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FROM: Maria Sandercock, Shoreline Planner, WA Department of Ecology
Date: June 17, 2021
Subject: Initial Determination of Consistency
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Use of this Document

Ecology's *Initial Determination of Consistency* provides Ecology's review of the proposed amendment to the City of Poulsbo (City) Shoreline Master Program (SMP). This document is divided into two sections:

Findings of Fact, which provides findings related to the City's proposed amendment, amendment history, and the review process and **Initial Determination** of the proposed amendment with next steps.

Attachment 1 itemizes issues that must be addressed for Ecology's final approval of the proposed amendment.

Brief Description of Proposed Amendment

The City has submitted Shoreline Master Program (SMP) amendments to Ecology for initial determination of concurrence to comply with periodic review requirements. Ecology is required under WAC 173-26-104(3)(b) to make an initial determination of consistency with applicable laws and rules.

FINDINGS OF FACT

Need for amendment

The City's comprehensive update to their SMP went into effect in 2010. The City made an amendment to the SMP in 2018, which was approved by Ecology in 2019. Now, the proposed amendment is needed to comply with the statutory deadline for a periodic review of the Poulsbo Shoreline Master Program pursuant to RCW 90.58.080(4).

SMP provisions to be changed by the amendment as proposed

The City prepared a checklist and an analysis that documents proposed amendments. The amendments bring the SMP into compliance with requirements of the act or state rules that have been added or changed since the last SMP amendment, ensure the SMP remains consistent with amended comprehensive plans and regulations, and incorporate amendments deemed necessary to reflect changed circumstances, new information, or improved data. The City has identified some areas of the SMP in need of update for improved implementation. The City uses parallel designations along most of its shoreline – a designation of "Shoreline Residential-1" or "Natural" is applied in the area of the shoreline buffer, and a less restrictive "Shoreline Residential-2" or "Urban Conservancy" is applied to the remainder of the shoreline jurisdiction. Residential uses are listed as "V" in Shoreline Residential-1 in the use table, meaning they may be allowed through a variance. The City has found this confusing to implement and is proposing amendments to improve implementation and to allow some limited residential development without a variance. The City is also proposing a number of other revisions to address unclear language and generally improve implementation. The City also has an updated Critical Area Ordinance and intends to update the SMP to incorporate this.

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The City has proposed the following amendments (code section numbering uses the proposed numbering, not the existing numbering):

Chapter 16.08

Article 1. General Master Program Provisions.

- 16.08.040 Definitions:
 - Definitions for the following words are added: Agricultural activities, alteration, average grade level, breakwater, bulkhead, cumulative impact, emergency, enhancement, estuary, exempt development, fair market value, feasible, groin, height, invasive, jetties, modification, mooring buoy, normal maintenance, normal repair, normal residential appurtenance, qualified professional.
 - Definitions for the following words are revised: Aquaculture, development, soft shoreline armoring, shoreline buffer, soft shoreline armoring.
 - Definitions for the following words are removed: Agriculture, repair.
 - A reference to WAC 173-27 is added.
 - A list of acronyms and abbreviations is added.
- 16.08.050 Shoreline Jurisdiction
 - Revisions to determination of shoreline jurisdiction are made for clarification.
- 16.08.060 Shoreline master program regulations. This section is deleted. This section had listed what regulations constitute the Poulsbo SMP and included an incorporation of the 2007 CAO.
- 16.08.060 (formally 070) Relationship to other policies and regulations.
 - Subsection added that refers to location of the SMP policies in the comprehensive plan.
 - Subsection added that refers to the CAO as the location of regulations for critical areas.
- 16.08.070 (formally 080) Shoreline maps and boundaries. Minor revisions to permit requirements for mapping shoreline jurisdiction.

Article II Regulations Applying to All Shoreline Development, Uses, and Activities

- 16.08.110 General.
 - “shoreline zone” replaced with “shoreline jurisdiction.”
 - Requirements that impacts be mitigated replaced with “offset through compensatory mitigation.”
 - Sub-section E, referring to the CAO, is deleted.
 - Addition of sub-section listing developments not required to obtain local review.
- 16.08.120 Federal and state approvals. The following change is made: “All work near, at, or waterward of the OHWM may require permits or approvals from one or more of the following state and federal agencies:”
- 16.08.130 Mitigation and sequencing requirements. Clarifications to mitigation sequencing requirements added. A reference to the CAO is added for when impacts include critical areas.

