The City of Poulsbo (City) adopted Ordinance #2012-10 on July 11, 2012, authorizing submittal of the updated Shoreline Master Program (SMP) to the Department of Ecology (Ecology) for review. Ecology notified the City of a complete submittal in a letter dated August 17, 2012, initiating formal review of the updated SMP. The Department of Ecology did not hold a public hearing for this SMP, but accepted public comments on the City’s updated SMP between September 24 and October 26, 2012. Notice of Ecology’s review and the opportunity to submit comments were mailed to 71 individuals listed as regional or local interested parties. At the conclusion of the 32-day comment period, Ecology received one written (W) comment from the Port of Poulsbo (Port), as summarized below.

Please note, the statements below are not the opinions or comments of Ecology, but rather summary of comments received during the public comment period.

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<tr>
<td>W-1</td>
<td>SMP-Update Process (Consistency with Port Plan)</td>
<td>The Port provided a general concern arguing that the updated SMP is inconsistent with the Port’s Comprehensive Plan and therefore is also inconsistent with the SMP-Guidelines related to WAC 173-26-201(3)(d)(ii).</td>
<td><strong>City of Poulsbo Response:</strong> As the Port was previously informed: The Port’s “comprehensive plan” or “harbor scheme” (which has not been officially updated according to legal requirements for public notice, public hearing and agency participation) is required to comply with the SMP’s policies – not the reverse. The City has considered the Port in the SMP update from the beginning, and made numerous attempts to obtain the Port’s participation and input, with no success until the final months before SMP adoption. The Port has never stated what specifically in the City’s SMP is “inconsistent” with the Port’s comprehensive plan, so it is difficult to respond to this generic statement.</td>
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<td>W-3</td>
<td>Definition (16.08.030.35) (Liveaboard)</td>
<td>The Port request that the City revise the definition for “Liveaboard” within the SMP to align with the time criteria within Washington Department of Natural Resources code at: WAC 332-30-106(62)(b)(i)</td>
<td><strong>City of Poulsbo Response:</strong> WAC 332-30-106(62)(b)(ii) refers only to residential use of a vessel for a certain period on state-owned aquatic lands. The Port and other marinas have boating facilities on both privately-owned land and on state aquatic land, and the City’s regulatory authority extends to all such facilities regardless of underlying land ownership. The City also points out that the time limits for residential use (liveaboards) according to this code section are more stringent than what the City has adopted – which seems to go against the Port’s request for defensive use.</td>
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1 Ecology received two letters from the Port dated October 15, 2012 and October 25, 2012. The first letter included an identical letter (including the Port of Poulsbo letterhead) representing the Washington Public Port Association (WPPA). However, the WPPA letter was not signed and did not provide contact information for WPPA. Ecology sent the Port of Poulsbo a email (dated October 24, 2012) requesting clarification from the Port related to the second letter, for which the Port rescinded the October 15, 2012 comment letters and provided Ecology with a clean copy of their comments dated October 25, 2012. Pursuant to the Ports request, Ecology will only consider the October 25, 2012 letter from the Port of Poulsbo as part of this SMP review.
