



CITY OF BAINBRIDGE ISLAND

Shoreline Master Program - Frequently Asked Questions

The City of Bainbridge Island's current Shoreline Master Program (SMP) took effect July 30, 2014. Since then, the Department of Planning and Community Development has received over 70 shoreline permit applications, 30 of which have been issued, in the midst of two appeals to the Growth Management Hearings Board and a Petition for Review to Kitsap County Superior Court. Permitted development activity on the shoreline over this time period includes new residential construction, residential alteration and expansion, new and repaired docks, tree removal, and public and private utilities.

The updated SMP presented staff with new rules, new expectations and the need for revised applications and internal protocols. Staff recognizes that the SMP includes complex and potentially confusing code language. What was intended as innovative and flexible in theory has proven somewhat difficult to implement in practice. As a result, the City is preparing to undertake a limited amendment to address many of these issues. Additionally, the City is revising its aquaculture regulations to better reflect local conditions and community input.

City staff developed the following FAQ to help shoreline property owners better understand the SMP in general and as it may specifically relate to their property. The application of most regulations is site-specific; that is, how a regulation is applied depends on the location and existing conditions of a property. Given the site-specific nature of most regulations, the City encourages you to contact the Department of Planning and Community Development if you have specific questions about how the SMP may affect your property and/or any plans you may have for changes.

Hasn't the City's SMP been challenged and overturned in court?

No. Preserve Responsible Shoreline Management (PRSM), et al, and Kitsap County Association of Realtors (KCAR) filed an appeal of the City's SMP in October 2014. In April 2015, the Growth Management Hearings Board concluded that the Petitioners failed to provide clear and convincing evidence demonstrating that the City's SMP was inconsistent, or failed to comply, with the Shoreline Management Act or applicable guidelines. The Growth Management Hearings Board ruled overwhelmingly in favor of the City, denied the appeal and dismissed the case. The same petitioners subsequently filed a Petition for Review with the Kitsap County Superior Court in May 2015. A briefing schedule has not been set.

Aren't requirements for shoreline buffers and setbacks a "taking" of private property rights?

No. The U.S. Constitution allows state and local governments to limit private property activities provided the limitations serve a legitimate public benefit and they do not deprive the landowner of all reasonable use of the property. The SMP regulations protect shorelines of the state, a public resource. In most cases, buffers do not deprive landowners of all reasonable use of their property and, generally speaking, all property tends to benefit from reasonable setbacks and

buffers. In those limited instances where a buffer or setback precludes or significantly interferes with reasonable use, the property owner may apply for a variance.

We keep hearing that the SMP has drastically lowered our property values and will make it extremely difficult to sell our home. Is this true?

No. During the SMP update process, we heard numerous concerns about how the new SMP regulations might affect shoreline property values. However, Kitsap County Assessor's data indicate that for the one-year period following the effective date of the SMP (August 2014 through July 2015), the median sale value of waterfront homes slightly increased over the one-year period prior (August 2013 through July 2014). And while complete 2015 sales data is not yet available, the total number of waterfront sales for 2015 (currently 41) appears to be on pace to equal or exceed 2014 sales (53).

Can I be fined for not getting City approval for everyday activities?

Enforcement provisions are not applicable to everyday activities such as mowing your lawn, weeding or washing your car. There are enforcement provisions in the SMP that allow the City to fine individuals that fail to comply with regulations. The enforcement provisions, including fines, are consistent with the authority provided to the City in the Washington State Shoreline Management Act. However, it is City policy that staff first work with individuals to come into voluntary compliance. A fine would only be issued if an individual failed to comply after working with City staff.

Do I need City approval to maintain my yard?

No. Maintenance of existing residential landscaping is not regulated by the SMP. Vegetation management standards in the SMP do not apply retroactively to existing lawfully established uses and developments, including maintenance of existing residential landscaping, such as lawns and gardens. Property owners are strongly encouraged to voluntarily improve shoreline vegetation conditions over the long term.

Can I make changes in my garden without City approval?