Article III Shoreline Development, Uses, and Activities – this is a new Article, created from existing code sections.

- 16.08.160 Shoreline Environment designations. An introductory sentence is added.
- 16.08.170 Shoreline use table.
 - Clarification is added that accessory uses are subject to the same shoreline permit process as its primary use.

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- Proposed change to allow aquaculture in Aquatic environment as a minor conditional use.
- Proposed change to allow single family residential uses in the Shoreline Residential-1 environment outright instead of only through a variance, provided the footprint does not exceed 2,500 square feet, including appurtenances.
- Proposed change to allow SFR appurtenances outright in both Shoreline Residential-1 and Shoreline Residential-2, while currently these require either a variance or a minor conditional use permit.
- Addition of accessory dwelling units to the use matrix as an allowed use in the Shoreline Residential-1, Shoreline Residential-2, and High Intensity environments, and prohibited in Urban Conservancy, Natural, and Aquatic.
- 16.08.190 Shoreline development and use standards – all environments and uses
 - Shoreline buffer for Dogfish Creek estuary reduced from 150 feet to 100 feet.
 - Clarification is added on how to measure shoreline buffers and setbacks.
 - An allowance is added that when a shoreline buffer is interrupted by a road, the Director may allow development on the landward side.
- 16.08.210 Lot coverage by building and structures. Minor addition to clarify what is meant by “zero-to-one-hundred-twenty-five-foot area.”
- 16.08.220 Height Regulations. List of structures that are excluded from height calculations is deleted.
- 16.08.230 Residential Land Uses.
 - Removal of limitation on multifamily development to 4 units in Shoreline Residential-2.
 - Existing clarification that no residential densities are established in SR-1 is removed.
 - Residential densities in SR-1 are proposed to be those in the underlying zoning.
- 16.08.260 Marinas and other boating facilities. Reference to WAC 173-26-221(4) added.
- 16.08.270 Buoys. A requirement is added that buoys use embedded or helical anchors and mid-line floats where feasible.
- 16.08.300 Public services, transportation facilities and utilities. Requirement added that stream crossings use WDFW’s Water Crossing Design Guidelines (2013).
- 16.08.320 Aquaculture. This is a new proposed section.
 - Regulations for aquaculture uses are proposed.
- 16.08.360 Public viewsheds and public view corridors.
 - List of established public viewsheds is removed.
- 16.08.370 Public access design standards. Introductory statement is added.

Article V. Shoreline Modifications

- 16.08.380 Shoreline modifications – General requirements
 - Minor clarification to reference for mitigation sequencing standards.
 - A requirement is added that applications for shoreline modifications must include tidal elevations and distances to permanent benchmarks.
- 16.08.400 Shoreline modifications table
 - A row is added for breakwaters, jetties, and groins, which are listed as a conditional use in the Aquatic environment and N/A in all other environments.
- 16.08.420 Shoreline stabilization measures

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- For new and enlarged stabilization, a requirement is added that applicants must demonstrate that non-structural methods are not feasible or sufficient. Another requirement is added that applicants must demonstrate that erosion control measures will not result in a net loss of ecological functions.
- For major repairs and replacements, a requirement is added that mitigation for habitat impacts will be required if there is a change in location or work outside of the structural footprint.
- 16.08.430 Breakwaters, jetties, and groins.
 - “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.”
 - Clarification is added that the use shall not cause a net loss of ecological function.
- 16.08.450 Fill
 - “Fill shall not be permitted in regulated wetlands or streams without adhering to the standards defined in Article II of the SMP.”
- 16.08.470 Habitat restoration and enhancement activities. Reference to maintenance and monitoring requirements in the CAO is added.

Article VI Nonconformances.

- 16.08.480 Nonconforming shoreline uses and structures.
 - A provision is added to clarify how to review a combination of nonconforming structures and uses.
 - A new subsection on legally existing single-family residential structure in the Shoreline Residential-1 environment is added. This would allow expansion of these structures as long as it does not extend waterward of the existing structure and the total footprint does not exceed 2,500 square feet.

