

STAFF REPORT

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TO: Pierce County Land Use Advisory Commissions (LUACs)

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SUBJECT: The Pierce County LUACs will review and consider proposed amendments to the Pierce County Code and Development Regulations for an update to the Shoreline Master Program (SMP). Amendments are proposed in Chapter 1.22.080 – Hearing Examiner Code, and the following Development Regulations: Title 18 – General Provisions, Title 18A – Zoning, Title 18E – Critical Areas, Title 18J – Design Standards and Guidelines. Title 18S, Development Regulations – Shorelines is a proposed new title. Title 20 – Shoreline Regulations would be repealed.

SUMMARY: Staff presents proposed amendments to current code and new regulations to update the Pierce County Shoreline Master Program (SMP). This is an update to the existing shoreline maps, policies, and regulations that were adopted in 1975. The proposal is intended to comply with requirements of the State’s Shoreline Management Act (Chapter 90.58 RCW) and State guidelines for updating SMPs found in Chapter 173-26 of the Washington Administrative Code (WAC).

NOTICE: Notice of the Land Use Advisory Commission meetings were published in the official County newspaper (Puyallup Herald), as well as Peninsula Gateway, the Eatonville Dispatch, and the Tacoma News Tribune, as applicable, in accordance with PCC Chapter 2.78.020.

SEPA: Environmental Review will be conducted pursuant to the State Environmental Policy Act (SEPA), Pierce County Code Title 18D, and provisions of the Growth Management Act.

ATTACHMENTS:

- ATTACHMENT “A”** Proposed Amendments to Chapter 1.22.080, Hearing Examiner Code
- ATTACHMENT “B”** Proposed Amendments to Title 18, Pierce County Development Regulations - General Provisions
- ATTACHMENT “C”** Proposed Amendments to Title 18A, Pierce County Development Regulations - Zoning
- ATTACHMENT “D”** Proposed Amendments to Title 18E, Pierce County Development Regulations – Critical Areas
- ATTACHMENT “E”** Proposed Amendments to Title 18J, Pierce County Development Regulations - Design Standards and Guidelines
- ATTACHMENT “F”** Proposed New Title 18S, Pierce County Development Regulations - Shorelines

PROJECT DESCRIPTION:

In 1971, the Washington State Legislature passed the State Shoreline Management Act. In 1972, the public adopted the Act in a statewide referendum vote. The Act required local governments, including Pierce County, to develop Shoreline Master Programs (SMPs). As part of the Act, in 1972 the State adopted guidelines which local governments were required to follow in drafting their SMPs. The existing 1974 County maps and policies, and the 1975 regulations, were adopted in 1975 consistent with these guidelines. There have been a few minor adjustments since then but no significant changes. In the past 30-plus years there have been several substantial adjustments to local land use regulations including the State Growth Management Act that required comprehensive land use plans, updates to zoning, environmental regulations, and development requirements. RCW [36.70A.480](#) provides that the goals and policies contained in a local shoreline master program shall be considered an element of the local comprehensive plan required by the Growth Management Act. All other portions of the local shoreline master program, including the use regulations, are considered a part of the local development regulations required by the Growth Management Act.

The State has required that all jurisdictions review and adjust their shoreline master programs based on new guidelines and laws which recognize the significant changes that have taken place in land use regulation and planning since the early 1970s. “The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration and preservation.” “It is the policy of the state to provide for the management of the shorelines by planning for and fostering all reasonable and appropriate uses.” “Uses shall be preferred which are . . . unique to or dependent upon use of the state's shoreline.” “Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single-family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state.” RCW [90.58.020](#):

To begin the update, local governments must assess existing development and environmental condition of the shorelines, and then use that information as a baseline to monitor changes over time. The basis of that assessment is a required document called an Inventory and Characterization Report. From that baseline, any new development cannot have an unmitigated negative impact on the current environmental condition. That requirement is called “no net loss.” If a development is proposed that has the potential for a negative environmental impact, that impact is required to be addressed and mitigated. Another significant change is the requirement to integrate into the SMP existing regulations that have been adopted as part of the State Growth Management Act, such as those addressing critical areas, erosion, flood hazard, landslide hazard, wetlands, and fish and wildlife.

