline at the time of planting or upon reaching maturity. In the event of a conflict between required new landscaping for site screening/buffering and view preservation, view preservation shall take precedence.
  4. Native vegetation plantings to maintain or restore shoreline habitat areas; provided, that such plantings shall be of a size that will not obscure the view from the street or park to the shoreline at the time of planting or upon reaching maturity.
  5. Open fencing that is designed not to obscure the view from the street or park to the shoreline.
  6. Electric distribution lines (excluding major electric transmission lines), cable and telephone lines and similar wire facilities are permitted, but for new or expanded development and redevelopment these should be located underground whenever feasible.
  7. Surface parking that is permitted under Section 16.08.~~300290~~(B), and which does not obscure the view from the street or park to the shoreline.



F. G. Dedication.

1. For land divisions and site plans, the view corridor shall be established as part of the land division or site plan approval, either as a tract or as a permanent easement across common open space for public viewing benefit, and shall be recorded on the face of the plat or site plan.
2. The applicant shall execute a covenant or similar legal agreement, in a form acceptable to the city attorney, to maintain and protect the public view corridor.

**16.08.370 Public access design standards.**

In preserving and promoting public access, the SMA and shoreline guidelines (WAC 173-26) recognize that shorelines of the state are a resource to be used and enjoyed by all citizens of Washington State. While balancing the rights of privacy and private property, the SMA promotes public access as a “preferred use” in terms of water-oriented recreation and requires public access amenities (such as walkways, seating, signage, etc.) to be incorporated into certain waterfront development. In this context, public access can mean many things, including physical access to the water, public access to piers and docks, or development of overlooks providing visual access to the shoreline.<sup>56</sup>

A. New and expanded public access to the shoreline that is intended to meet the requirements of this chapter shall comply with the following standards:

1. Walkways shall be designed and sited to minimize the amount of native vegetation removal, impact to existing trees, soil disturbance, and disruption of existing habitat corridor structures and functions, according to the requirements in Sections 16.08.~~120110~~ (B) and 16.08.~~140130~~.
2. Where feasible, walkways that are adjacent to other public shoreline access areas such as street ends, walkways, parks and other connections shall maximize the public nature and connectivity of the access.
3. Walkways shall minimize intrusions of privacy for occupants and residents of the site, by avoiding locations directly adjacent to residential windows and outdoor private open spaces and recreational amenities.
4. Public access shall be indicated by signs installed at each entrance to the public pedestrian walkway, and on the abutting rights-of way that lead into the development site. Signs shall be located for maximum visibility. Design, materials and mounting requirements shall meet city specifications.
5. All public pedestrian walkways and access points shall be in a minimum six-foot-wide easement or tract, or similar legal agreement in a form acceptable to the city attorney, and recorded on the plat or site plan. Easements extending through individual lots shall have required notice on title. Land survey information for these purposes shall be provided by the applicant in a format approved by the shoreline administrator.

B. Operation and Maintenance Requirements. The following operation and maintenance requirements apply to all new and expanded public pedestrian walkways and shoreline access points required under this section:

1. Hours of Operation. Unless otherwise established by the shoreline administrator, all required pedestrian walkways and shoreline access points shall be open to the public between dawn and dusk.
2. The applicant is permitted to secure the subject property outside of the hours of operation by a security gate, subject to the following provisions:
3. The gate shall remain unlocked and in an open position during hours of permitted public access.

C. Signage shall be included noting the hours of permitted public access.

<sup>56</sup> Language to clarify the purpose of public access, consistent with Ecology SMP handbook

- D. The city planning director is authorized to approve temporary closures for maintenance and repair, or if hazardous conditions are present that would affect public safety.
- E. No certificate of occupancy or final inspection approval shall be issued until all required public access improvements are completed.
- F. The applicant, and its successor or assigns, shall be responsible for the completion and maintenance of all waterfront public walkways and access points and signage on the subject property, and shall keep these in a safe, accessible, and functioning condition.

## ARTICLE V. SHORELINE MODIFICATIONS

### 16.08.380 Shoreline modifications—General requirements.<sup>57</sup>

The standards in this section apply to all shoreline modifications in the city's shoreline jurisdiction.