Article VII Conditional Uses and Variances

- No changes other than updates to code references.

Article VIII Enforcement.

- No changes proposed.

Amendment History, Review Process

The City prepared a public participation program in accordance with WAC 173-26-090(3)(a) to inform, involve and encourage participation of interested persons and private entities, tribes, and applicable agencies having interests and responsibilities relating to shorelines.

The City used Ecology’s checklist of legislative and rule amendments to review amendments to chapter 90.58 RCW and department guidelines that have occurred since the master program was last amended, and determine if local amendments were needed to maintain compliance in accordance with WAC 173-26-090(3)(b)(i). The City also reviewed changes to the comprehensive plan and development regulations to determine if the shoreline master program policies and regulations remain consistent with them in accordance with WAC 173-26-090(3)(b)(ii). The City considered whether to incorporate any amendments needed to reflect changed circumstances, new information or improved data in accordance with WAC 173-26-090(3)(b)(iii). The City consulted with Ecology and solicited comments throughout the review process.

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The City held a joint local/state comment period on the proposed amendments following procedures outlined in WAC 173-26-104. The comment period began on March 17, 2021 and continued through April 17, 2021. A virtual public hearing before the Planning Commission was held on April 27, 2021.

The City provided notice to local parties, including a statement that the hearings were intended to address the periodic review in accordance with WAC 173-26-090(3)(c)(ii). Ecology distributed notice of the joint comment period to state interested parties on March 15, 2021.

The City received three (3) written comment letters and zero (0) oral comments on the proposed amendments. Comments were provided by the Washington Department of Fish and Wildlife (WDFW), the Suquamish Tribe, and a member of the public. In response the WDFW comments, the City revised the definition of soft shoreline armoring, added clarification that projects near the OHWM may require federal and state permits, revised buoy requirements, and revised application site plan requirements. The City did not incorporate WDFW comments recommending revision of the definition of “no net loss” because the existing definition is already consistent with SMP Guidelines. The City did not incorporate WDFW recommendations to use “site potential tree height” in determining buffers because the City concluded that would be more significant than the scope of this amendment, but the City intends to consider this for potential future amendments. WDFW also expressed concerns about the addition of an allowance for legally existing residential uses in Shoreline Residential-1 to expand laterally. Ecology agrees that lateral expansions of development within shoreline buffers can impact ecological functions. Expansions will only be allowed up to a total of 2,500 square feet, including existing footprint. Most existing homes within Shoreline Residential-1 already exceed 2,500 square feet of development area and so are not eligible for this allowance. Those that do not are on narrower parcels with little to no remaining space to expand laterally. This allowance is therefore unlikely to result in a significant amount of lateral expansion and will mostly be used to expand on the landward side of houses.

The City also made several changes to the amendment in response to comments from the Suquamish Tribe. These were to revise the definition of “shoreline buffer;” add a list of the projects from WAC 173-27-044; keep language requiring that shoreline armoring only be used for erosion caused by waves, tides, or currents; and corrected an incorrect code reference.

The City submitted the proposed amendment to Ecology for initial state review on April 28, 2021. Ecology verified that the submittal was complete on April 29, 2021.

Summary of Issues Identified by Ecology as Relevant to Its Decision

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

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

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Definitions – Shoreline Buffer

The City proposed to revise the definition for shoreline buffer, and made further revisions in response to comments from the Tribe. The revision would alter the definition in a manner that could allow new development in the buffer as long as that development is listed as allowed in the use table. This would be inconsistent with the purpose of a shoreline buffer and with SMP section 16.08.200.A.4, which provides more clarification how the shoreline buffer should be implemented.

Finding. Ecology finds that the amendment would revise the shoreline buffer in a way that would reduce protections for the buffer area, resulting in possible loss of ecological function. Ecology has identified a change necessary for consistency with the no net loss requirement in WAC 173-26-186(8)(b) [Attachment 1, Req-1].

Critical Area Incorporation

The City proposes to strike the section of the SMP that incorporates the 2007 CAO (PMC 16.08.060), but does not propose to replace it with an updated incorporation. A reference to the 2017 CAO is included, but the CAO does not apply in shoreline jurisdiction. Without an incorporation of the critical area regulations from the CAO, the SMP lacks provisions for critical area protections. Conversations with City staff have indicated that the City intends to incorporate the 2017 CAO into the SMP.

