

DRAFT

ORDINANCE NO. *-16**

AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON, RELATING TO AMENDMENTS TO THE CITY'S 2013 SHORELINE MASTER PROGRAM REGARDING REDEVELOPMENT OF SHORELINE PROPERTIES AND MINOR CLARIFICATIONS AND CORRECTIONS; AMENDING CHAPTERS 6, 7, 8, 9 AND 12 AND ADDING A NEW APPENDIX E TO THE 2013 SHORELINE MASTER PROGRAM; AND AMENDING PORT ORCHARD MUNICIPAL CODE CHAPTER 16.35 TO EFFECT THE SAME; PROVIDING FOR SEVERABILITY AND CORRECTIONS; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, on March 26, 2013, the Port Orchard City Council (the "City Council") approved Ordinance 005-13, which adopted the City of Port Orchard's (the "City") 2013 Shoreline Master Program; and

WHEREAS, the City desires to adopt updates to the 2013 Shoreline Master Program to address redevelopment of shoreline properties and to make certain clarifications and corrections; and

WHEREAS, on August 2, 2016, the City provided required 60-day notice of its intent to amend the 2013 Shoreline Master Program to the Department of Ecology and the Department of Commerce; and

WHEREAS, on August 26, 2016, the City's SEPA official issued a determination of non-significance for the proposed changes to the Shoreline Master Program and there have been no appeals; and

WHEREAS, on September 14, 2016, the Planning Commission held a duly-noticed public hearing on the proposed changes to the Shoreline Master Program, and no public testimony was received;

THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, DO ORDAIN AS FOLLOWS:

SECTION 1. The City Council adopts all of the "Whereas" sections of this ordinance as findings in support of this ordinance.

SECTION 2. Port Orchard Municipal Code (POMC) Chapter 16.35 is hereby amended to read as follows (new text is shown by underline); all other provisions of this section shall remain unchanged and in full force and effect:

16.35.030 Nonconforming uses – Applicability.

(1) All nonconforming uses, lots and structures shall be subject to the provisions of this chapter; provided that uses and structures within the two hundred foot (200 ft) shoreline zone as established in Chapter 2 of the shoreline master program are also subject to the provisions of the city’s shoreline master program. If a conflict appears to exist between the provisions of this chapter and the shoreline master program, the shoreline master program shall supersede and control.

SECTION 3. Development Regulations G-DR-12 and G-DR-13 of Section 6.5, Chapter 6 – “General Shoreline Master Program Policies and Regulations” of the 2013 Shoreline Master Program adopted by Ordinance No. 005-13 are hereby deleted as follows (deletions are shown by ~~strikeout~~). The subsequent development regulations in Chapter 6 and following chapters of the Shoreline Master Program shall be renumbered but are otherwise unchanged and in full force and effect, unless otherwise indicated in this ordinance:

6.5 Public Access

Development Regulations

~~**G-DR-12** All waterfront development proposals within the High-Intensity environment, with a construction value of 50 percent or more of assessed improvement value, shall be required to dedicate a 14-foot public access easement to the City, and to construct a 10-foot wide mixed use path or boardwalk, in accordance with the Mosquito Fleet Trail Plan.~~

~~**a.** The path shall be located on the water side of the development where feasible. Where it is not feasible, a dedication and path shall be built adjacent to the roadway.~~

~~**b.** The specific location and design of the walkway, landscaping, and any signage shall be approved by the City Development Director and the City Engineer.~~

~~**c.** The City may approve a reduction in path size to a minimum of 6 feet where site constraints do not allow construction of a 10-foot path.~~

~~**d.** All trail or boardwalks that are constructed shall connect to existing or proposed access on adjacent properties.~~

~~e. Water dependent industrial uses (e.g. boatyards) may request an administrative exemption from shoreline public access requirements through the development. However, trail improvements along the roadway, viewpoints and street side improvements identified with G-DR-12 are required with all waterfront development.~~

~~f. Where an existing sub-standard walkway exists, upgrades to the standard are required where the value of development is 50 percent or greater of assessed improvement value.~~