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<tr>
<td>W-4</td>
<td>Definition</td>
<td>(Marina) The Port suggests that within the “Marina” definition, that all reference to “boats” or “boating” be replaced with the term “vessels”.</td>
<td><strong>City of Poulsbo Response:</strong> As defined in the SMP, a marina provides boat moorage facilities and other boating-related services. The City is satisfied that this definition is consistent with the intent of WAC 173-26-241(3)(c).</td>
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<tr>
<td>W-5</td>
<td>General Development</td>
<td>(General Development Standard) The Port argues that the referenced standard is “vague”, for which they request that the standard be revised to clarify how “long-term and regional effects” of a proposal will be evaluated?</td>
<td><strong>City of Poulsbo Response:</strong> As indicated, the City will evaluate the effects of the proposal on natural shoreline resources and the ability of future generations to enjoy and use the shoreline. Any negative long-term and regional effects shall be mitigated in accord with the mitigation sequencing requirements of PMC 16.08.140. This evaluation will be done on a case-by-case basis, and the standards used will be those that are relevant to the specific proposal (commercial, marina, etc) as provided in the shoreline use regulations of the SMP. The regulations also provide for compliance of all proposals with requirements for no net loss and cumulative impacts. The requirements of the City’s critical areas ordinance (PMC 16.20) will also be applied as appropriate.</td>
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<tr>
<td>W-6a</td>
<td>General Development</td>
<td>(Mitigation Sequencing) The Port raised concerns with the peer review component of the referenced mitigation sequencing standard. The Port requests that the City develop a roster of pre-qualified consultants to choose from when peer review is required by the City for a shoreline project report.</td>
<td><strong>City of Poulsbo Response:</strong> A list of consultants may be developed at a later date, and/or the City may refer to the roster of approved small works contractors provided by the MRSC, but it is not appropriate to have a list of consultants (which is constantly subject to change) incorporated into the SMP or any other adopted plan.</td>
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<td>W-6b</td>
<td>General Development</td>
<td>(Water Quality) In response to the referenced hazardous materials spill standard the Port comments that the standard is “vague and unenforceable”, the Port provides alternative language that they argue would alleviate their concerns.</td>
<td><strong>City of Poulsbo Response:</strong> The Port’s proposed language is not very different from the adopted language, and does not provide an alternative standard for “water quality problems”. The Port is incorrect in stating that the City does not have the authority to coordinate spill containment and cleanup unless it were in a city storm or sanitary sewer. The City also has authority over actions that occur under a City-issued permit, or which are located on City-owned property (both upland and tidal), the public streets, or that affect critical areas.</td>
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<tr>
<td>W-7a</td>
<td>Shoreline Use</td>
<td>(Redevelopment Standard) The Port comments suggest that the term “Non-Exempt” be more liberal regulation in the SMP.</td>
<td><strong>City of Poulsbo Response:</strong> Refer to the definitions of “redevelop” and “repair” in PMC 16.08.040. They are not the same thing, and redevelopment is not exempt.</td>
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<td>W-7b</td>
<td>Shoreline Use 16.08.180.D.E – Float Planes and Accessory, Use</td>
<td>Citing plans to “…accommodate existing and growing float plane operations with appropriate float plane facilities at the marina”, the Port is concerned that the SMP does not specifically list “float plane facilities” as a permitted or conditional use, for which they state their overall concern that the updated SMP is not consistent with the Ports Comprehensive Plan. (Accessory Uses) The Port argues that the updated SMP will prohibit the Ports planned renovation, reconstruction and expansion of existing “accessory uses and structures”, which they claim are necessary to “…support increased marina usage and capacity”. Further, the Port seek clarity on whether the definitions for water-related, water enjoyment or “non-water oriented uses” “…relate to the accessory use or the primary use” at a site? Citing potential conflicts related to future expansion of some of the Ports existing (accessory) uses, they request that the City “designate existing Port accessory uses, which are accessory uses/structures to the primary water-dependent marine use, as permitted or conditionally permitted uses”.</td>
