

SHORELINE MASTER PROGRAM UPDATE *WORKSHOP NO. 2*

City Council
July 14, 2021



SMP PERIODIC REVIEW AND UPDATE

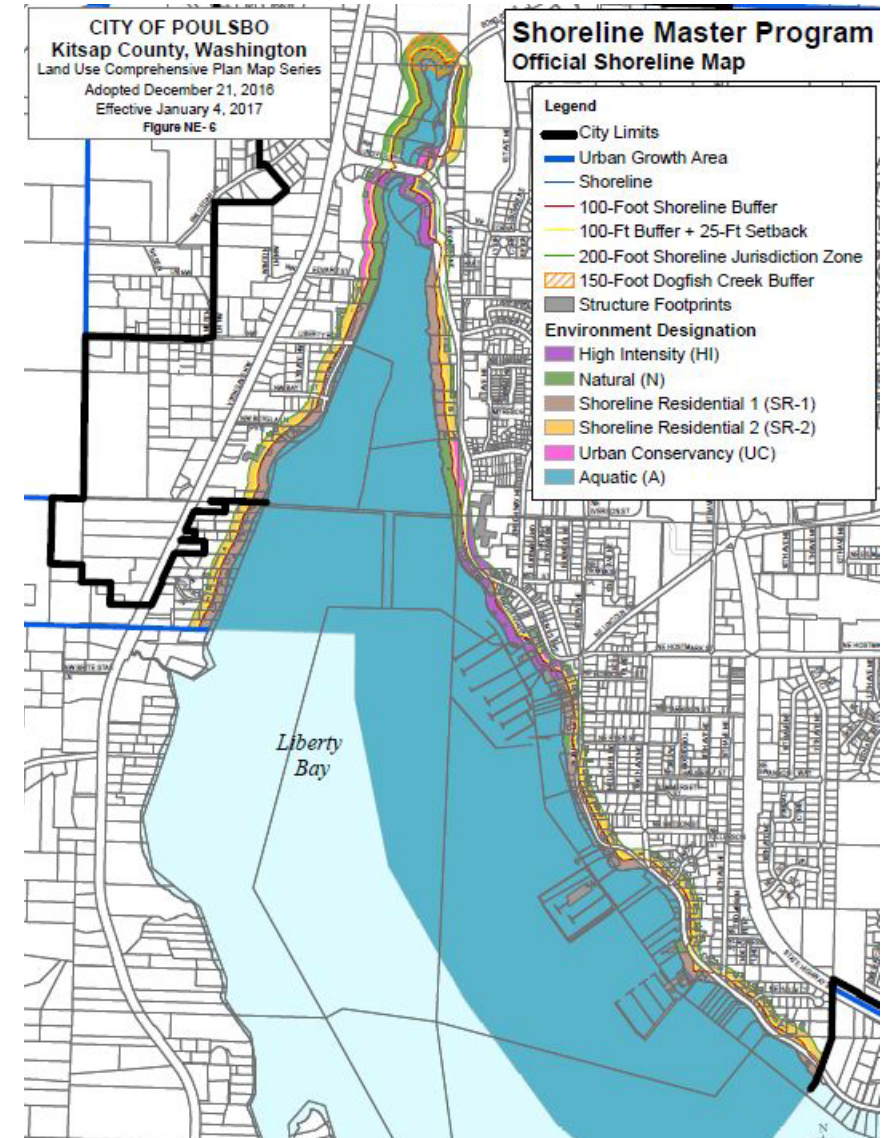


- The Shoreline Management Act requires cities to review/update their SMPs every 8 years.
 - The purpose of this 8-year review is to assure that the SMP complies with applicable laws and guidelines and is consistent with the City's comprehensive plan, development regulations and other local regulations.
 - Although, the 2012 comprehensive update was a lengthy and intensive planning process that resulted in a complete overhaul of the SMP, the scope of this periodic review is narrower and designed to ensure the SMP stays current and adaptable.
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The SMP includes:

- Comp Plan Chapter 5 - Goals and Policies
- Official Shoreline Maps
- PMC 16.08 - Regulations
- PMC 16.09 - Administration and Procedures

Other supporting documents include the Inventory and Characterization Report, Cumulative Impacts and No Net Loss Report, and Restoration Plan.