~~**G-DR-13** Shoreline development by public entities that requires a shoreline substantial development permit, including local government, port districts, state agencies, and public utilities shall provide a 14-foot public access easement and shall construct a 10-foot wide mixed use path or boardwalk, in accordance with the Mosquito Fleet Trail Plan.~~

~~a. The path or boardwalk is subject to G-DR-12 (a-f) above.~~

~~b. Development proposals on land owned by public entities not on the waterfront, but within shoreline jurisdiction (200 feet) shall provide publicly accessible open space, with amenities such as benches, totaling not less than 2 percent of the lot area. Exceptions may be made for safety, security, or impact to the shoreline environment. Any open space must be accessible from public right-of-way.~~

SECTION 4. Development Regulation SMP-GP-32 of Section 6.6, Chapter 6, “General Shoreline Master Program Policies and Regulations” of the 2013 Shoreline Master Program adopted by Ordinance No. 005-13 is hereby amended as follows (additions are shown by underline; deletions are shown by ~~strikeout~~):

6.6 Shoreline Vegetation Conservation

Management Policies

SMP-GP-32 The City shall ~~endeavor to provide~~ develop and apply standards and regulations that require shoreline development and uses to meet the ~~provide~~ no net loss of standard for maintenance of shoreline ecological functions.

SECTION 5. Sections 7.2, 7.5 and 7.10 of Chapter 7, “Shoreline Development Standards and Use Regulations” of the Shoreline Master Program adopted by Ordinance No. 005-13 are hereby amended to read as follows (additions are shown by underline, deletions are

shown by ~~strikeout~~); all other provisions of this chapter shall remain unchanged and in full force and effect:

7.2 Shoreline Development Standards Matrix

DEVELOPMENT STANDARDS SETBACKS AND HEIGHT REQUIREMENTS	NATURAL	URBAN CONSERVANCY	HIGH INTENSITY	SHORELINE RESIDENTIAL	AQUATIC
Agriculture					
Cultivation / Grazing setback	x	100	100	100	x
Building Setback	x	100	50	50	x
Height limits (See underlying zoning Code or overlay districts – POMC Chapter 16)					
Aquaculture					
Water-dependent setback	x	0	0	0	0
Water-related setback ¹	x	50	25	35	x
Height limits:					
Upland (See underlying zoning Code or overlay districts – POMC Chapter 16)					
Over-water	x	x	x	x	15
Boating Facilities & Boat Launches					
Water-dependent setback	0	0	0	0	0
Building setback ¹	x	50	25	25	n/a
Height limits: ^{4,2}					
Upland (See underlying zoning Code or overlay districts – POMC Chapter 16)					
Overwater structures	x	x	x	x	30
Commercial Development					
Water-dependent setback	x	0	0	x	0
Water-related setback ¹	x	100	25	x	0
Non-water oriented setback ¹	x	x	75	x	x
Building height limit (See POMC Ch. 16)					
Forest Practices					
Setback	x	100	n/a	75	n/a
Industrial Development					
Building Setbacks:					
Water-dependent	x	x	0	x	0

Water-related ¹	x	x	50	x	x
Non-water oriented ¹	x	x	100	x	x
Height Limits (See POMC Ch. 16)					
Parking					
Accessory	150	100	10	10	x
Primary	x	100	25	0	x
Recreational Development					
Water-dependent	n/a	0	0	0	0
Water-related/oriented ¹	10	10	0	0	x
Non-water oriented (unless specified below) ¹	100	75	25	25	x
Access Roads, restrooms, & accessory buildings	x	100	25	25	x
Parking Areas	x	50	10	0	x
Golf Courses or sports fields	x	200	100	100	x
Trails, boardwalks, or overlooks	0	0	0	0	0
Residential Development ³					
Single-family setbacks – building setback ¹	150	100	x	25	x
Single-family setbacks – accessory use setback (patios, decks, etc.)	100	50	x	15	x
2 to 4 dwelling units – building setback ¹	x	x	40	50	x
2 to 4 dwelling units – accessory use setback ¹	x	x	20	25	x
Transportation					
Arterials, Highways, Railroads	x	200	50	50	x
Multi-use trails, paths	x	0	0	0	0
Secondary/Access Roads	x	100	50	50	x
Utilities					
Buildings, transmission line, tower setbacks	200	100	50	75	0
Distribution pole height limit	36	36	36	36	x
Cellular tower height limit	x	100	100	x	x

(x = not permitted, p = permitted, a = administrative review, c = conditional use permit)

¹Lawfully constructed conforming structures within a shoreline buffer may be expanded or redeveloped in accordance with this Master Program. Refer to Appendix E for more information.