- A. All shoreline modifications shall be reviewed in accordance with the ~~avoid, minimize, mitigate-sequence mitigation sequencing standards~~ in Sections 16.08.~~120110~~ (B) and 16.08.~~140130~~.
- B. Shoreline modifications shall not individually or cumulatively result in a net loss of ecological functions or habitat. Preference shall be given to those types of shoreline modifications that have a lesser impact on ecological functions and require less mitigation of identified impacts resulting from shoreline modifications.
- C. During construction or repair work on a shoreline stabilization measure, areas of temporary disturbance within the shoreline buffer or ~~buffer~~ **building** setback shall be restored as quickly as possible to their predisturbance condition or better.
- D. Shoreline banks and bluffs (steep slopes) within the shoreline buffer and **building** setback shall not be modified to enlarge buildable area, or to provide or enhance physical support for new development or redevelopment, unless there is no other feasible method to prevent a regulatory taking of the property based on its zoning and environment designation of the property, in which case a shoreline variance shall be required.

### 16.08.390 Shoreline modifications prohibited in all environments.

The following shoreline modifications are prohibited in all shoreline environments, unless otherwise specified elsewhere in this chapter:

- A. Boat haulouts and boat lifts; outside of a marina or other boating facility.
- B. Boat houses and float plane houses.
- C. Boat launches; outside of a marina, park or other approved boating facility.
- D. Covered or enclosed moorage.
- E. Dikes and levees.
- F. Docks and piers; outside of a marina, park or other approved boating facility.
- G. Dredge spoil disposal; for activities other than habitat restoration or enhancement.
- H. Fill; for activities other than habitat restoration or enhancement.
- I. Floats.
- J. In-stream structures; for activities other than public access, public utilities or habitat restoration and enhancement.
- K. Removal of gravel for flood control.
- L. Weirs.

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<sup>57</sup> New section consistent with WAC, provides standards for administration

**16.08.400 Shoreline modifications table.**

**Shoreline Modifications Table**

A. The table is coded according to the following legend:

1. P = Permitted, when meeting requirements for the specific modification and shoreline environment; may be subject to shoreline substantial development permit or shoreline exemption requirements.
2. C or MC = Conditional use or minor conditional use, when approved by the city and the Department of Ecology. See Chapter 16.09 for conditional use and minor conditional use permit requirements.
3. X = Prohibited; the use is not eligible for a conditional use permit or variance.
4. N/A = Not applicable in the specific environment, due to the intrinsic nature of the modification. For example, a buoy can only be located in an aquatic environment.

<b>SHORELINE MODIFICATION TABLE</b>						
See Section 16.08.390 for modifications prohibited in all shoreline environments. See Chapter 16.09 for permit application and processing requirements.						
	<i>Environment Designations</i>					
	SR-1	SR-2	HI	UC	N	A
<b><i>Shoreline Modifications</i></b>						
Boat launch—public or private, in a marina, park or other approved boating facility	C	N/A	P	X	C	P <sup>1</sup>
Boat haulouts and boat lifts—public or private, in a marina or other approved boating facility	C	N/A	P	X	X	P <sup>1</sup>
<u>Breakwaters, jetties and groins</u> <sup>58</sup>	N/A	N/A	N/A	N/A	N/A	C <sup>4</sup>
Docks and piers—public or private, in a marina, park or other approved boating facility	N/A	N/A	N/A	N/A	N/A	P
Dredging—maintenance	N/A	N/A	N/A	N/A	N/A	P <sup>2</sup>
Dredging—new	N/A	N/A	N/A	N/A	N/A	C
Fill—for habitat restoration or enhancement activities	N/A	N/A	N/A	N/A	N/A	C
Habitat restoration or enhancement activities	P	P	P	P	P	P
Shoreline stabilization measures <sup>3</sup> —soft	P	P	P	MC	C	P <sup>1</sup>
Shoreline stabilization measures <sup>3</sup> —hard	P	P	P	MC	C	P <sup>1</sup>
Structural flood hazard reduction measures	MC	N/A	MC	MC	X	N/A

<sup>1</sup> If a modification project includes work above the ordinary high water mark OHWM as well as in the aquatic environment, and if the proposed modification is conditional in the affected upland environment(s), the entire modification project shall be reviewed as a conditional use.

<sup>2</sup> Refer to Section 16.08.440 for standards on maintenance dredging vs. new dredging activity.

<sup>3</sup> Refer to Section 16.08.420 for requirements on soft vs. hard stabilization measures, and necessary supporting documentation.