ROLE OF WA STATE DEPARTMENT OF ECOLOGY

- Assists with SMPs and permit review.
- Provides written guidance for SMP updates.
- **Must approve SMPs before it becomes effective.**

	SUMMARY OF CHANGE	REVIEW	ACTION
2017			
a.	OFM adjusted the cost threshold for substantial development to \$7,047.	16.09.040: All shoreline development, except as specified in WAC 173-27-040 and RCW 98.58.030(3)(e), 90.58.140(9), 90.58.147, 90.58.355 and 90.58.515, must obtain a permit prior to commencement.	None.
b.	Ecology amended rules to clarify that the definition of "development" does not include dismantling or removing structures.	16.08.040: "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. <u>Development does not include dismantling or removing structures if there is no other associated development or re-development.</u>	Added " <u>Development does not include dismantling or removing structures if there is no other associated development or re-development.</u> " to 16.08.040 Definitions
c.	Ecology adopted rules that clarify exceptions to local review under the SMA.	16.09.040: All shoreline development, except as specified in WAC 173-27-040, <u>WAC 173-27-044</u> , and RCW 98.58.030(3)(e), 90.58.140(9), 90.58.147, 90.58.355 and 90.58.515, must obtain a permit prior to commencement. Chapter 16.08 and this chapter indicate which permit is required for specific development types that do not meet the exemption criteria.	Added <u>WAC 173-27-044</u> to 16.09.040
d.	Ecology amended rules that clarify permit filing procedures consistent with a 2011 statute.	16.09.190: WAC <u>173-27-130</u> establishes the requirements and procedures for filing decisions on permits with the Department of Ecology.	None.
e.	Ecology amended forestry use regulations to clarify that forest practices that only involves timber cutting are not SMA "developments" and do not require SDPs.	Per 16.08.190 forest practices are prohibited in all environments.	None.
f.	Ecology clarified the SMA does not apply to lands under exclusive federal jurisdiction	Poulsbo does not have land under exclusive federal jurisdiction.	None.
g.	Ecology clarified "default" provisions for nonconforming uses and development.	Tailored provisions for nonconforming use and development in 16.08.480	None.
h.	Ecology adopted rule amendments to clarify the scope and process for conducting periodic reviews.	Poulsbo SMP does not describe the periodic review scope and procedures.	None.
i.	Ecology adopted a new rule creating an optional SMP amendment process that allows for a shared local/state public comment period.	Poulsbo SMP does not include a description of the SMP submittal process	None.
j.	Submittal to Ecology of proposed SMP amendments.	Poulsbo SMP does not include a description of the SMP submittal process	None.
2016			
a.	The Legislature created a new shoreline permit exemption for retrofitting existing structures to comply with the Americans with Disabilities Act.	16.09.040: All shoreline development, except as specified in WAC 173-27-040 and RCW 98.58.030(3)(e), 90.58.140(9), 90.58.147, 90.58.355 and 90.58.515, must obtain a permit prior to commencement.	None.

REVIEW SCHEDULE

- Initial Release: February 22
 - 30 Day Joint Ecology Public Comment Period: March 17 to April 19
 - PC Workshops: March 9 and April 13
 - PC Public Hearing: April 27 (Joint Hearing with Ecology)
 - Ecology Initial Determination Review: April 28 – July 17
 - PED Committee Updates: Feb 24 and April 28
 - Transfer of PC Recommended Documents to CC for Review (via email): June 2 (follow up emails on June 9 and July 7)
 - CC Workshops: June 9, July 7, July 14
 - CC Public Hearing: July 21
 - CC Ordinance Adoption: August 4
 - Submit Adoption Package to Ecology – SMP is effective after approval by Ecology
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QUESTIONS/COMMENTS FROM CITY COUNCIL

CC Member	Page	Topic Area	Staff Response
CL/DM	4	Definition of Alteration	Added back in “ <u>Alterations do not include walking, fishing, or any other passive recreation or other similar activities.</u> ”
CL/DM	8	Definition of Height	Change definition of height to be consistent with the zoning ordinance.
CL	10	Normal residential appurtenance	Added “ <u>...or as otherwise determined by the Planning Director.</u> ”
DM	--	Legal review	Public Trust Doctrine: The courts have recognized the SMA as one of the primary means by which protecting the public trust is carried out.
ES	--	Habitat restoration/view corridors	