²Height limits are subject to zoning and overlay district regulations found in POMC Title 19.

³If a public road lies between a proposed residential use and the shoreline, the regular front yard zoning setbacks shall apply.

7.5 Boating Facilities

Development Regulations

SU-DR-10 Hand launch sites where improvements are limited to installation of signage and improvements valued at a monetary amount that does not exceed the amount currently established and effective per WAC 173-27-040(2)(a) \$5000 ~~or less~~ shall be exempt from a Shoreline Substantial Development Permit.

7.10 Moorage: Docks, Piers and Mooring Buoys

Development Standards for New Piers and Docks

~~Length~~—Docks, piers, and floats should be designed, located and operated to minimize interference with adjacent water uses and impacts to fish, shellfish and habitat. The maximum length, width and surface area of a pier or dock should be consistent with the requirements of WAC 220-660-380, and should be the minimum necessary to accomplish moorage and shore access based on site-specific circumstances as determined by a marine engineer, as well as potential impacts and mitigation requirements. Ells are not permitted on single-family residential docks, piers or floats. Unless otherwise recommended by the Department of Ecology and/or the Department of Fish and Wildlife based on site-specific review, all decking, and floats 6 feet or less in width shall include a minimum of thirty percent (30%) functional grating, floats greater than 6 feet in width shall have a minimum of fifty percent (50%) functional grating, and ramps shall be fully grated.

~~Width~~

- ~~1. The maximum width of a single family residential pier or dock is six (6) feet.~~
 - ~~2. The maximum width of a commercial or public pier will be the minimum necessary to accommodate the permitted use.~~
 - ~~3. The maximum width of a ramp is four (4) feet.~~
 - ~~4. The maximum width of ells and floats is six (6) feet for public or commercial uses. Any additional fingers must be no wider than two (2) feet.~~
 - ~~5. Ells are not permitted on single family residential docks, piers, or floats.~~
- ~~Area. Surface area of docks, piers and ramps shall be determined on a site-specific basis.~~

~~-Decking~~

- ~~1. If pier is over four feet wide, decking is required to 30% functional grating on the pier.~~
- ~~2. Ramps are required to be fully grated.~~
 - ~~a. Option 1: A float with a width of 6 feet or less must have functional grating installed on at least 30 percent of the surface area of the float.~~
 - ~~b. Option 2: A float with a width greater than 6 feet (up to 8 feet) must have functional grating installed on at least 50 percent of the surface area of the float.~~

~~Piles~~

- ~~1. The Piling diameter of piles shall be the minimum required for the purpose based on site-specific circumstances as determined by a marine engineer. cannot exceed 12 inches.~~
- ~~2. Piling materials.—No creosote, pentachlorophenol, CCA or comparable toxic compounds not approved for marine use, shall be used for any portion of the overwater structure of the pile. For any ACZA treated wood, the wood must be treated by the manufacturer per the Post Treatment Procedures outlined in “BMP Amendment #1 – Amendment to the Best Management Practices (BMPs) for the Use of Treated Wood in Aquatic Environments; USA Version – Revised July 1996,” by the Western Wood Preservers Institute, as amended April 17, 2002 or the most current BMPs.~~

SECTION 6. Sections 8.3, 8.4, 8.5, 8.7.3, 8.9, 8.10 and 8.11 of Chapter 8, “Shoreline Administration and Permit Procedures” of the 2013 Shoreline Master Program adopted by Ordinance No. 005-13 are hereby amended to read as follows (additions are shown by underline, deletions are shown by ~~strikeout~~); all other provisions of this chapter shall remain unchanged and in full force and effect:

8.3 Shoreline Exemptions

The Shoreline Administrator shall issue a letter of exemption if any of the criteria below are met or meets the criteria allowed per WAC 173-27-040(2):

- a) Any development of which the total cost or fair market value, whichever is higher, does not exceed the amount currently established and in effect per WAC 173-27-040(2)(a). ~~five thousand dollars, if such development does not materially interfere with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period.~~

~~"Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the Bureau of Labor and Statistics, United States Department of Labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the *Washington State Register* at least one month before the new dollar threshold is to take effect.~~ For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030 (2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;

8.4 Administrative Shoreline Substantial Development Permits

Substantial development permits ("SDPs") are required for all developments (unless specifically exempt) that meet the legal definition of "substantial development," but may qualify for processing as an administrative permit subject to ~~the~~ Section 8.4.1.

SDPs are reviewed and processed by local governments and subsequently sent to Ecology for filing. Under WAC 173-27-150, substantial development permits cannot be approved unless they are consistent with policies and procedures of the Shoreline Management Act, Ecology rules, and the local master program. Local government may condition the approval of permits if needed to ensure consistency of the project with the act and the local master program.

"Substantial development" shall mean any development of which the total cost or fair market value exceeds the amount currently established and in effect per WAC 173-27-040(2)(a), ~~exceeds five thousand dollars,~~ or any development which materially interferes with the normal public use of the water or shorelines of the state.

8.5 Shoreline Substantial Development Permits

Substantial development permits ("SDPs") are required for all developments (unless specifically exempt) that meet the legal definition of "substantial development."

SDPs are reviewed and processed by local governments and subsequently sent to Ecology for filing.

Under WAC 173-27-150, substantial development permits cannot be approved unless they are consistent with policies and procedures of the Shoreline Management Act, Ecology rules, and the local master program.

Local government may condition the approval of permits if needed to ensure consistency of the project with the act and the local master program.

"Substantial development" shall mean any development of which the total cost or fair market value exceeds the amount currently established and in effect per WAC 173-27-040(2)(a), exceeds five thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state.

8.7.3 Variance Process

Requests for a variance from the regulations in this Master Program shall be submitted on forms provided by the city and~~Variations are subject to processing under POMC 16.06 and 16.07. They are administered by the Shoreline Administrator or his/her designee.~~Variance requests and are subject to public notice, public comment, a public hearing (for regular variances), and SEPA requirements. Administrative variances are subject to public notice, but not public hearings, unless appealed.

8.9 Public Notice

Public notice shall be provided consistent with the City's permit processing regulations~~POMC 16.06.~~

8.10 Public Hearings

Public hearings shall be conducted by the Hearing Examiner in accordance with the City's permit processing regulations~~POMC 16.~~

8.11 SEPA Review

Project review conducted pursuant to the State Environmental Policy Act (SEPA), RCW 43.21C, shall occur concurrently with project review set forth in this Master Program and the City's SEPA regulations~~POMC Chapter 16.07~~.

SECTION 7. The introduction and sections 9.1, 9.2 and 9.3 of Chapter 9, "Existing Development" of the 2013 Shoreline Master Program adopted by Ordinance No. 005-13 are hereby amended to read as follows (additions are shown by underline, deletions are shown by ~~strikeout~~); all other provisions of this chapter shall remain unchanged and in full force and effect:

CHAPTER 9: EXISTING DEVELOPMENT AND USES

~~Nonconforming development includes~~ Primary shoreline uses and structures which were *lawfully* constructed, established, or created prior to the effective date of the Master Program, or amendments thereto, including those approved through a variance or conditional use permit, shall be considered legal conforming. Lawfully constructed appurtenant structures that do not conform to present regulations or standards of this Master Program or the Act, and lawfully constructed existing over-water residences and other non-water-dependent over-water or in-water structures, shall be considered legal nonconforming. Any structure or use that was not lawfully constructed or established shall be considered illegal nonconforming and may be subject to enforcement or abatement action pursuant to the Port Orchard Municipal Code. ~~but which do not conform to present regulations or standards of the Master Program or policies of the Act. In such cases, the standards of this Chapter shall apply.~~

9.1 Existing Legal Conforming and Nonconforming Uses

1) Conforming Uses. Conforming uses may continue, and may be expanded or intensified, in accordance with the Act and this Master Program.