<sup>4</sup> Refer to Section 16.08.490 for standards on breakwaters, jetties, and groins. <sup>59</sup>

<sup>58</sup> Consistent with section 16.08.490

<sup>59</sup> Edited for ease of administration and clarity

**16.08.410 Piers, docks and boat launches.**

New or expanded piers, docks, or boat launches are prohibited outside of boating facilities such as marinas, public boat launches and day use recreational facilities, public and private parks, and boat repair and maintenance operations. Existing piers, docks and boat launches outside of boating facilities and boat repair and maintenance operations may be maintained, repaired and redeveloped in compliance with state regulations and city and state permitting requirements

**16.08.420 Shoreline stabilization measures.**<sup>60</sup>

A. The following table is a summary of the key requirements found in this section:

SHORELINE STABILIZATION MEASURES	REQUIREMENTS
Structural vs. nonstructural methods	<ul style="list-style-type: none"> <li>• Nonstructural methods are preferred, but if there is demonstrated need for structural stabilization measures to protect a principal use or structure then soft structural stabilization must be considered prior to hard structural stabilization.</li> </ul>
New or enlarged hard or soft shoreline structural measures (including additions and increases in size such as height, width, length or depth)	<ul style="list-style-type: none"> <li>• A geotechnical report is required to demonstrate need and shall include design recommendations for minimizing structural measures and impacts to natural sediment transport.</li> <li>• For hard structural proposals, the geotechnical report shall also include an evaluation of the feasibility of soft vs. hard shoreline structural measures. <u>It must be demonstrated that the non-structural methods are not feasible or sufficient.</u></li> <li>• It must be demonstrated that the erosion <u>control structure will not result in a net loss of ecological functions. is being caused by waves, tides or currents, and not by loss of upland vegetation or drainage issues.</u></li> <li>• Mitigation for habitat impacts shall be required.</li> </ul>
Major repair or replacement of hard or soft shoreline structural measures	<ul style="list-style-type: none"> <li>• A major repair is a collapsed or eroded structure or a demonstrated loss of structural integrity, or repair of toe rock or footings, and the repair is over more than fifty percent of the structure’s continuous linear length; or</li> <li>• A major repair is repair to more than seventy-five percent of the linear length of the structure that involves replacement of top or middle course rocks or similar repair.</li> <li>• A geotechnical report is required to demonstrate need and shall include design recommendations for minimizing structural measures and impacts to natural sediment transport.</li> <li>• For hard structural proposals, the geotechnical report shall also include an evaluation of the feasibility of soft vs. hard shoreline structural measures.</li> <li>• <u>If the major repair or replacement involves a change or relocation in the structural footprint or requires significant work outside of the footprint to conduct the repair/replacement, mitigation for habitat impacts may be required.</u></li> </ul>
Minor repair of hard or soft shoreline stabilization measures	<ul style="list-style-type: none"> <li>• Does not meet threshold for new, enlarged, major repair or replacement measures.</li> <li>• No geotechnical report or needs assessment required.</li> </ul>