Finding. Ecology finds that the amendment would remove the SMP's critical area regulations. Ecology finds that this is inconsistent with the requirement that SMPs "provide for management of critical areas" in WAC 173-26-221(2)(a). Ecology has identified a change necessary for consistency with this requirements [Attachment 1, Req-2].

Components of the SMP

The City proposes to delete a section of the SMP that lists the documents and code sections that comprise the SMP (PMC 16.08.060). Because the Poulsbo SMP is not a standalone document, this list is necessary so there is clarity on what constitutes the SMP.

Finding. Ecology finds that the amendment would remove a list of the components of the SMP. Ecology has identified a change necessary for consistency with WAC 173-26-191(2)(b), which authorizes the incorporation of other regulations and code sections into the SMP [Attachment 1, Req-3].

Shoreline Residential-1 allowed uses

The City identified a need to address allowed uses in the Shoreline Residential-1 environment (SR-1), which is a parallel designation along portions of the shore and coincides with the location of the shoreline buffer. The current SMP lists residential uses as only allowed in SR-1 through a shoreline variance. The City would like to allow residential development in SR-1 without a shoreline variance if a property does not have at least 2,500 square feet of developable space outside of the shoreline buffer. However, the proposed amendment is lacking some of the necessary limitations to ensure that this allowance would not result in a loss of ecological functions. City staff have provided additional language to address this concern.

Finding. Ecology finds that the amendment to allow residential development in Shoreline Residential-1 may result in a loss of ecological function, inconsistent with WAC 173-26-186(8)(b). Ecology has identified changes necessary to ensure consistency with WAC 173-26-186(8)(b) [Attachment 1, Req-4, Req-7].

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Finding. Ecology finds that the amendment would allow accessory dwelling units in the Shoreline Residential-1 environment, which coincides with the shoreline buffer. Ecology finds that accessory dwelling units are not a preferred use in the shoreline. Ecology finds that non-preferred uses should be located outside of the shoreline buffer for consistency with RCW 90.58.020 and WAC 173-26-201(2)(d). Ecology has identified a change necessary for consistency [Attachment 1, Req-5].

Dogfish Creek Estuary Buffer

The City proposes to reduce the shoreline buffer for the Dogfish Creek estuary from 150 feet to 100 feet (PMC 16.08.190.A). This would be inconsistent with the Cumulative Impacts Analysis and lacks justification based in the most current, accurate, and complete scientific and technical information.

Finding. Ecology finds that the proposed reduction of the Dogfish Creek estuary lacks scientific justification, as required by WAC 173-26-201(2)(a). Ecology has identified a change necessary for consistency with WAC 173-26-201(2)(a) and the requirement to assure no net loss of ecological function in WAC 173-26-186(8)(b) [Attachment 1, Req-6].

Fill

The City proposes to add language to the fill regulations in PMC 16.08.450.C that appears to allow fill in wetlands and streams if it adheres to the standards in Article II of the SMP. It's not clear what standards this might be referring to. Further, critical area regulations generally prohibit fill in wetlands and streams. This allowance would create an internal inconsistency with the critical area regulations.

Finding. Ecology finds that the amendment to PMC 16.08.450.C would create an internal inconsistency with the critical area regulations that are incorporated in PMC 16.08.060.F. Ecology has identified a change necessary to ensure internal consistency between these regulations [Attachment 1, Req-8].

Recommended Changes

Ecology has identified one change recommended for clarification and improved implementation [Attachment 1, Rec-1].

INITIAL DETERMINATION

After review by Ecology of the complete record submitted and all comments received, Ecology has determined that the City proposed amendments, subject to and including Ecology's required changes (itemized in Attachment 1), are consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions).

Next Steps

- Consider the changes Ecology has identified in Attachment 1 to resolve the issues identified above. Please let me know if you would like to discuss alternative language or different approaches for resolving these issues.
- If these issues are resolved prior to local adoption, we anticipate being able to approve your SMP Periodic Review amendment promptly after formal submittal is provided consistent with WAC 173-26-110.