

EXHIBIT E



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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November 15, 2021

The Honorable Becky Erickson
Poulsbo City Hall
200 Northeast Moe Street
Poulsbo, WA 98370

Re: City of Poulsbo Shoreline Master Program Periodic Review Amendment – Conditional Approval

Dear Mayor Erickson:

I would like to take this opportunity to commend the City of Poulsbo (City) for its efforts in developing the proposed of the Shoreline Master Program (SMP) amendment. It is obvious that a significant effort was invested in this periodic review and amendment process.

As we have discussed with your staff, the Department of Ecology (Ecology) considered the record and concluded that portions of the proposal were not consistent with applicable laws and rules. The findings and conclusions that support Ecology's decision are contained in Attachment A. The specific changes identified as necessary to make the proposal approvable are detailed in Attachment B.

Pursuant to RCW 90.58.090 (2)(e), at this point, the City may:

- Agree to the proposed changes as shown in Attachment B, or
- Submit an alternative proposal. Ecology will then review the alternative(s) submitted for consistency with the purpose and intent of the changes originally developed by Ecology and with the Shoreline Management Act.

Final Ecology approval will occur when the City and Ecology agree on language that meets statutory and guideline requirements.

Please provide your response within 30 days to the Director at laura.watson@ecy.wa.gov.

We look forward to concluding the SMP periodic review amendment process in the near future. If you have questions, or would like to discuss the changes identified by Ecology, please contact our regional planner, Maria Sandercock, at maria.sandercock@ecy.wa.gov or (425) 256-1372.

Sincerely,

Laura Watson
Director

Enclosures / cc: Nikole Coleman
Joe Burcar, Ecology
Maria Sandercock, Ecology

ATTACHMENT A: FINDINGS AND CONCLUSIONS CITY OF POULSBO SHORELINE MASTER PROGRAM PERIODIC REVIEW AMENDMENT

SMP Submittal accepted August 9, 2021, Ordinance No. 2021-08
Prepared by Department of Ecology on October 28, 2021

Use of this Document

Ecology's Findings and Conclusions (presented herein Attachment A), including reference to *Required Changes* (Attachment B), provide the factual basis for Ecology's decision on the City of Poulsbo's proposed amendment to their Shoreline Master Program (SMP) as a result of their SMP periodic review. This document is divided into three sections: **Findings of Fact**, which provides findings related to the City's proposed amendment, amendment history, and the review process, **Conclusions of Law**, and Ecology's **Decision and Effective Date** of the amendment. Attachment B outlines Ecology's identified required changes to the SMP amendment.

Brief Description of Proposed Amendment

The City of Poulsbo (City) is undergoing a statutorily required periodic review of their Shoreline Master Program (SMP) and has submitted an amendment to the Washington State Department of Ecology (Ecology) for approval. As part of this review, the City chose to utilize the joint review process set forth in WAC 173-26-104. As part of this process on June 17, 2021, per WAC 173-26-104(3)(b), Ecology provided the City with an initial determination of consistency with the policy of the Shoreline Management Act (SMA) and applicable rules. The City's final adopted ordinance incorporated all of Ecology's required and recommended changes provided as part of the initial determination; however, the City made additional changes to the amendment when adopting this ordinance, which are assessed in this document and Attachment B.

FINDINGS OF FACT

Need for amendment

The City's comprehensive update to their SMP went into effect in 2013. The City subsequently completed a locally initiated amendment to their SMP to revise residential use provisions and the Shoreline Environment Designation Map; this amendment was approved by Ecology in 2019. Now, the current proposed amendment is needed to comply with the statutory deadline for a periodic review of the SMP 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 the proposed amendment. The amendment brings the SMP into compliance with requirements of the Shoreline Management Act (Act) or state rules that have been added or changed since the City completed their SMP comprehensive update, ensure the SMP remains consistent with amended comprehensive plans and regulations, and incorporate changes deemed necessary to reflect changed circumstances, new information, or improved data

The City's SMP consists of goals and policies located in Chapter 5 of the Comprehensive Plan and regulations codified in Chapter 16.08 and 16.09 of the Poulsbo Municipal Code (PMC). The Official Shoreline Designation Map is shown in Figure NE-6 in Chapter 5 of the Comprehensive Plan. Relevant portions of the City's critical areas ordinance are incorporated into the SMP by reference. The SMP regulates shoreline uses and development along Liberty Bay and the Dogfish Creek estuary.