Yes. The SMP states, "any changes from the existing landscape to a different landscaping use or activity will require that the modified area comply with the provisions of 4.1.3, Vegetation Management, and the intent of providing native vegetation to maintain ecological functions and processes." Making changes within an existing garden – such as switching from tulips to daffodils or tomatoes to potatoes – would not be considered a change from the existing landscape and would not be regulated by the SMP. Larger-scale changes would need to meet the intent of providing native vegetation. For example, if you wanted to get rid of a large area of ornamental rose bushes within the shoreline buffer because they are difficult to maintain, the City would require that you replace the roses with native plants. Removal of non-native vegetation outside the shoreline buffer is permitted. The City recognizes that "any changes" is broad language and will clarify its meaning as part of the anticipated limited amendment.

Do I need City approval to prune my trees?

It depends. There are provisions within the SMP that allow for pruning without permission. Vegetation management standards do not apply to maintenance of existing residential landscaping. Maintenance trimming of vegetation that has a main stem or supporting structure less than three inches in diameter – except for tree topping – is specifically exempt from vegetation management standards. Minor pruning within the shoreline buffer, including thinning of larger branches to enhance views, is allowed with a clearing permit. A clearing permit can be obtained for no cost – in many cases over-the-counter – from the Department of Planning and Community Development at City Hall.

If I remove a hazard tree (dead, diseased or dying), do I have to leave it in my yard?

Yes. Unless it remains as a wildlife snag (left upright at a safe height), a dead tree that is taken down within the shoreline jurisdiction must be retained on site to provide or enhance wildlife or marine habitat. The City does not have an approved list of replacement trees, but does offer a list of recommended plants for mitigation and revegetation.

Is the goal of the SMP to phase out all single-family docks over time?

No. There is no stated goal in the SMP to phase out all single-family docks over time. The regulations in the SMP – not the goals or policies – are part of the City’s development regulations. The goals are not regulations in themselves and, therefore, do not impose requirements beyond those set forth in the regulations. While the SMP does have provisions that limit areas where docks may be constructed, the Cumulative Impacts Analysis completed for the SMP (2012) determined that a total of 155 new docks could be constructed based on existing site conditions and proposed SMP regulations.

Is the intent of the SMP to phase out all homes and docks on the shoreline over time?

No. The stated over-arching goal of the SMP is to “ensure that future use and development of the City’s shoreline maintain a balance between competing uses, results in no net loss of shoreline ecological functions, and achieves a net ecosystem improvement over time.” Residential use – homes and appurtenant structures – are a preferred use of the shoreline.

Can I replace my bulkhead under the new SMP?

Yes. If property owners can clearly demonstrate a need to protect their residence from loss or damage, they can replace their bulkhead using the approach that has the least impact on the natural shoreline.

I keep hearing that the new SMP made virtually every home along the shore “non-conforming.” Is this true?

No. In an analysis completed for the SMP update, approximately 225 existing shoreline homes were identified as potentially “non-conforming” with the proposed (2014) SMP regulations. Nearly double that number were already non-conforming with the existing (1996) SMP regulations. Existing shoreline homes that were legally established, but which do not meet the present regulations or standards of the SMP, are allowed to remain in place and may be repaired, maintained and remodeled and, in some cases, expanded.

How is my existing shoreline home affected by the new buffer standards in the updated SMP?

Existing homes are “grandfathered” under the Shoreline Management Act and the local shoreline program and may remain in place unaffected by the new shoreline buffers. Existing homes located within the shoreline buffer may be repaired, maintained and remodeled and, in some cases, expanded following provisions for existing development in the SMP. New houses built under the updated SMP are subject to the new buffer standards.

Can I rebuild my house in the same location if it burns down?

In most cases, yes. The SMP states, “If an existing primary structure is damaged or destroyed by fire, explosion, earthquake, flooding or other casualty, it may be reconstructed to the bulk dimension existing immediately prior to the catastrophic event.” However, if the structure is located on a property with a steep slope, the size and location of the new structure may need to be modified to meet factor of safety standards.

If my home is unoccupied for 12 months in a row, do I forfeit the right to live in my house?

No. You do not forfeit the right to live in your house if it is unoccupied 12 months in a row, or for any amount of time. We believe this concern may be based in a misunderstanding of the term “non-conforming use.” A non-conforming use is one that is not permitted in the underlying shoreline designation. For example, a commercial amusement facility is not permitted in the Island Conservancy designation but may be present because it was established prior to effective date of the current regulations. As a non-conforming use, the commercial facility would be allowed to remain until such time the use is discontinued for 12 consecutive months. On the other hand, single-family residential use is a permitted use in all shoreline designations except Natural and is not subject to non-conforming use regulations in the SMP.