<sup>60</sup> Edited for ease of administration and clarity

- B. All new stabilization measures, and major repairs, replacement, and enlargements to existing structural stabilization shall comply with the requirements of Sections 16.08.120(B) and 16.08.140.
- C. New or Enlarged Structural Shoreline Stabilization.
  - 1. For the purposes of this section, enlargement of an existing structural stabilization method shall include additions to increases in size (such as height, width, length or depth).
  - 2. New or enlarged structural shoreline stabilization measures shall only be allowed landward of the ~~ordinary high water mark~~ OHWM of Liberty Bay.
  - 3. The city shall only approve a new or enlarged hard or soft structural stabilization measure to protect a principal structure or shoreline use in the following circumstances:
    - a. For new or enlarged hard structural stabilization, conclusive evidence, documented by a geotechnical analysis, that the primary structure or shoreline use is in danger from shoreline action caused by waves, tidal action or currents. The analysis must show that there is a significant possibility that the structure will be damaged within three years or the shoreline use will be impaired as a result of shoreline erosion in the absence of hard structural stabilization measures, or where waiting until the need is immediate would result in the loss of opportunity to use measures that would avoid impacting ecological functions.
    - b. For new soft structural stabilization measures, provide narrative demonstrating need for structural stabilization to protect the principal structure or shoreline use.
    - c. For hard and soft stabilization proposals, it must be demonstrated that erosion is not due to loss of upland vegetation, natural bluff sloughing, or on-site drainage.
- D. Replacement or Major Repair of Hard Structural Shoreline Stabilization.
  - 1. For the purposes of this section, major repair or replacement of a hard shoreline stabilization measure shall include the following activities:
    - a. A repair needed to a portion of an existing stabilization structure that has collapsed, eroded away or otherwise demonstrated a loss of structural integrity, or in which the repair work involves modification of the toe rock or footings, and the repair is fifty percent or greater than the linear length of the shoreline stabilization measure; or
    - b. A repair to more than seventy-five percent of the linear length of the existing hard structural shoreline stabilization measure in which the repair work involves replacement of top or middle course rocks or other similar repair activities.
  - 2. A major repair or a replacement of an existing hard structural stabilization measure with another hard structural stabilization measure shall only be approved to protect a principal structure, or shoreline use if not associated with a principal structure, if conclusive evidence is provided, documented by a geotechnical analysis, that the primary structure or use would be in danger from shoreline erosion caused by waves, tidal action or currents without the existing hard structural stabilization, and the repair or replacement proposal is consistent with the requirements of Section 16.08.380(B).
- E. Minor Repairs of Hard Shoreline Stabilization. Minor repairs of hard shoreline stabilization include those maintenance and repair activities not otherwise addressed in the subsection above. The city shall allow minor repair activities to existing hard structural shoreline stabilization measures.
- F. Repair or Replacement of Soft Shoreline Stabilization and Submittal Requirements.
  - 1. The city shall allow repair or replacement of soft shoreline stabilization.

2. The applicant shall provide design recommendations for minimizing impacts and ensuring that the replacement or repaired soft stabilization measure is designed, located, sized and constructed to ensure no net loss of ecological functions; and
- G. A new, repaired or replaced soft or hard shoreline stabilization measure shall not result in significant adverse impacts to adjacent or down-current properties from changes in sedimentation or tidal impacts.
- H. The city may require peer review by a civil engineer for proposed designs for new hard shoreline stabilization.

**16.08.430 Breakwaters, jetties and groins.**<sup>61</sup>

Breakwaters, jetties and groins are not permitted in any shoreline environment unless associated with moorage in a marina or port facility, public access or public recreation facility, public shoreline stabilization, or another specific public purpose. In addition to compliance with the other requirements of this chapter, an approved breakwater, jetty or groin must meet the following criteria. A shoreline conditional use permit is required.

- A. The structure is essential to the safe operation of a moorage or marina facility or the maintenance of other **public** water-dependent uses, such as a swimming beach.
- B. The location, size, design and accessory components of the moorage or marina facility or **public** water-dependent use to be protected shall not ~~cause a net loss of ecological functions result in undesirable or adverse impacts to the shoreline and aquatic environment~~, navigation, or nearby waterfront properties.
- C. All breakwaters, jetties or groins must be designed and constructed under the supervision of a civil engineer or other qualified engineering professional. As part of the application, the engineer shall demonstrate based on accepted industry engineering standards or guidelines that the structure is the smallest feasible structure to meet the requirements of this chapter and accomplish its purpose, and that the design will result in the minimum feasible adverse impacts ~~upon the environment, to~~ nearby waterfront properties, and navigation, **and shall not cause a net loss of ecological functions**. Peer review by **consulting qualified specialists** of the proposed design may be required.
- D. Breakwaters may only use floating or open-pile designs unless such a design is demonstrated to not be practicable.

**16.08.440 Dredging and dredge material disposal.**

- A. A shoreline conditional use permit is required for new dredging proposals, i.e., dredging of areas that have not previously been dredged under state and/or federal dredging approvals. A shoreline substantial development permit is required for maintenance dredging of areas that have previously received state and/or federal dredging permits, such as navigational channels and marina basins.

Maintenance dredging qualifies as normal maintenance when:

1. There is a designated and authorized facility, such as a federal navigational channel or berth, authorized by a previously issued shoreline conditional use permit or shoreline substantial development permit;
  2. The dredging is limited to restoring previously existing contours within the channel or berth as approved in the previous permit, and does not expand the channel or berth; and
  3. The person or entity proposing the maintenance dredging demonstrates that the work is exempt to the satisfaction of the shoreline administrator. A shoreline exemption application is required.
- B. New or expanded development shall be sited and designed to avoid or, if that is not feasible, to minimize the need for new and maintenance dredging.