PUBLIC ACCESS/VIEWS AND VEGETATION MANAGEMENT

- “The city does not establish, protect, or maintain views from private property.” [SMP 16.03.360]
 - Protecting public access to the State’s shorelines is one of three major policies of the SMA. “The public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible...” [RCW 90.58.020].
 - “View corridors to and from the water and adjacent shoreland features provide visual rather than physical public access. View corridors offer unobstructed or significant views of the shoreline or shore resources.” [SMP Handbook, Public Access, Page 9]
 - “View protection can include preventing view blockage through height limitations or requiring aesthetic enhancement with landscaping. However, *view protection does not allow for excessive vegetation removal to create views or enhance existing views*. Local governments sometimes require project applicants to provide a visual analysis for projects that appear to obstruct residential views.” [SMP Handbook, Public Access, Page 10]
 - “Where public access conflicts with environmental protection of wetlands and critical wildlife habitats, protection of the resource has priority.” [SMP Handbook, Public Access, Page 15]
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16.08.460 – TREE AND VEGETATION AND REMOVAL

- “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.” [16.08.460 A]
 - “...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” is permitted. [16.08.460 B]
 - “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.” [16.08.460 D]
 - “.... 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.” [16.08.460 E]
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QUESTIONS OR COMMENTS REGARDING NATURAL ENVIRONMENT CHAPTER?

DRAFT 2021 SMP Update | CC Recommended | July 14, 2021 | 1
Red underline and strikethrough = Staff Proposed Addition or Deletion
Purple underline and strikethrough = PC Recommended Addition or Deletion

Chapter 5. Natural Environment

NOTE: For ease of review, only the section of Chapter 5 pertaining to “Shoreline of Liberty Bay” are included below. The entire chapter can be viewed online here: <https://cityofpoulsbo.com/wp-content/uploads/2019/06/Environment.pdf>

SHORELINES AND LIBERTY BAY

Shoreline Management

The City’s shoreline jurisdiction includes all Liberty Bay shorelines and aquatic areas within the City limits and the tidally-influenced (estuarine) portion of Dogfish Creek north of Lindvig Way, and shorelands from 0-200 feet of the ordinary high water mark (OHWM) of Liberty Bay. The City has also “predesignated” all of the shorelines within its unincorporated Urban Growth Area, and the SMP will address these shorelines as well as those located within the City limits. However, in the absence of an interlocal agreement with Kitsap County, the City will not have any regulatory authority in the predesignated areas until they are annexed. No “optional expansion” of jurisdiction for critical areas and buffers per RCW 90.58.030(2)(f)(ii) and WAC 173-26-221(2)(a) is included in this SMP.

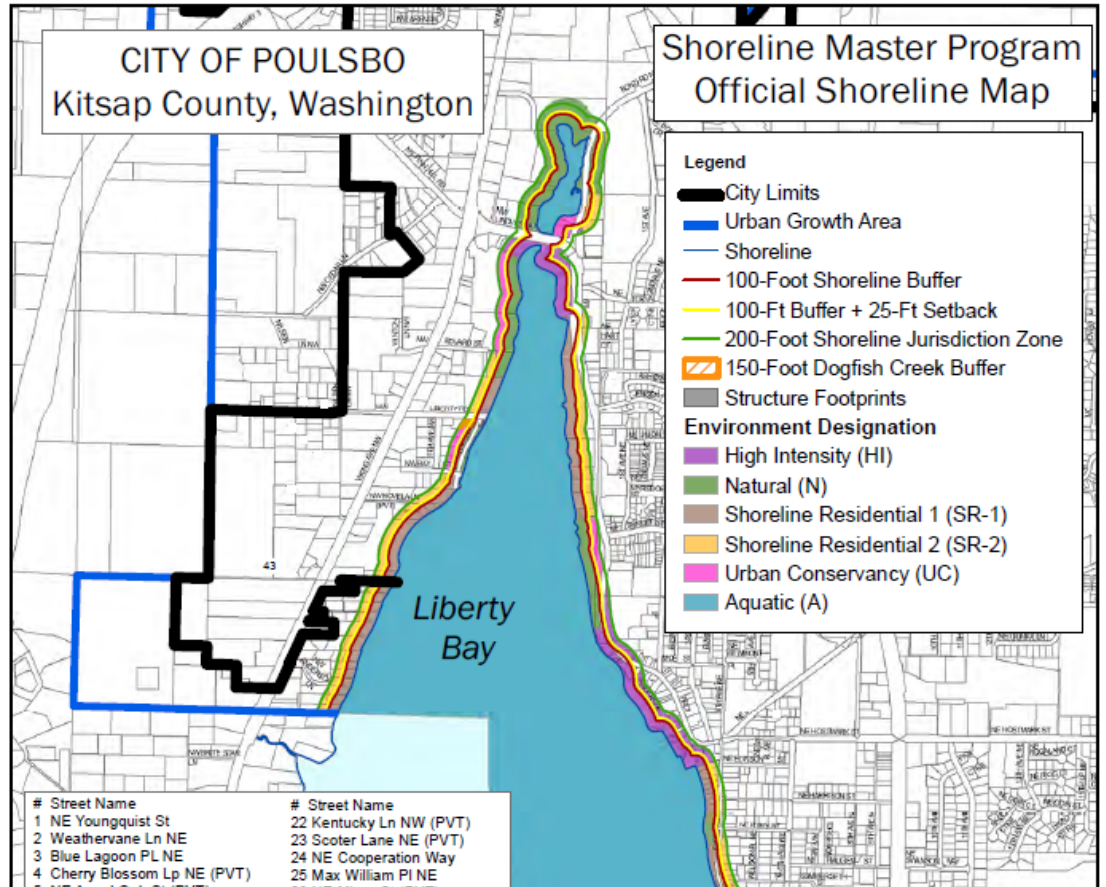
There are a number of local tools used to implement the goals and policies of the Act. Development regulations such as the Zoning Ordinance and Critical Areas Ordinance support the SMP in regulating development along the City’s shorelines. Capital improvement plans, such as sewer, water, parks and transportation,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