In keeping with the recent code consolidation efforts by the County, staff has relied on existing regulations to meet the State Legislature requirements wherever possible. One of the fundamental principals in addressing the new requirements was to examine the existing County Code Titles and determine if there was an adopted regulation already in place that satisfied the State guidelines. Title 18S would include those items not addressed in other existing Titles. Unlike other County development regulations, Title 18S would include the shoreline policies as well as the regulations because the policies clarify the intent of the SMP. This draft proposal also includes changes to existing Titles which were necessary to accommodate the SMP update.

BACKGROUND:

The SMP update process began in 2006 when the County hired a consultant to conduct an inventory and characterization of County shorelines. A technical group, consisting of representatives from County, State, Federal, and Tribal governments, was formed to provide input. On February 19, 2008, the County Council adopted Resolution R2008-12s to form the Shoreline Citizens Advisory Committee (SCAC), with members appointed from a variety of interest groups, to work on draft policies, regulations, and maps. A total of 29 meetings were held by the SCAC from March 2008 to February 2010. This group appointed two subcommittees to work on the aquaculture and residential boating facilities sections. From February 2010 to date, County staff has continued to review comments received from the SCAC, Ecology, and other County staff, when staff resources were available.

SHORELINE CITIZEN ADVISORY COMMISSION MEETINGS:

With a resurgence of the update effort, as a result of additional staff commitment, two meetings were held with the Shoreline Citizens Advisory Committee (SCAC) on May 22, 2012 and May 24, 2012, from 4:30–7:00 p.m., at the Pierce County Annex. The objective of the meetings was to make sure the SCAC members understood the formatting changes and how their recommendations were considered when creating the draft proposal.

PUBLIC OUTREACH:

In addition to the meetings with the SCAC, a significant public notice and involvement program is scheduled for the Shoreline Master Program update process. All of the approximately 15,000 land owners whose property falls within shoreline jurisdiction will receive a personal notice through the US Postal Service in time to participate in the open houses.

Open houses are scheduled for June 21, 2012, in Bonney Lake; July 11, 2012, in Gig Harbor; and July 16, 2012, in Lakebay.

Combined Land Use Advisory Committee (LUAC) Study Sessions are scheduled for June 4, 2012, in Graham, and June 6, 2012, in Gig Harbor.

Individual LUAC meetings will be held for five of the seven community plan areas that have shoreline jurisdiction within their community plan areas:

- June 12, 2012 – Graham;
- June 13, 2012 – Parkland-Spanaway-Midland;
- June 20, 2012 - Key Peninsula;
- June 27, 2012 - Gig Harbor;
- July 10, 2012 - Mid-County.

The Planning Commission is scheduled to hold six public meetings on the draft proposal:

- July 18, 2012 - Tacoma;
- July 25, 2012 - Gig Harbor;
- August 1, 2012 - Gig Harbor;
- August 15, 2012 - Fife;
- August 22, 2012 - Tacoma;
- August 29, 2012 - Tacoma.

COMPARISON OF CURRENT SMP TO UPDATED SMP:

Shorelines Jurisdiction: This draft proposal uses the minimum shoreline jurisdiction required by the State guidelines, that being an area 200 feet from the floodway. This is usually a more limited area than the floodplain. Also, while the State guidelines require the critical areas adjacent to the shorelines to be part of the shoreline jurisdiction, it does not require an additional 200-foot area of jurisdiction. This draft proposal has the shoreline jurisdiction ending at the edge of the critical area.

No Net Loss: The new environmental protection standard is “no net loss of shoreline ecological functions.” While restoration of degraded areas is encouraged, this does not mean all shoreline areas are required to be made “pristine” or returned to pre-settlement conditions. The County is required to inventory current shoreline conditions – including identifying existing ecological processes and functions that influence physical and biological conditions. When the updated SMP is adopted it is required to have policies and regulations to protect existing ecological conditions while allowing development of shoreline areas. This is accomplished by avoiding or minimizing the introduction of impacts to ecological functions that result from new shoreline development.

Shoreline Environment Designations (SEDs): The existing County SMP has five shoreline designations; they are as follows from most to least restrictive: Natural, Conservancy, Rural, Rural Residential, and Urban. The draft proposal includes changes to:

- Names of the SEDs.
- Definition, purpose, designation criteria, and policies for SEDs; and
- SED maps based upon the different names, definition and purpose, and designation criteria.