2) Nonconforming Uses. Nonconforming uses include shoreline uses which were lawfully established prior to the effective date of the Act or the Master Program, or amendments thereto, but which do not conform to present regulations or standards of the Master Program or policies of the Act. The continuance of a nonconforming use is subject to the following standards:

- a. Change of ownership, tenancy, or management of a nonconforming use shall not affect its nonconforming status, provided, that the use does not change or intensify.
- b. Additional development of any property on which a nonconforming use exists shall require that all new uses conform to this Master Program and the Act.
- c. If a nonconforming use is converted to a conforming use, no nonconforming use may be resumed without obtaining a shoreline variance.
- d. If a nonconforming use is discontinued for a period of 365 or more consecutive calendar days, it shall lose its nonconforming status, and the continued use of the property shall be required to conform to the provisions of this Master Program and the Act, or obtain a shoreline variance.

~~A use which is listed as a conditional use but which existed prior to adoption of the Master Program for which a Conditional Use Permit has not been obtained shall be considered a nonconforming use.~~

9.2 Existing Legal Conforming and Nonconforming Structures

- 1) Conforming Structures.
 - a. Conforming primary structures may be repaired, maintained, expanded or redeveloped in accordance with the Act, this Master Program, and the standards of Appendix E.
 - b. Conforming appurtenant structures may be repaired, maintained, expanded or redeveloped in accordance with the city's land use code and other applicable city policies and regulations, except that they may not be expanded or redeveloped within the shoreline buffer unless a shoreline variance is obtained.

~~24) Nonconforming Structures. Nonconforming structures include shoreline structures which were lawfully constructed or placed prior to the effective date of the Act or the Master Program, or amendments thereto, but which do not conform to present bulk, height, dimensional, setback, or density requirements. Nonconforming structures may continue even though the structures fail to conform to the present requirements of the environmental district in which they are located. A nonconforming structure may be maintained as follows:~~

- a. Necessary repairs and alterations that do not increase the degree of nonconformity may be made to nonconforming structures.
- b. A primary or appurtenant nonconforming building or structure may be repaired and, maintained, ~~and replaced~~ as provided in and as limited by this section and by Appendix E. ~~The~~ Any maintenance or, repair, ~~or replacement~~ shall be within the existing building or structure footprint and shall ~~should~~ not increase the degree of nonconformity.
- c. Changes to interior walls or non-structural improvements may be made to nonconforming structures.
- ~~d. A primary or appurtenant nonconforming building or structure, nonconforming as to the bulk, dimensional and density requirements of this Master Program, may be added to or enlarged if such addition or enlargement conforms to the regulations of the zoning district and the shoreline environment designation in which it is located, provided that the addition or enlargement is consistent with the standards of Appendix E.~~
- ~~e.d. A structure for which a variance has been issued shall be considered a legal nonconforming structure and the requirements of this section shall apply as they apply to preexisting nonconformities.~~

~~2) Residential structures shall be deemed "conforming" and not subject to the provisions of this Section 9.2 under the following conditions:~~

- ~~a. the residential structure or appurtenant structure was *legally* established and used for a conforming use when established;~~
- ~~b. the residential structure or appurtenant structure is not an over water structure;~~
- ~~c. the residential structure or appurtenant structure is non-conforming solely because it no longer meets the current standards for: setbacks, buffers, or yards; area; bulk; height; or density; and~~
- ~~d. redevelopment, expansion, change of occupancy class, or replacement of the residential structure is consistent with the master program, including requirements for no net loss of shoreline ecological functions.~~

~~For purposes of this provision, "appurtenant structures" means garages, sheds, and other legally established structures. "Appurtenant structures" does not include bulkheads and other shoreline modifications or over water structures. Nothing in this section affects the application of other federal, state, or local government requirements to residential structures.~~

9.3 Existing Lots

Undeveloped lots, tracts, parcels or sites located landward of the ordinary high water mark that were established prior to the effective date of ~~the Act and~~ this Master Program, but that do not conform to the present lot size or density standards are considered nonconforming lots of record and are legally buildable subject to the following conditions:

- a. All new structures or additions to structures on any nonconforming lot must meet all setback, height, and other construction requirements of ~~the~~ this Master Program, the Act, and the underlying zoning requirements and must also comply with applicable design, building, and engineering standards.