<td>City of Poulsbo Response: When the City included float planes and float plane facilities in the shoreline use table, the Port stated: “The Port objects to regulation of float plane operations and facilities under the SMP... Delete this entire section, as well as references to float planes in the use tables.” (Port letter of March 2012) Therefore, the City took float planes out of the use table. Now the Port wants them included again, which does not appear to be logical according to their own argument. Furthermore, PMC 16.08.180.B.1 states explicitly that if a use is not listed in the shoreline use table, it is considered “unclassified” and will be reviewed and processed as a conditional use. This is consistent with WAC 173-26-241(2)(b)(i) and WAC 173-27-030. Nothing in the SMP prohibits the Port from maintaining and repairing existing structures, whether primary or accessory, no matter what they are used for. However, all new, expanded or redeveloped structures and uses, whether primary or accessory, shall comply with the SMP requirements regarding the siting of water-dependent, water-related, water-enjoyment and non-water-oriented uses and structures. It would be inconsistent with the SMA to allow any and all new development and uses associated with the Port of Poulsbo to be located in the water or in the shoreline buffer, which is what the Port seems to want, citing their floating office and meeting rooms as examples. Offices and meeting rooms are non-water-oriented uses even if they are associated with an entity that operates a water-dependent use such as a marina.</td>
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<td>W-8a</td>
<td>Use Standards Marina, Boating Facilities 16.08.270. A.5. Critical Saltwater Habitats</td>
<td>The Port interprets the effect of the referenced standard as creating an unintentional prohibition of new development within all the aquatic areas of Liberty Bay. For which they request that this standard be waived for water-oriented shoreline modifications and development.</td>
<td>City of Poulsbo Response: As the Port was previously informed: The protection of critical saltwater habitats is mandatory under the DOE guidelines. WAC 173-26-221(2)(c)(iii)(B) says that “Master programs shall include policies and regulations to protect critical saltwater habitats and should implement policies and programs to restore such habitats.” “Waiver,” as suggested by the Port, is not an option.</td>
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<td>W-8b</td>
<td>Use Standards Marina, Boating Facilities 16.08.270.A.6 Non-Water-Dependent Uses</td>
<td>(Non-water-dependent) The Port object to the SMP requirement for “water-enjoyment uses” (such as the Ports Administrative Office and Meeting Room) to be located (to the maximum extent feasible) outside of the shoreline buffer and setback. The Port request that the City revise the provision to not require “water-enjoyment” uses be held to this standard.</td>
<td>City of Poulsbo Response: The Port’s administrative office and meeting room do not qualify as “water-enjoyment uses” per the Guidelines. They are non-water-dependent uses and must be regulated as such.</td>
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<tr>
<td>W-8c</td>
<td>Use Standards Marina, Boating Facilities 16.08.270.B.1.c Moorage Demand Analysis</td>
<td>(Moorage Demand Analysis) The Port raise concerns with what they describe as a unique requirement applied only to the Port (i.e., not to private marinas) requiring consistency with the Port’s Comprehensive Plan in order to justify an expansion of moorage at an existing marina. The Port requests that the City remove the unique standard that applies to the Port.</td>
<td>City of Poulsbo Response: As the Port was previously informed: WAC 173-26-231(3)(b) states: “New pier or dock construction, excluding docks accessory to single-family residences, should be permitted only when the applicant has demonstrated that a specific need exists to support the intended water-dependent uses. If a port district or other public or commercial entity involving water-dependent uses has performed a needs analysis or comprehensive master plan projecting the future needs for pier or dock space, and if the plan or analysis is approved by the local government and consistent with these guidelines, it may serve as the necessary justification for pier design, size, and construction.”</td>
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<td>W-8d</td>
<td>Use Standards Marina, Boating Facilities 16.08.270.E.2. Liveaboard</td>
<td>(Liveaboards) The Port contends that section 16.08.270.E.2 of the updated SMP places “...unworkable restrictions on vessel operations and marina management, and is inconsistent with Port Plans” related to managing liveboard moorage within their marina. Further, the Port states that they locate liveboard vessels based on “…the physical, operational and business needs”, as well as consideration of how the</td>
<td>City of Poulsbo Response: As the Port was previously informed: WAC 173-26-241(3)(c)(iii) requires the master program to contain “regulations to limit the impacts to shoreline resources from boaters living in their vessels.” WAC 173-26-241(3)(c)(vi) requires the master program to contain “regulations restricting vessels from extended mooring on waters of the state except as allowed by</td>
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It is a gross exaggeration to suggest that protecting critical areas will cause the “prohibition of new development within all the aquatic areas of Liberty Bay.” The regulations only prohibit development in “critical saltwater habitat areas, which are spawning and holding areas for forage fish, such as herring, smelt and sand lance; shellfish beds, mudflats, intertidal habitats with vascular plants, and areas with which priority species have a primary association, as designated in the City Comprehensive Plan’s Fish and Wildlife Habitat Conservation Areas Map or subsequently adopted document; or as otherwise defined in WAC 173-26-221(2)(i) or its successor. These areas affect an extremely limited portion of Poulsbo’s shorelines and aquatic areas.