The draft proposal includes the following designations, as recommended by the State guidelines: 1) Natural, 2) Conservancy, 3) Shoreline Residential, 4) High Intensity, and 5) Aquatic.

1. The Natural SED is for shoreline areas that are virtually pristine, and having significant natural ecological features or functions such as spits.
2. The Conservancy SED is for shoreline areas that have significant shoreline features or functions, and while there may be development it is offset by those items. A parcel that has a bluff between it and the waters' edge is an example of a potential Conservancy SED. Park and recreational parcels were designated Conservancy to balance the public access opportunities and environmental conditions.
3. The Shoreline Residential SED is for shoreline areas that are more intensely developed. While not exclusively residential, they are smaller lots that are developed or are planned for residential development.
4. The High Intensity SED is for shoreline areas that support water related commercial activities or significant transportation features such as ferry docks and marinas.
5. The Aquatic SED is for all waters that are located below the ordinary high water mark (OHWM).

The mapping of the lower shoreline area is based on existing conditions. The proposed designation criteria are detailed in the draft proposal.

Code Consolidation: Over the last three years the County has been clarifying and consolidating its development codes (titles/regulations). The goal is simplification and increased usability for the public and for staff. These efforts have been carried over into the update of the SMP.

The format of the existing County SMP has separate chapters for different types of development, even though some are related. The draft proposal combines similar uses into the same chapters. For example, the existing SMP has separate chapters for launching ramps, marinas, and piers/docks. The proposal combines launching ramps, marinas, and piers/docks, along with other similar types of facilities, into one section called Water Access Facilities.

The basic structure and organization of Title 18S is similar to the other County development regulation titles, except that Title 18S would include policies. There are general provisions that apply to all development; there are more detailed requirements for specific uses; and there is a development table, similar to the use table in Title 18A (Zoning Code) that has been added to help clarify the requirements.

While the existing County SMP has had few changes since the 1970s, other County regulations have increased significantly, such as, but are not limited to:

- Title 17C, Storm Drainage and Site Development
- Title 18, General Provisions
- Title 18A, Zoning Code

- Title 18E, Critical Areas
- Title 18J, Design Standards and Guidelines

The County's development-related Titles apply both within and outside the area of shoreline jurisdiction. As a result, they overlap with the existing County SMP regulations. This has been duplicative and confusing. Examples of the overlap are as follows:

- Title 20 (existing SMP regulations) has Chapter 20.28 that addresses bulkheads. Newer Title 18E (Critical Areas) has Chapter 18E.110 that addresses erosion hazard and slope stability (including bulkheads).
- Title 20 has Chapter 20.76 that addresses, in part, application requirements, public notice, etc. Newer Title 18 (General Provisions) has regulations that address many of the same issues.

To address this overlap, Title 18S would include regulations, for the most part, that are not addressed under the other existing Titles. Title 18S will refer users to those other Titles rather than repeating the regulations. Where other existing Titles do not adequately address SMP issues or State guidelines Title 18S would include the regulation.

Critical Areas Integration: Title 18E, Development Regulations – Critical Areas is incorporated by reference in the draft proposal. Title 18E contains regulations for: wetlands, regulated fish and wildlife species and habitat conservation areas, aquifer recharge areas and wellhead protection areas, volcanic hazard areas, flood hazard areas, landslide hazard areas, seismic (earthquake) hazard areas, mine hazard areas, and erosion hazard areas.

Marine (saltwater) shorelines have critical area features such as habitat for listed species, kelp beds, and eel grass that will now be regulated. These features have been defined as critical areas since the 2005 adoption of Title 18E, but not all of the features had protective regulations. All marine shorelines are proposed to have standardized buffers to protect a significant amount of the ecological function without the need for detailed, site specific assessments for each application. The widths of the proposed marine buffers would range from 75 to 150 feet, depending on the SED. Buffers would be required to be vegetated at a percentage, also based on the parcel's SED. Provisions would be provided to allow the widths of buffers to be modified or reduced.

Review Process: The review process for exemptions has been clarified. Historically, there has been an "Exemption" process. It has given the impression that the proposed development was exempt from all requirements of the County SMP. However, the application was exempt only from the requirement to obtain a Substantial Development Permit. The draft proposal does not call this review process an "exemption". Proposals that do not require a Substantial Development Permit would be considered "Permitted Development."