SECTION 8. Chapter 12, “Definitions”, of the 2013 Shoreline Master Program adopted by Ordinance No. 005-13 is hereby amended to read as follows (additions are shown by underline, deletions are shown by ~~strikeout~~); all other provisions of this chapter shall remain unchanged and in full force and effect:

CHAPTER 12 – DEFINITIONS

~~**Accessory Building** – A separate building attached to or detached from the principal building and used for purposes customarily incidental to the use of the principal building. Accessory buildings can include, but are not limited to: garage, shed, playhouse, cabana, hobby room, etc.~~

Appurtenant Structure – A structure or building that is secondary to or which supports the use of the primary structure on the site, serving a purpose customarily associated with and incidental to the primary structure. Examples: decks, garages and patios ~~may be considered appurtenant structures to a single-family residence.~~

Commercial – Commercial developments are those uses that include wholesale, retail, service, office or business trade activities. A mixed-use development that contains commercial uses and residential uses within the same building or buildings shall be regulated as a commercial use according to the requirements of this Master Plan, including but not limited to setbacks, height and public access.

Footprint, Building or Structure – The area covered by a building ~~or structure~~ on the ground. This definition does not include cantilevered portions of a building ~~or structure~~, or those portions of a site that have only surface development without walls and a roof (such as a ~~deck or patio~~parking lot) or development located solely underground (such as a below-ground basement ~~or installed utility lines~~).

Non-conforming Use or Development, Legal – Any appurtenant building or structure, over-water residence, or other non-water-dependent over-water or in-water building or structures, ~~shoreline use or structure~~ or portion thereof, which was lawfully constructed or established prior to the effective date of the ~~Act~~SMA or this local Shoreline Master Program or amendments, but which no longer conforms to the policies and regulations of the Master Program.

Primary Structure - The structure or building 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, decks, patios, greenhouses, swimming pools, and parking lots.

Redevelop, Redevelopment - “Redevelop” or “redevelopment” means the replacement of an existing structure or part of an existing structure, or demolition of the structure, with development of a new and/or remodeled structure or structures in its place.

Substantial Development – Any developments of which the total cost or fair market value exceeds the amount currently established and in effect per WAC 173-27-040(2)(a)~~\$5000~~, or any development which materially interferes with the normal public use of the water or shorelines of the state; EXCEPT as specifically exempted pursuant to RCW 90.58.030(3)(e).

SECTION 9. “Appendix E – Mitigation and Restoration for Redevelopment Activities”, included as Attachment 1 of this Ordinance and hereby incorporated as if fully set forth herein, is hereby added to the 2013 Shoreline Master Program adopted by Ordinance No. 005-13.

SECTION 10. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such

invalidity or unconstitutionality shall not affect the validity of constitutionality of any other section, sentence, clause or phrase of this ordinance.

SECTION 11. Corrections. Upon the approval of the city attorney, the city clerk and/or code publisher is authorized to make any necessary technical corrections to this ordinance, including but not limited to the correction of scrivener’s/clerical errors, references, ordinance numbering, section/subsection numbers, and any reference thereto.

SECTION 12. Effective Date. This ordinance shall be published in the official newspaper of the city and shall take full force and effect five (5) days after the date of publication. A summary of this ordinance in the form of the ordinance title may be published in lieu of publishing the ordinance in its entirety.