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<sup>61</sup> Edited for ease of administration and clarity



- C. Dredging waterward of the OHWM may be allowed only for the following purposes:
1. To establish, expand, relocate, maintain or reconfigure navigation channels and basins where necessary for assuring safe and efficient accommodation of navigational uses and then only when significant ecological impacts are minimized and when mitigation is provided.
  2. To establish, expand, relocate, maintain or reconfigure private or public marina facilities, water-dependent uses, or other public access uses.
  3. Maintenance dredging of established navigation channels and basins shall be restricted to maintaining previously dredged and/or existing authorized location, depth and width consistent with subsection A of this section; otherwise, the project shall be reviewed as a new or expanded dredging application.
  4. To restore ecological functions, provided the applicant can demonstrate a clear connection between the proposed dredging and the expected environmental benefits to water quality or degraded tidelands or submerged lands, native vegetation, and/or critical saltwater habitat.
  5. To obtain fill or construction material when necessary for the restoration of ecological functions. Dredging waterward of the OHWM for the primary purpose of obtaining fill or construction materials is not permitted in other circumstances. When allowed, the site where the fill is to be placed must be located waterward of the OHWM. The fill must be located with a significant in-water habitat enhancement or restoration project.
- D. Dredging that is allowed under subsection B of this section shall meet the requirements of Sections 16.08.120 and 16.08.140.
- E. Dredge materials may be deposited waterward of the OHWM of Liberty Bay only when the material is considered suitable under, and the activity is conducted in accordance with, the dredged material management program of the state department of natural resources, and in accordance with applicable state and federal permit authorizations, and is associated with a permitted in-water habitat enhancement or restoration project. Dredge materials may not be deposited in the floodway or waters of Dogfish Creek.
- F. All permitted dredging must be the minimum area and volume necessary to accommodate the existing or proposed use, and must be implemented using practices that do not exceed state water quality standards.
- G. Dredging projects shall be designed and carried out to prevent direct and indirect impacts on adjacent properties.

**16.08.450** **Fill.**<sup>62</sup>

- A. A shoreline conditional use permit is required for fill.
- B. Fills landward and waterward **of the OHWM** shall be permitted only if the fill:
1. Is necessary to support: water-dependent use; public access; cleanup and disposal of contaminated sediments as part of an interagency environmental cleanup plan; expansion or alteration of transportation facilities of statewide significance currently located on the shoreline, and then only upon a demonstration that alternatives to fill are not feasible; mitigation action; environmental restoration; or a beach nourishment or enhancement program;
  2. Will not result in significant damage to water quality, fish or other species, or net loss of aquatic habitat or shoreline habitat including critical saltwater habitat; and
  3. Will not adversely alter natural drainage, currents, sedimentation, or circulation patterns.
- C. Fill shall not be permitted in regulated wetlands or streams **without adhering to the standards defined in Article II of the SMP.**

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<sup>62</sup> Edited for ease of administration and clarity

- D. Refuse disposal sites, solid waste disposal sites and sanitary fills are prohibited in the shoreline [jurisdiction zone](#).
- E. In addition to the above requirements, a proposal to fill shall also comply with the requirements of Chapter 15.3540, Grading ~~and Clearance~~.

**16.08.460 Tree and vegetation maintenance and removal.**

To maintain the ecological functions that trees provide for the shoreline environment, any proposal to remove trees or other vegetation in the shoreline buffer area or in an aquatic area shall be subject to the following requirements:

- A. Significant native trees shall be retained in the shoreline buffer unless removal is required due to documented hazardous conditions, approved as part of a shoreline variance for reasonable use of property, or for approved shoreline access where no other feasible solution is available. In such circumstances, removal of significant native trees shall be subject to the requirements of subsection B of this section.
- B. Removal, pruning, thinning, limbing or cutting of native trees or native vegetation within the shoreline buffer or in an aquatic area, with the exception of normal and routine tree and vegetation maintenance within rights-of-way, utility corridors, public access points and pathways, park and recreational facilities, existing landscaped areas, and public safety purposes, shall be subject to the following standards:
  - 1. Existing native shoreline vegetation in an aquatic area or within a shoreline buffer shall be preserved and permanently protected, with limited exceptions to remove and/or maintain native vegetation to establish and maintain the following: water-dependent and water-related uses; public recreation and public access uses; city-approved public view corridors; and utilities and roads; or in the case of a documented hazardous condition or shoreline variance.
  - 2. Proposed removal of native shoreline vegetation as described in subsection (B)(1) of this section shall comply with Sections 16.08.120(B) and 16.08.140. When approved projects will result in an unavoidable loss of native shoreline or aquatic vegetation within an aquatic area or a buffer area, mitigation shall be required to ensure no net loss of shoreline habitat value and functions. Additional conditions or restrictions may apply if removal is proposed on steep slopes or unstable soils.
  - 3. Proposals to remove, prune, thin, limb or cut trees or native vegetation within the shoreline buffer or in an aquatic area shall be subject to the standards of the city's clearing and grading ordinance and critical areas ordinance, and may be subject to the findings of the city arborist regarding preservation of the health and appearance of the tree(s) and surrounding native vegetation. Danger tree abatement may be achieved by felling or topping the tree. Habitat needs may require leaving the fallen tree in the riparian corridor or maintaining a high stump.
  - 4. Nondestructive pruning or thinning of lateral branches to preserve or enhance views, or trimming, shaping, thinning or pruning of a tree necessary to its health and growth shall be consistent with the following standards:
    - a. In no circumstance shall removal of more than one-fifth of the original crown or canopy be permitted.
    - b. Pruning shall not include topping, stripping of branches or creation of an imbalanced canopy.
- C. In addition to the requirements of subsections A and B of this section, a tree removal request shall be submitted in writing to the city prior to any native tree removal, and shall include information on the location, number, type and size of tree(s) being removed, and information on any replacement tree(s) or other vegetation to be planted.

- D. Removal of nonnative or invasive vegetation within the shoreline buffer is permitted; provided, that the removal shall not cause damage to the buffer’s native vegetated habitat values and functions. Additional restrictions or conditions may apply if removal is proposed on steep slopes or unstable soils.
- E. The city planning director may condition an approval for tree or native vegetation removal approval to require replacement trees, restoration of native vegetation, stabilization of soil and steep slopes, or other requirements as appropriate to protect shoreline habitat.

**16.08.470 Habitat restoration and enhancement activities.**

Habitat restoration activities include those shoreline habitat and natural systems enhancement projects that are proposed and conducted specifically for the purpose of establishing, restoring or enhancing habitat that supports or contributes to the welfare of priority species in the shoreline. Requirements for project impact mitigation are also addressed in Section 16.08.~~140~~130.

- A. Restoration of ecological functions and processes shall be carried out in accordance with a city-approved habitat restoration or enhancement plan and the requirements of this chapter. Activities within critical areas or their buffers shall also meet the requirements of the city’s critical areas ordinance.
- B. All habitat restoration and enhancement activities shall protect the integrity of adjacent natural resources, including aquatic habitats and water quality, and shall be compatible with adjacent shoreline uses.
- C. Long-term maintenance and monitoring shall be included in any habitat restoration or enhancement proposal and shall adhere to the standards defined in Section 700 of the critical area’s ordinance, Chapter 16.20 PMC.<sup>63</sup>
- D. Covered Activities. The following actions are allowed under this section:
  - 1. Establishment or enhancement of native vegetation;
  - 2. Removal of nonnative or invasive plants upland of the OHWM;
  - 3. Conversion of existing hard structural shoreline stabilization to permitted soft shoreline stabilization, including associated clearing, dredging and filling necessary to implement the conversion; provided, that the primary purpose of such actions is clearly restoration of natural character and the ecological functions of the shoreline and that the actions are consistent with the requirements of this chapter. (Ord. 2012-10 § 2 (Exh. A) (part), 2012)

**ARTICLE VI. NONCONFORMANCES**

**16.08.480 Nonconforming shoreline uses and structures.**

- A. Structures and uses that were legally established prior to the effective date of this shoreline master program (~~Ordinance 2012-10~~), but that do not conform to the use and development regulations in Sections 16.08.180 through 16.08.320, shall be subject to the applicable requirements in subsections B through ~~FE~~ of this section, unless the criteria of subsection ~~GF~~ of this section can be met.
 

“Nonconforming” does not apply to uses or structures approved with a shoreline conditional use permit or a shoreline variance after the adoption of this shoreline master program, which shall be considered conforming for the purposes of this chapter.
- B. If a structure or use is nonconforming according to this chapter, that structure or use shall be subject only to the nonconforming provisions of this chapter, and not the nonconforming provisions of any other part of the city code.