As required by the Shoreline Management Act, the City has established shoreline environment designations, which serve as an “overlay” to the City’s comprehensive plan land use designations. These designations are applied to specific shoreline areas to guide the use and development of these areas. There are six environments applied to the City’s shorelines – Shoreline Residential 1 and 2, High Intensity, Urban Conservancy, Natural and Aquatic; these environments have been mapped and are identified on Figure NE-6.

GOAL NE-7

Ensure no net loss of shoreline ecological values and functions, as required by the Shoreline Management Act 90.58 RCW.

QUESTIONS OR COMMENTS REGARDING SHORELINE MAPS?



QUESTIONS OR COMMENTS REGARDING PMC CHAPTER 16.09?

Chapter 16.09 SHORELINE ADMINISTRATION AND PROCEDURES

Sections:

- 16.09.010 Purpose.
 - 16.09.020 Shoreline administrator.
 - 16.09.030 Applicability of the shoreline master program.
 - 16.09.040 Exemption from permit requirements.
 - 16.09.050 Letter of exemption issued in certain cases.
 - 16.09.060 Review of exempt actions.
 - 16.09.070 Application materials.
 - 16.09.080 Concurrent review of permit applications.
 - 16.09.090 Developments and uses located both inside and outside of the shoreline.
 - 16.09.100 Notice of applications and hearings.
 - 16.09.110 General review criteria for all substantial development permits.
 - 16.09.120 Minor shoreline substantial development permits (Type II).
 - 16.09.130 Shoreline substantial development permits (Type III).
 - 16.09.140 General review criteria for all shoreline conditional use permits.
 - 16.09.150 Minor shoreline conditional use permits (Type II).
 - 16.09.160 Shoreline conditional use permits (Type III).
 - 16.09.170 Shoreline variances.
 - 16.09.180 Issuance of permits.
 - 16.09.190 Filing with Department of Ecology.
 - 16.09.200 Requests for review.
 - 16.09.210 Time to commence and complete development.
 - 16.09.220 Revision to issued permits.
 - 16.09.230 Enforcement authority.
 - 16.09.240 Additional authorities and responsibilities.
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QUESTIONS OR COMMENTS REGARDING PMC CHAPTER 16.08?