PASSED by the City Council of the City of Port Orchard, APPROVED by the Mayor and attested by the City Clerk in authentication of such passage this * day of *** 2016.**

Robert Putaansuu, Mayor

ATTEST:

Brandy Rinearson, CMC, City Clerk

APPROVED AS TO FORM:

Sharon Cates, City Attorney

Sponsored by:

****, Councilmember

Attachment: Attachment 1 (“Appendix E – Mitigation and Restoration for Redevelopment Activities”)

PUBLISHED:
EFFECTIVE DATE:

DRAFT

Appendix A of Ordinance ***-16:

**APPENDIX E –
Mitigation and Restoration
for Redevelopment Activities**
CITY OF PORT ORCHARD



Shoreline redevelopment, as defined in this Master Plan, shall be designed and conducted in a manner that protects the current ecological condition of the shoreline, and prevents or mitigates adverse impacts, while encouraging revitalization and improvements within the City's waterfront areas. Redevelopment proposals shall preserve existing native habitat and shoreline functions to the maximum extent feasible, and shoreline restoration may be required for redevelopment within the shoreline buffer.

A. Applicability.

The provisions of this Appendix must be referenced in conjunction with other requirements of this Master Program and with other city policies and regulations. If a conflict appears to exist between this Appendix and another section of this Master Program or other city policies or regulations, the redevelopment proposal shall comply with this Appendix unless otherwise indicated herein.

B. Mitigation Sequencing

1. When redevelopment is proposed that will result in adverse impacts to the shoreline, mitigation measures shall be applied in the following sequence of steps, listed in order of priority:
 - a. Avoid the impact altogether by not taking a certain action or parts of an action;
 - b. Minimize 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. Rectify the impact by repairing, rehabilitating or restoring the affected environment;
 - d. Reduce or eliminate the impact over time by preservation and maintenance operations;
 - e. Compensate for the impact by replacing, enhancing, or providing substitute resources or environments, including utilization of the in-lieu fee process where appropriate; and
 - f. Monitor the impact and the mitigation projects, and take appropriate corrective measures.
2. Application of the mitigation sequence shall achieve no net loss of ecological functions for each redevelopment proposal.
3. After mitigation sequencing is applied in accordance with 1. and 2. above, compensatory mitigation selection shall be guided by the following sections of this Appendix.
4. Failure to demonstrate that the mitigation sequencing standards have been met may result in permit denial, or the city may restrict or reduce development or land uses, or impose additional conditions.

C. Mitigation Standards

1. Some redevelopment projects may result in multiple types of impacts to shoreline ecological functions, each of which may require compensatory mitigation.
2. Mitigation is not required outside of the standard shoreline buffer established for the relevant use and shoreline environment in Table 7.2 of this Master Program, unless the redevelopment impact is to aquatic lands, critical saltwater or freshwater habitat, or water quality. All other requirements of this Master Plan are applicable to the site, as are all other applicable city policies and regulations, including but not limited to, the land use and zoning code, critical areas

ordinance, stormwater regulations, clearing and grading ordinance, and permit requirements.

3. A Shoreline Mitigation Plan shall be prepared for any redevelopment project that will result in adverse impacts to the shoreline, including removal of native vegetation within the shoreline buffer. If the project will also involve restoration, a combined Shoreline Mitigation and Restoration Plan may be submitted by the applicant.

4. Shoreline Mitigation Plans shall be prepared using site-specific data according to the requirements of WAC 173-26-201(2)(e) and WAC 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 applicable requirements of the city's critical areas ordinance shall also be addressed in the mitigation plan.

5. Mitigation plantings or other mitigation options shall occur adjacent and parallel to the OHWM of the shoreline as a first preference. Depending on site conditions, mitigation may be allowed away from the shoreline edge, if the actions are replacing in-kind functions and would achieve greater ecological benefit.

6. All mitigation activities shall protect the integrity of adjacent natural resources, including critical areas, aquatic habitats and water quality, and shall be compatible with adjacent shoreline uses.

7. Removal of vegetation within a shoreline buffer shall comply with the following replacement ratios unless an alternative proposal can be demonstrated to have greater ecological benefit:

- a. Removal of grass/lawn: 1:1 replacement with native vegetation.
- b. Removal of non-native landscaping (groundcover other than lawn, shrubs, trees): 1:2 replacement with native vegetation.
- c. Removal of native vegetation: 4:1 replacement with native vegetation.