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<sup>63</sup> Edited for ease of administration and clarity

C. For the purposes of this section, “damage” shall refer to those impacts from sudden and unforeseeable events out of the property owner’s control, such as fires or windstorms, and shall not include the gradual deterioration of a structure due to lack of maintenance or repair.

D. The rules of this chapter are applied by first reviewing which provisions are applicable to the nonconformity. When a combination of nonconforming structure or use exists, each segment of the nonconformity is reviewed independently of the other.<sup>64</sup>

E. ~~D.~~ Nonconforming Shoreline Uses.

1. A structure that houses a nonconforming use may not be expanded, redeveloped, or relocated unless the nonconforming use is eliminated.
2. The planning director may allow a nonconforming use within a structure or site to be replaced with another nonconforming use, upon determining that:
  - a. The replacement use is less intensive and will result in reduced impacts to shoreline habitat and resources;
  - b. The replacement use is consistent with the zoning code.
3. A nonconforming use shall be considered abandoned if it is discontinued for more than twelve months, and may not be resumed, unless the discontinuance was due to damage or destruction of the structure, in which case the nonconforming use may only be resumed in accordance with subsection E of this section.
4. An over-water or in-water structure which is being used for a nonconforming use may not be expanded or redeveloped unless the use is brought into conformance with the requirements of this chapter.

E. ~~E.~~ Nonconforming Shoreline Structures.

1. Routine maintenance and repair of legally established nonconforming structures is permissible. Repair in excess of fifty percent of a structure shall be considered restoration or rebuilding per Section 16.08.040.
2. A nonconforming structure that is relocated within the shoreline jurisdiction shall be brought into conformance with shoreline master program and zoning regulations in effect on the date of the proposed relocation.
3. Damage or Destruction of Nonconforming Structures. A nonconforming structure that is damaged or destroyed may be restored or rebuilt subject to the following requirements:
  - a. The applicant shall apply for permits needed to restore or rebuild the structure within twelve months of the date when the damage occurred. The city council may extend this twelve-month period if extenuating circumstances (e.g., insurance litigation) have prevented the applicant from applying for permits;
  - b. The restoration or rebuilding of the structure shall be complete within two years of permit issuance;
  - c. If a structure located in a landslide hazard area is destroyed, it may be rebuilt only if the rebuilt structure is located outside of the landslide hazard area;
  - d. The planning director may allow a destroyed nonconforming structure to be rebuilt at another nonconforming location on the same site, upon determining that the new location of the nonconforming structure is less nonconforming and will result in reduced impacts to shoreline habitat and resources than if the structure were to be rebuilt in the original location;

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<sup>64</sup> Added for ease of administration and clarity

- e. The structure shall be restored or rebuilt in compliance with current building code requirements and other applicable city and state regulations;
  - f. All other requirements of this chapter and Chapter 16.09 shall be met; and
  - g. No net loss of shoreline habitat values or functions on the site or adjacent waters shall occur.
4. A nonconforming structure, or a structure (conforming or nonconforming) that contains a nonconforming use or uses, may be expanded or redeveloped with a shoreline variance subject to the following requirements:
- a. No portion of the structure that is located over-water or in-water may be expanded or redeveloped;
  - b. Structures or other development shall not extend further waterward;
  - c. No other nonconformities shall be created or be increased;
  - d. A variance is not needed for any other purpose;
  - e. No additional or enlarged building footprint or new development area shall be located within fifty feet of the OHWM;
  - f. A redevelopment or expansion shall not be located within a landslide hazard area, flood hazard area or other critical area, or the buffer and setback required for such areas according to Chapter 16.20;
  - g. All other requirements of this chapter and Chapter 16.09 shall be met; and
  - h. No net loss of shoreline habitat values or functions on the site or adjacent waters shall occur.
5. A nonconforming structure that is removed other than for reasons of damage shall not be replaced unless it is brought into conformance with the requirements of this chapter.
6. Legally existing single-family residential structures and normal residential appurtenances within the Shoreline Residential-1 shoreline environment shall be subject to the following provisions:<sup>65</sup>
- a. Enlargement or expansion, by the addition of space to the main structure, or by the addition of space to a normal residential appurtenant structure, may be permitted, with a shoreline substantial development permit, if the following criteria are met:
    - i. The expansion does not extend farther waterward than the existing primary residential structure; and
    - ii. The new development area (existing plus proposed) does not exceed 2,500 square feet footprint, including normal residential appurtenances; and
    - iii. No net loss of shoreline habitat values or functions on the site or adjacent waters shall occur.
  - b. Proposed enlargements or expansions that do not meet the criteria in Section 16.08.550 F.6.a shall be subject to Section 16.08.550 F.4.
- G. F. If a property owner wishes to establish the status of a primary residential structure as conforming to the shoreline master program according to RCW 90.58.620, the criteria in subsections (F-G)(1) and (2) of this section must be met. Nothing in this subsection exempts any residential structure from the requirement that all future development, redevelopment, expansion or alteration of the structure shall be in compliance with the provisions of this master program. Additionally, this subsection does not address other nonconformances that may exist according to the zoning code or other city regulations.