In addition to changes identified on the periodic review checklist, the City made the following changes:

Chapter 16.08 PMC

- Definitions are updated to remove unnecessary definitions, add new definitions, and revise some existing definitions. [16.08.040]
- The 2017 CAO is incorporated by reference, replacing the 2007 CAO incorporation. [16.08.060]
- Revisions to the shoreline use table to allow Aquaculture in the Aquatic environment as a conditional use and to allow single-family residences in the Shoreline Residential-1 environment in certain circumstances [16.08.170]. New aquaculture regulations are added in 16.08.320.
- Revisions to the shoreline modifications table to add breakwater, jetties, and groins as a conditional use. [16.08.400]
- Additional requirements for new and enlarged shoreline stabilization are added. [16.08.420]
- Provisions for nonconforming uses and structures are revised to allow some limited expansion of legally-existing nonconforming single family residences in the Shoreline Residential-1 environment. [16.08.480]

Shoreline Map

- A section of Shoreline-Residential-1 in the Dogfish Creek estuary that is part of the City-owned Fish Park is now designated as Natural.
- A section of shoreline north of Bay Street that is the City-owned West Poulsbo Waterfront Park and is Shoreline Residential-1 for the first 100 feet of shorelands and Shoreline Residential-2 for the second 100 feet of shorelands is re-designated as Natural for the first 100 feet and Urban Conservancy for the second 100 feet.

Chapter 5 of the Comprehensive Plan

- Management policies for the Shoreline Residential-1 environment are revised to allow limited single-family residential development.

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. An important element of the public participation plan is the City's SMP Periodic Review project [website](https://cityofpoulsbo.com/planning-economic-development/shorelineupdate/)¹. The Planning Commission held remote meetings addressing this topic, beginning March 2, 2021 and continuing through April 27, 2021.

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,

¹ <https://cityofpoulsbo.com/planning-economic-development/shorelineupdate/>

and determine if local SMP 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, including opportunities to comment on draft materials in January 2020.

Joint local/state comment period under WAC 173-26-104

The City and Ecology 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 and to affected tribes on March 15, 2021.

We received three (3) written comment letters 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. The City prepared a "City Response to Public Comments" memo, which identified 13 individual comment topics from the comment letters. WDFW requested revisions to definitions, clarification to a section on federal and state permitting, consideration of WDFW's "site potential tree height" tool for determining stream buffers, addition of a requirement that buoys use helical or embedded anchors, addition of site plan requirements for projects waterward of OHWM, and included a comment recommending against lateral expansions of nonconforming structures. The Suquamish Tribe requested revisions to the definition for "shoreline buffer;" that the exceptions in WAC 173-27-044 be listed in the SMP; and correction of a code reference. The Tribe also expressed concern over changes to shoreline armoring regulations. The comment letter from the member of the public expressed frustration with the strict regulations in the SMP.

In response to 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 also 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.

Finding. Ecology has reviewed the comments received along with the City’s responses. Ecology finds the City’s responses are generally consistent with statutory and rule obligations required of SMP amendments. Ecology finds that the City considered comments and incorporated additional amendments to address issues raised during the comment period.

Initial Determination of Consistency

As part of this review, the City chose to utilize the joint review process set forth in WAC 173-26-104. After the joint local/state comment period and hearing, and consideration of the comments received, the City submitted the proposed amendment to Ecology for initial review. Ecology is required under WAC 173-26-104(3)(b) to provide the City with an initial determination of consistency with the policy of the Shoreline Management Act (SMA) and applicable rules.

Ecology received the City’s submittal for an initial determination of consistency on April 29, 2021. We provided the City a formal written statement documenting our initial determination of consistency.

Ecology considered the record, including comments received and the City’s responses to these comments, and concluded that portions of the proposal were not consistent with applicable laws and rules. On June 17, 2021, we provided a written statement describing the specific areas of concern and changes necessary. Ecology identified eight (8) required changes to address issues with the proposed definition for “shoreline buffer,” the proposed incorporation of the 2017 CAO, the proposed changes to the Shoreline Residential-1 uses and development regulations, and proposed changes to the Dogfish Creek Estuary buffer. Ecology also identified one (1) recommended change to improve clarity of the proposed amendments. After review by Ecology of the complete initial record submitted and all comments received, Ecology determined that the City’s proposed amendments, subject to and including Ecology’s required changes, 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). We concluded that if the issues identified within our required and recommended changes were resolved prior to local adoption, we anticipated being able to approve this SMP Periodic Review amendment upon formal submittal per WAC 173-26-110.