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<td>Moorage</td>
<td>liveaboard vessel may provide “...security and safety at the marina”.</td>
<td>applicable state regulations and unless a lease or permission is obtained from the state and impacts to navigation and public access are addressed.” The City’s proposed regulations are aimed at complying with these two requirements. Nothing in the regulations interferes with “vessel operations” as the Port suggests; the regulations simply limit the extent of liveaboard uses as a means of limiting impacts and restricting extended mooring. The City requires liveaboards to be in dedicated slips but does not specify which slips or limit the ability of liveaboards to transfer slips. The limit on the number of liveaboards in 16.08.270(E)(5) is also consistent with WAC 332-30-171, which says that the total number of slips in a marina located on state-owned aquatic lands that can be used for liveaboards is limited to ten percent of the total number of slips in the marina. The proposed limit therefore fulfills the requirement of WAC 173-26-241(3)(c)(vi) by restricting extended mooring as allowed by state regulations. Furthermore, as the Port is well aware, their shoreline permit allows a maximum of twelve liveaboards – and the Port has informed the City in writing that they currently have more than twice the number allowed. The Port should focus on resolving this violation before making any plans that would include more liveaboards. They should also welcome this requirement as a stable and reliable means to improve their ability to track the number and location of liveaboards in their marina facilities, as the City will also do.</td>
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<td>W-8e</td>
<td>Use Standards Marina, Boating Facilities 16.08.270.F. Covered Moorage (Covered Moorage) Citing ongoing demand for covered moorage and the intent to replace existing boathouses with covered moorage, the Port request that the City distinguish (within the SMP) the definitions for a “boathouse” from “covered moorage”, for which they suggest that the City prohibit new “boathouses”, but allow for new “covered moorage”.</td>
<td>City of Poulsbo Response: As the Port was previously informed: Per WAC 332-30-139 (Marinas and moorages), covered moorage may be considered for highly-developed areas and in locations having a commercial environment. DNR’s habitat stewardship guidelines, which apply to state land leases, state: “New covered moorage and boathouses should not be allowed.” The draft SMP regulations are consistent with these directions.</td>
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<td>W-8f</td>
<td>Use Standards Marina, Boating Facilities 16.08.270.H.1.d. Parking</td>
<td>(Parking for Boat Launches) The Port argues that the subject provisions are “too prescriptive” and require larger parking spaces than are needed to support the intended use. The Port request clarity as to how the parking standard would be applied to different boating uses?</td>
<td><strong>City of Poulsbo Response:</strong> As the Port was previously informed: The referenced regulation applies only to boat launches, piers and dock facilities “outside of a marina.” The Port’s marina and any other marina located on Liberty Bay would not be covered by this regulation. What would be covered are other boat launches, piers, and docks, which the use table in 16.08.180 limits to park and recreation facilities. This section is therefore not relevant to the Port’s operations.</td>
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<td>W-8g</td>
<td>Use Standards Marina, Boating Facilities 16.08.270.J.3. Commercial Activities</td>
<td>(Commercial Activities) The Port contents that the referenced provision is beyond the City’s SMP authority, as they characterize the standard as, “...impermissibly expand SMP permitting jurisdiction over shoreline “developments” (defined in RCW 90.58.030(3)(a)) to include other unspecified “activities”. They recommend that the City revise the standard to delete the “permitting requirements”, for which they propose amended language to replace the existing standard within the SMP.</td>
<td><strong>City of Poulsbo Response:</strong> As the Port was previously informed: The Port is incorrect that the Shoreline Management Act only authorizes the City to regulate “developments.” This question was decided by the Washington Supreme Court in Clam Shacks of America, Inc. v. Skagit County, 109 Wn.2d 91, 743 P.2d 265 (1987), in which the Court held that local governments can require permits for “shoreline activities’ which are not ‘developments’ as defined in the Act.” Accord, Twin Bridge Marine Park, L.L.C. v. Dep’t. of Ecology, 162 Wn.2d 825, 175 P.3d 1050 (2008).</td>
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<tr>
<td>W-9</td>
<td>Use Standards Parking 16.08.300.D Lots/Garages</td>
<td>(Transportation Facilities) The Port characterize the referenced provision as “vague” and beyond the obligation to maintain no net loss of shoreline ecologic functions required by the SMP-Guidelines, for which they question, “…what factors will be considered and what weight will be given” in the City’s review of these standards? The Port requests that the City revise the standard to ensure compliance with the SMP-Guidelines and seek clarity as to what constitutes a “negative aesthetic impact” and how might it this evaluated?</td>
<td><strong>City of Poulsbo Response:</strong> Please note that the referenced section does not actually contain the language “negative aesthetic impact”. As the Port was previously informed: The City is not limited to regulations that ensure “no net loss of shoreline ecological functions” and is, in fact required to do more. There are many places in the Shoreline Act and the DOE Guidelines which indicate that the City is to be concerned about other things like aesthetics, public access and views, and these requirements are neither “vague” nor “unenforceable” as the Port contends. For example, with respect to aesthetics, RCW 90.58.020 says that in implementing the policies of the Shoreline Management Act, “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 consistent with the overall best interest of the state and the people generally.” RCW 90.58.100(2)(b) requires that every shoreline master program have a “public access element making provision for public access to publicly owned areas.”</td>
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W-10 | Use Standard 16.08.350. Lighting | (Lighting) Referencing the whole “Lighting” section of the SMP, the Port contend that the standards are “…overly prescriptive and could prevent use of updated technologies…” For which the Port recommend that the City revise and simplify the standards by requiring that the type of lighting be the “…minimum necessary for safe operation and pedestrian use, while complying with applicable state and federal regulation that are protective of fish habitat”.