<sup>65</sup> Allows the expansion of existing nonconforming single-family and appurtenances in the SR-1 environment, consistent with other jurisdictions

1. The owner shall provide evidence that demonstrates to the satisfaction of the planning director that the structure was legally permitted and built according to all city requirements in effect at the time of building permit approval; and
2. The structure shall not be located in a landslide hazard area.

## ARTICLE VII. CONDITIONAL USES AND VARIANCES

### 16.08.490 Conditional uses and variances.

A request for a shoreline conditional use permit or a shoreline variance shall be subject to the criteria of Chapter 173-27 WAC, 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 application for a shoreline conditional use permit or a shoreline variance shall be processed according to the requirements of Chapter 16.09. In addition, the following criteria shall apply in all shoreline areas:

- A. All development and uses indicated as conditionally permitted land uses in the relevant shoreline environment according to Section 16.08.~~190~~180 shall require a shoreline conditional use permit.
- B. A new or expanded use or development which is otherwise permitted, but which would significantly impair or alter the public's access to or use of the waters of Liberty Bay, shall require a shoreline conditional use permit.
- C. A new or expanded use or development which by its 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.
- D. A new or expanded use or development that is proposed in critical saltwater habitat shall require a shoreline conditional use permit.
- E. 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 the requirements of the zoning code, critical areas ordinance or shoreline master program requirements for development setbacks and buffers) shall require a shoreline variance. All development regulations and requirements that can be met without a shoreline variance shall be met. Development allowed through a shoreline variance shall be the minimum allowed to prevent a regulatory taking of the lot based on its zoning and shoreline environment.
- F. Nonconforming lots within the shoreline jurisdiction zone are not eligible for a shoreline variance to allow further subdivision.
- G. 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.

## ARTICLE VIII. ENFORCEMENT

### 16.08.500 Enforcement.

- A. Authorization. The city planning director is authorized to enforce this chapter, and to designate city employees as authorized representatives of the city to investigate suspected violations of this chapter, and to issue orders to correct violations and notices of infractions. In the event of a violation of this chapter, the planning director shall be authorized to require complete or partial restoration of shoreline habitat including compensatory mitigation to rectify any net loss to its function and values.
- B. Right of Entry. When it is necessary to make an inspection to enforce the provisions of this chapter, or when the city planning director or his/her designee has reasonable cause to believe that a condition exists on property which is contrary to, or in violation of this chapter, the planning director or his/her designee may enter the property for the purposes of inspection.



- C. Stop Work Orders. Whenever any work or activity is being done contrary to the provisions of this chapter or conditions of an approved permit, the city planning director or his/her designee may order the work stopped by notice in writing, served on any persons engaged in doing or causing such work to be done, or by posting the property, and any such persons shall forthwith stop such work or activity until authorized by the city planning director or his/her designee to proceed.
- D. Revocation of Permits or Variances. Any permit or variance granted in accordance with the terms of this title may be revoked if any of the conditions or terms of such permit or variance are violated, or if any law or ordinance is violated in connection therewith. Any such revocation shall be processed as a Type III application under the provisions of Title 19.
- E. Penalties. The violation of any provision of this chapter shall constitute a civil and criminal infraction. Each violation shall constitute a separate infraction for each and every day or portion thereof during which the violation is committed, continued or permitted. Every person convicted by the municipal court of a violation of the criminal provisions, or the provisions of this chapter, shall be punished by a fine of not more than five thousand dollars or imprisonment in the county jail for a period not to exceed one year, or both such fine and imprisonment.
- F. Other Enforcement Actions. Violations under this chapter may be subject to additional enforcement action according to other city enforcement regulations, including but not limited to those in the critical areas ordinance and zoning code.