The City considered the changes identified in Ecology’s initial determination and accepted all required and recommended changes prior to local adoption.

The City also made additional revisions to the amendment after Ecology issued the initial determination. These revisions included removing the definition of “average grade level,” and revising the definitions of “height” and “normal residential appurtenance.”

Final Submittal

With passage of Ordinance #2021-08, on August 4, 2021, the City authorized staff to forward the proposed amendments to Ecology for formal approval. The City submitted the amendments and Ecology verified the submittal as complete on August 9, 2021.

At the conclusion of our formal review, Ecology’s Director must decide to approve the amended program as submitted, approve it with required changes and/or recommended changes, or deny approval.

Consistency Review

Consistency with Chapter 90.58 RCW

The proposed amendment has been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4) and (5). The City has also provided evidence of its compliance with SMA procedural requirements for amending their SMP contained in RCW 90.58.090(1) and (2).

Consistency with applicable guidelines (Chapter 173-26 WAC, Part III)

The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program Guidelines (WAC 173-26-171 through 251 and 173-26-020 definitions). This includes review for compliance with the SMP amendment criteria found in WAC 173-26-201(1)(c) along with review of the SMP Periodic Review Checklist completed by the City.

Consistency with SEPA Requirements

The City submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance (DNS) for the proposed SMP amendments on May 23, 2019. Ecology did not comment on the DNS.

Other Studies or Analyses supporting the SMP amendment

Ecology also reviewed supporting documents prepared for the City in support of the SMP amendment. These documents include a public participation plan, a periodic review checklist, and an addendum to the Cumulative Impacts Analysis prepared by Grette Associates on March 15, 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, Ecology has identified issues relevant to its decision, which are outlined below and in Attachment B:

Definitions

Not every WAC definition is required to be in the SMP, but definitions that are in the SMP must be consistent with WAC 173-27. See WAC 173-26-191(2)(a)(iii)(C): “Local governments may include administrative, enforcement, and permit review procedures in the master program or the procedures may be defined by a local government ordinance separate from the master program. In either case, these procedures shall conform to the Shoreline Management Act, specifically RCW 90.58.140, 90.58.143, 90.58.210 and 90.58.220 and to chapter 173-27 WAC.” Ecology cannot approve a definition in the SMP that is inconsistent with WAC 173-27.

The City's SMP does not include a definition for "average grade level". According to WAC 173-27-030(3) "average grade level" is based upon the existing grade level as measured directly under the proposed building or structure. The height definition in WAC 173-27-030(9), relies on average existing grade level, as defined under "average grade level" per WAC 173-27-030(3), to determine height. Therefore, Ecology finds that the City's code must include this definition to ensure proper implementation of the height restrictions and related provisions of this SMP.

Finding. Ecology has identified a change necessary for consistency with WAC 173-27-030 [Attachment B, Item Req-1].

The City proposes to use their zoning code definition for height instead of having a separate definition in the SMP. The zoning code calculates height using finished grade level, not existing grade level. Ecology finds that referring to the zoning code for the height definition is inconsistent with WAC 173-27-030(3) and (9).

Finding. Ecology has identified a change necessary for consistency with WAC 173-27-030 [Attachment B, Item Req-2].

WAC 173-27-040(2)(g) provides an exclusive list of structures that may be considered normal residential appurtenances for the purposes of qualifying for an exemption from a shoreline substantial development permit. "Local circumstances may dictate additional interpretations of normal appurtenances which shall be set forth and regulated within the applicable master program." [WAC 173-27-040(2)(g), emphasis added]. Ecology finds that the City may identify additional appurtenances through the amendment process, which would need to include supporting analysis demonstrating how changes to this definition satisfy state requirements. Ecology finds that the City's addition of the phrase "or as otherwise determine by the Planning Director" would allow an open-ended opportunity for the Planning Director to consider additional or revised appurtenances outside of the SMP amendment process and without Ecology's review.

Finding. Ecology has identified a change necessary for consistency with WAC 173-27-040(2)(g) [Attachment B, Item Req-3].

CONCLUSIONS OF LAW

After review of the complete record submitted and all comments received, Ecology concludes that the City's proposed amendment with incorporation of Ecology's required changes as shown in Attachment B, can be considered 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).

Ecology concludes that the proposed amendment with acceptance of Ecology's required changes satisfies the criteria for approval of amendments found in WAC 173-26-201(1)(c). This includes the conclusion that approval of the SMP amendment will not foster uncoordinated and piecemeal development of the state's shorelines (WAC 173-26-201(1)(c)(i) and will assure no net loss of shoreline ecological functions will result from implementation of the amended master program (WAC 173-26-201(1)(c)(iv) and WAC 173-26-186(8)).