Red underline and ~~strikethrough~~ = Staff Proposed Addition or Deletion
Purple underline and ~~strikethrough~~ = PC Recommended Addition or Deletion
Green underline = In response to Public/Agency Comment Received/Dept of Ecology Initial Determination
Blue underline and ~~strikethrough~~ = CC Recommended Addition or Deletion

Chapter 16.08

SHORELINE MASTER PROGRAM

Article I. General Master Program Provisions

16.08.010	Authority.
16.08.020	Scope of shoreline master program.
16.08.030	Purpose.
16.08.040	Definitions.
16.08.050	Shoreline jurisdiction.
16.08.060	Shoreline master program regulations.
16.08. 070 <u>060</u>	Relationship to other policies and regulations.
16.08. 080 <u>070</u>	Shoreline maps and boundaries.
16.08. 090 <u>080</u>	Interpretations.
16.08. 100 <u>090</u>	Liberal construction.
16.08. 110 <u>100</u>	Severability.

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

16.08. 120 <u>110</u>	General.
16.08. 130 <u>120</u>	Federal and state approvals.
16.08. 140 <u>130</u>	Mitigation and sequencing requirements.
16.08. 150 <u>140</u>	In-water construction and development activities.
16.08. 160 <u>150</u>	Water quality.

Article III. Shoreline Development, Uses and Activities

16.08. 170 <u>160</u>	Shoreline environment designations.
16.08. 180 <u>170</u>	Shoreline use table.
16.08. 190 <u>180</u>	Shoreline uses prohibited in all environments.
16.08. 200 <u>190</u>	Shoreline development and use standards—All environments and uses.
16.08. 210 <u>200</u>	Land division and boundary line adjustments.

ECOLOGY INITIAL DETERMINATION

Attachment 1:

City of Poulsbo - Ecology Required and Recommended Changes

The changes in **red** are **required** for consistency with the SMA (RCW 90.58) and the SMP Guidelines (WAC 173-26, Part III). Changes in **blue** are **recommended** and consistent with SMA (RC 90.58) policy and the SMP Guidelines (WAC 173-26, Part III)

ITEM	SMP Submittal PROVISION	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)	RATIONALE
Rec-1	16.08.040 Definitions	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 shorelines, or the applicable master program specifically requires that such appurtenances be included ; Provided further, that temporary construction equipment is excluded in this calculation.	Recommended Change 1: Delete phrase This phrase is not necessary in the definition for height and may be confusing.
Req-1		84. "Shoreline buffer" means an area immediately adjacent to the shoreline as measured from the OHWM, which under optimal conditions, is are composed of intact native vegetation, and where new development is not allowed unless necessary to accommodate water-oriented uses or other developments specifically allowed in the shoreline buffer by this SMP, and only if but may only be modified and/or reduced to accommodate allowed uses when consistent with the Shoreline Management Act and this chapter such that no net loss of critical area or shoreline ecological functions is assured occurs . Shoreline buffers and setbacks extend both above and below ground.	Required Change 1: Revise definition for "shoreline buffer" A change is necessary to ensure consistency with the no net loss requirement of the SMA [WAC 173-26-186(8)(b)] and the use preferences [WAC 173-26-201(2)(d)]. The amendment would change the definition of shoreline buffer in a way that might allow any of the permitted uses from the use table in 16.08.170 in the shoreline buffer. Not all of these uses are water-dependent uses and so should not be allowed in the shoreline buffer. New development in the buffer will impact shoreline ecological functions and should only be allowed when necessary to support water-dependent uses and when impacts can be mitigated. This change is also necessary to ensure internal consistency with 16.08.200.A.4, which limits uses and development in shoreline buffers. The Suquamish Tribe provided comments on this definition to the City – Ecology has shared this revision with the Tribe and received their concurrence.
Req-2 & Req-3	16.08.060970 Relationship to other policies and regulations	F. The following sections of the Critical Areas Ordinance (Ordinance 2017-10, codified in Chapter 16.20 PMC) are incorporated herein as regulations of this master program. 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. 1. Section 200 Wetlands 2. Section 300 Fish and Wildlife Habitat Conservation Critical Areas 3. Section 400 Geologically Hazardous Areas	Required change 2: Incorporate CAO by reference. A change is necessary for consistency with RCW 36.70A.480 & RCW 90.58.610, which govern the relationship between CAOs and SMPs. CAOs do not apply in shoreline jurisdiction. As such, WAC 173-26-221(2)(a) requires that SMPs provide for management of critical areas. Local governments may accomplish this by incorporating the CAO into the SMP. The proposed amendment would strike the incorporation of the 2007 CAO, but not replace it with an updated incorporation. City staff have indicated that the preference would be to incorporate the 2017 CAO. Ecology's revisions to this section



THANK YOU.