**City of Poulsbo Response:** The lighting regulations are consistent with the City zoning code and critical areas ordinance, and provide specific standards to assist applicants with compliance. As the Port is aware, the Department of Fish and Wildlife (DFW) requested this language. The SMP gets updated regularly, and if DFW’s recommendations change, the City can change the language at that time.
### Attachment B
Responsiveness Summary to Public Comments

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<td>W-11</td>
<td>Shoreline Modifications 16.08.440. A Dredging</td>
<td>(Dredging) Claiming that the subject provision is &quot;internally inconsistent&quot;, as a SSDP and letter of exemption are both referenced in the standard, the Port requests that the provision be amended consistent with their suggestion to eliminate reference to a Shoreline Substantial Development Permit and to clarify when &quot;maintenance dredging&quot; qualifies as &quot;normal maintenance&quot;.</td>
<td>City of Poulsbo Response: Revise PMC 16.08.440(A) as follows: &quot;A Shoreline Conditional Use Permit is required for new dredging proposals, i.e., dredging of areas that have not previously been dredged under state and/or federal dredging approvals. A Shoreline Substantial Development Permit is not required for maintenance dredging of areas that have previously received state and/or federal dredging permits, such as navigational channels and marina basins, provided that the three criteria below are met.&quot; In previous discussions with the Port, the City has acknowledged the Port’s interest in performing maintenance dredging, and has informed Port commissioners and staff that they simply need to provide their federal permit in order to meet the requirement of previous dredging approval.</td>
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<tr>
<td>W-12</td>
<td>Shoreline Administration 16.08.480.E.4.a. Nonconforming Uses and Structures</td>
<td>(Nonconforming Use and Structures) The Port comment that the entire (Nonconforming) section of the SMP is; &quot;...overly restrictive, and far more restrictive than Ecology guidelines require, particularly with regard to overwater structure/uses.&quot; The Port suggests that the City revise the section consistent with WAC 173-27-080 and further recommend that the City delete any restrictions within 16.08.480.E.4, which limit rebuilding or expanding of existing overwater structures.</td>
<td>City of Poulsbo Response: The City’s regulations for nonconforming uses and structures are in fact extremely liberal, and the Port should refer to other local jurisdictions for examples of nonconforming regulations that are far more stringent and inflexible. The SMP contains very clear requirements for rebuilding nonconforming structures and reestablishing nonconforming uses within the structure, if the structure is damaged or destroyed. An applicant has 12 months to apply for a permit to rebuild, and 2 additional years to complete rebuilding. Ironically, the Port’s recommended substitute language is more restrictive than this.</td>
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Enclosure:

Three page letter from the Port of Poulsbo dated October 25, 2012, including a copy of the Port’s 8-page Comprehensive Plan titled: “Six Year Comprehensive Plan Years 2006 to 2012 – The Port of Poulsbo, Washington”, and a 7-page comment matrix titled: “Port of Poulsbo Review and Comments 5/2/12 – Third Comment Submittal, City of Poulsbo Draft SMP released 4/24/12 and additional changes per City Attorney email of 5/1/12”.