Ecology concludes that those SMP segments relating to shorelines of statewide significance continue to provide for the optimum implementation of Shoreline Management Act policy (RCW 90.58.090(5)).

Ecology concludes that the City has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the City has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 and WAC 173-26-104 regarding public and agency involvement in the SMP review and amendment process, including conducting a public hearing, providing notice, consultation with parties of interest, and solicitation of comments from tribes, government agencies and Ecology.

Ecology concludes that the City has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the City SMP submittal to Ecology was complete pursuant to the requirements of WAC 173-26-090, WAC 173-26-104, and WAC 173-26-110.

Ecology concludes that we have complied with the state's procedural requirements for review and approval of shoreline master program amendments as set forth in RCW 90.58.090 and WAC 173-26-104, WAC 173-26-110, and WAC 173-26-120.

Ecology concludes that with this action the City has completed the required process for periodic review in accordance with RCW 90.58.080(4) and applicable state guidelines (WAC 173-26).

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendments will be consistent with the policy of the Shoreline Management Act, the applicable guidelines and implementing rules, once the required changes set forth in Attachment B are accepted by the City.

As provided in RCW 90.58.090(2)(e)(ii) the City may choose to submit additional alternatives to all or part of the changes required by Ecology. If Ecology determines that the alternative proposal is consistent with the purpose and intent of Ecology's original changes and with RCW 90.58, then the department shall approve the alternative proposal and that action shall be the final action on the amendment.

Ecology approval of the proposed amendment, with required changes or approved alternative language, will be effective 14 days from Ecology's final action approving the amendment. Ecology's final action will be a letter verifying the receipt of written notice that the City has agreed to the required changes identified in Attachment B.

ATTACHMENT B: DEPARTMENT OF ECOLOGY REQUIRED CHANGES TO THE CITY OF POULSBO SHORELINE MASTER PROGRAM PERIODIC REVIEW AMENDMENT

The changes in **red are required** to ensure compliance with the SMA (RCW 90.58) and the SMP Guidelines (WAC 173-26, Part III) and to clarify provisions for implementation.

ITEM #	SMP Submittal PROVISION	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)	RATIONALE
Req-1 Req-2 & Req-3	16.08.040 Definitions	<p>A. Shoreline Master Program</p> <p><u>“Average grade level” means the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property that will be directly under the proposed building or structure. In the case of structures to be built over water, average grade level shall be the elevation of the ordinary high water mark. 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</u></p> <p>44. “Height” <u>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 in the C-1 zoning district per PMC 18.80.040 B.4. -shall be measured per the definition in Section 18.40.030.</u></p> <p>65. “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 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, or as otherwise determined by the Planning Director.</p>	<p>Required Change 1: Add definition for “average grade level.” A change is necessary for consistency with WAC 173-27-030. According to WAC 173-27-030(3) "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: In the case of structures to be built over water, average grade level shall be the elevation of the ordinary high water mark. 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. The height definition in WAC 173-27-030(9), relies on average existing grade level, as defined under “average grade level” per WAC 173-27-030(3), to determine height. Therefore, Ecology finds that the City’s code must include this definition to ensure proper implementation of the height restrictions and related provisions of this SMP.</p> <p>Required Change 2: Revise “height” definition A change is necessary for consistency with WAC 173-27-030. According to WAC 173-27-030(9): “Height” 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. The City proposes to rely on the zoning code definition for height. However, this definition is inconsistent with WAC 173-27-030(9), which relies on average existing grade level to determine height. In consultation with City staff on this issue, Ecology proposes to include a modified version of the definition of “height.” Ecology finds the required change to the definition of “height” to be consistent with WAC 173-27-030(9) while adding Poulsbo specific exclusions for internal consistency and compatibility with the City’s zoning code.</p> <p>Required Change 3: Revise definition for “Normal residential appurtenance” A change is necessary for consistency with WAC 173-27-040(2)(g), which allows local governments to identify specific additional appurtenances from those listed in rule during the planning process. The phrase “or as otherwise determined by the Planning Director” is too open-ended to be implemented consistent with WAC 173-27-040(2)(g) and is inconsistent with the requirement that SMP provisions “be sufficient in scope and detail to ensure the implementation of the Shoreline Management Act”¹ and the SMP Guidelines.</p>

¹ WAC 173-26-191(2)(a)(ii)(A)