D. Restoration Standards

1. Restoration of ecological functions and processes shall be carried out in accordance with a city-approved Shoreline Restoration Plan and the requirements of this Master Program. Shoreline Restoration Plans shall be prepared using site-specific data according to the requirements of WAC 173-26-201(2)(e) and WAC 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 applicable requirements of the city's critical areas ordinance shall also be addressed in the restoration plan.

2. All restoration activities shall protect the integrity of adjacent natural resources, including critical areas, aquatic habitats and water quality, and shall be compatible with adjacent shoreline uses.

3. Covered Activities. The following actions, individually or in combination, are allowed under this section:

- a. Establishment or enhancement of native vegetation;
- b. Removal of nonnative or invasive plants upland of the OHWM, or hard or impervious surfaces such as pavement or other existing structures, and replacement with native vegetation .
- c. 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 Master Program and this appendix.

E. Redevelopment Within a Shoreline Buffer

1. Within a shoreline buffer, redevelopment of an existing primary legal conforming building or portion of such buildingstructure, may be allowed subject to the following:
 - a. The shoreline designation of the redevelopment site is High Intensity or Shoreline Residential.
 - b. The redevelopment proposal shall not extend further waterward than the footprint of the existing primary buildingstructure or portion of such primary buildingstructure to be redeveloped. Areas located between existing primary buildings, including planted landscaping and lawn, pavement and similar surface coverage, may be developed if the development will not extend further waterward than the existing primary buildings.
 - c. Any shoreline impacts anticipated to result from the redevelopment shall be subject to mitigation sequencing as provided in this appendix, and addressed in a Shoreline Mitigation Plan.
 - d. Regardless of whether a Shoreline Mitigation Plan is required, the redevelopment proposal shall include a Shoreline Restoration Plan consistent with subsection C. above and with Section 6.6 (Shoreline Vegetation Conservation) herein that will provide a substantive, measurable improvement to shoreline conditions within the site or in aquatic areas adjacent to the site.
 - e. The redevelopment proposal shall not result in the loss of public access to the shoreline, including undeveloped easements or right of way.
 - f. Redevelopment within a shoreline buffer is not allowed in areas of special flood hazards as defined in POMC 15.38.110 or geologically hazardous areas as defined in POMC Section 15.38.020.
 - g. All portions of the shoreline buffer that will not be developed shall be maintained or replanted in native vegetation. Removal of existing native vegetation to accommodate development is not allowed within the shoreline buffer unless it is required for the water-related or water-dependent uses and accompanied by mitigation according to this Master Plan.
 - h. The city may request that the applicant submit studies by qualified professionals, or that a submitted study, impact analysis, and/or shoreline mitigation or restoration plan be peer-reviewed by qualified professionals at the applicant's expense, in order to determine compliance with the mitigation and/or restoration requirements of this appendix.
 - i. The redevelopment proposal shall be consistent with other applicable city policies and regulations, including but not limited to the land use and zoning code, critical areas ordinance, stormwater regulations, clearing and grading ordinance, and permit processing requirements.
 - j. If the applicant is unable or unwilling to comply with subsections a. – i. above, the standard shoreline buffer for the shoreline environment designation of the site shall apply and all new development or redevelopment on the site shall be located outside the shoreline buffer unless otherwise allowed by the Act and this Master Plan.
2. Within a shoreline buffer, redevelopment of an existing appurtenant building or structure or portion of such building or structure is not allowed without a shoreline variance. If a shoreline

variance is obtained, the redevelopment is subject to the requirements of subsections D.1. a.- j. above.

~~3. If a redevelopment proposal does not meet the requirements of subsections D.1. a. i. above, development activities may only take place outside the shoreline buffer.~~

F. Monitoring and Maintenance of Mitigation and Restoration Activities

1. Mitigation and restoration activities are subject to the requirements of Section 6.6 – Development Regulations G-DR-32.h. and G-DR-35 of this Master Program.

2. Mitigation and restoration activities that are unpermitted, are inconsistent with an approved mitigation plan or restoration plan, or are not maintained in accordance with subsection 1. above, are subject to enforcement per Chapter 10 of this Master Program.

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