The existing County SMP requires a Shoreline Substantial Development Permit be subject to a public hearing and decision by the County Hearing Examiner. The draft proposal changes this to an administrative process, with a decision made by the Director of Planning and Land Services (PALS). Public notice of the application submittal will still be required.

The draft proposal includes a new permit type, Administrative Conditional Use Permit. It will not require a public hearing, and the decision will be issued administratively by the PALS Director. Public notice of the application submittal will be required. There would be no change to the existing Shoreline Conditional Use Permit and Variance processes.

The existing SMP allows legal, nonconforming uses to expand subject to approval of a Shoreline Nonconforming Use Permit. The updated SMP eliminates this permit type. Expansions of existing nonconforming uses would be subject to approval of a Conditional Use Permit or Variance.

Single-Family Development: The draft proposal agrees with the State Shoreline Master Program (WAC 173-26-241 (3) j) in recognizing that “single-family residences are the most common form of shoreline development and are identified as a priority use when developed in a manner consistent with control of pollution and prevention of damage to the natural environment.”

Additionally, the State Legislature passed new legislation in September 2011 (RCW 90.58.620) that allowed local governments to designate “(R)esidential structures and appurtenant structures that were legally established, and are used for a conforming use, but that do not meet standards for the following to be considered a conforming structure: Setbacks, buffers, or yards; area; bulk; height; or density. This new law is incorporated into the draft proposal. The existing County SMP prohibits new single-family residences in the Natural SED. According to State guidelines, the draft proposal would allow residences in the Natural SED subject to approval of an Administrative Conditional Use Permit.

The existing County SMP has a 50-foot setback requirement along most shorelines. The draft proposal would eliminate this setback because the distance a residence must be located from the shoreline would be determined through critical area review, Title 18E.

Boating Facilities: The existing County SMP has a maximum depth limitation for docks. The draft proposal would also have a minimum depth requirement. The existing County SMP states that single/joint-use docks should not exceed 150 feet in length on saltwater. The draft proposal would revise the maximum length to 125 feet for docks serving one parcel, 150 feet for docks serving two parcels, 175 feet for docks serving three parcels, and 200 feet for docks serving four parcels. The existing County SMP imposes no limit on the number of boating facilities a parcel may have. The draft proposal would limit a parcel to no more than three boating facilities. The existing County SMP allows deviations to the sizes of docks to be processed with a Substantial Development Permit. The draft proposal would require a Variance. The existing County SMP does not address lifts, the draft proposal does.

Public Access: The draft proposal includes regulations that would require new development to provide on-site public access to the shoreline. Public access would not be required of individual single-family residences, but would be required of larger residential subdivisions, commercial and industrial development. Public access would consist of a dedication of land or a physical improvement in the form of a walkway, trail, bikeway, corridor, viewpoint, park, deck, observation tower, pier, boat launching ramp, dock or pier area, or other area serving as a

means of view and/or physical approach to public waters. It could include interpretive centers and displays. If on-site public access cannot be provided, off-site public access could be provided consisting of a dedication of land, physical improvement, and/or equivalent financial contribution to a local public access fund for a specific public access project.

COMPREHENSIVE PLAN POLICY ANALYSIS:

The State recognizes that shoreline management is most effective and efficient when accomplished within the context of comprehensive planning. For counties planning under the Growth Management Act, chapter [36.70A](#) RCW requires mutual and internal consistency between the comprehensive plan elements and implementing development regulations (including master programs). The requirement for consistency is amplified in WAC [365-196-500](#). The Pierce County Comprehensive Plan sets out policies for development. The draft proposals policies and regulations have been reviewed for consistency with the Comprehensive Plan and have been determined to be consistent.

CONCLUSION:

The draft proposal complies with requirements of the State's Shoreline Management Act (Chapter 90.58 RCW) and State guidelines for updating SMPs found in Chapter 173-26 of the Washington Administrative Code (WAC). Staff has worked diligently to provide an draft proposal that accommodates “all reasonable and appropriate uses” while “protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the water of the state and their aquatic life” and that is consistent with “public rights of navigation.” Additionally, the draft proposal serves to fulfill directives contained within Pierce County Council Resolution No. R2008-12s. Staff recommends that the Land Use Advisory Commissions review the documents and recommend that the Planning Commission approve the proposed amendments and forward them on to the County Council for consideration.