



DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

MEMORANDUM

**Date:** January 11, 2018  
**To:** Planning Commission  
**From:** Christy Carr, AICP  
Senior Planner  
**Subject:** SMP Amendment – Guiding Themes

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The following themes are those which have been identified by staff, project applicants and others as the most in need of review and revision. As stated in the November 30, 2017 draft work plan, although the Planning Commission and City Council may consider policy decisions as they arise throughout the process, **significant policy changes are not anticipated as part of the amendment.** Exceptions may include the optional approach to nonconforming structures and any revisions to specific regulations or performance standards (see item 2 and 7, below). These could result in a change in intent of the SMP rather than changes only in its implementation. Such changes would more than likely trigger the need for review and potential revision to SMP background documents, such as the Cumulative Impacts Analysis.

The draft workplan (attached) has been updated to assign each proposed topic to consider to one or more of these guiding themes, summarized below. The intent is for the Planning Commission to arrive at consensus on this list and for staff to revise specific language only as it pertains to one or more of the themes.

1. **Existing structures:** WAC 173-27-080 includes definitions and standards for nonconforming development that apply when a local program does not contain locally adopted standards (see attached for reference). The City’s SMP refers to nonconforming structures as “existing development” (see SMP Section 4.2). This section has a “general” section and is then divided into specific types of structures (e.g., primary structures, accessory structures, aquatic structures), each of which have different provisions for expansion/alteration. In addition to improving the overall clarity of the section, several questions have been addressed by staff and project applicants:
  - a. Which parts of the SMP apply to existing, nonconforming structures, if any?
  - b. What triggers the requirement to comply with the SMP for existing, nonconforming structures? This needs to be specific to avoid misinterpretation, inconsistency of application or default to “most restrictive” clause.
  - c. Can someone tear down their entire house (100%) (or accessory/appurtenant structure) and rebuild in the same footprint? Should there be a threshold (e.g., up to 50% square footage or percent value)?

- d. Does the City want to retain the current thresholds on expansion of existing, nonconforming structures (only landward, no more than 25%, once in lifetime of structure)?
  - e. What are clear definitions of applicable terms and which ones should be used: alteration, expansion, remodel, redevelopment, etc.?
- 2. Non-conforming structures (term itself):** Although a well-established concept in land use, regulating nonconforming uses and development is a contentious issue. The word “nonconforming” has raised concerns and confusion among property owners. Home owners are worried about having a “nonconforming” label on their property. Their concerns and questions include: Can they repair and maintain their house? Will homeowners insurance cost more? Will they be able to get a loan for house repairs or improvements? Will potential buyers be able to get a mortgage? RCW 90.58.620 states that new or amended SMPs approved by Ecology after September 1, 2011 may include provisions that allow “legally established residential structures and appurtenant structures that are used for a conforming use to be considered a conforming structure even though they do not meet SMP standards for setbacks, buffers, yards, area, bulk, height or density” (See SMP Handbook, starting on page 6 for background). During its update process, the City did not use this optional approach to nonconforming structures. If the City wants to consider this optional approach, a new strategy for regulating existing structures needs to be developed. Note, some provisions for nonconforming structures may no longer apply, which could necessitate the requirement for a shoreline variance in some circumstances.
- 3. Vegetation management – Existing landscaping (“established yard”):** Staff, shoreline property owners and vegetation maintenance providers continue to struggle with what can or cannot be done in terms of existing landscaping. There are endless variations on what shoreline property owners may consider their “yard” and what constitutes “normal or routine maintenance” or “ongoing maintenance.” Clarity is needed as to if/when/which vegetation management provisions apply to existing landscaping.
- 4. Vegetation management – other:** A number of vegetation management regulations need to be simplified and clarified, and with that, some policy direction is needed. Examples include: removal of significant trees, “1/3-2/3” provision where a structure is allowed to encroach into up to 1/3 of Zone 2 of the shoreline buffer with the remaining 2/3 of Zone 2 (and all of Zone 1) planted with native vegetation.
- 5. Consistency with no net loss standard:** The current conditions of the shorelines, including existing development, are the starting point or baseline for determining no net loss. Regulations and provisions need to be reviewed for consistency with the no net loss standard. For example, do any vegetation management regulations result in “restoration” vs. “mitigation” for identified impacts. Examples of means to achieve the no net loss standard would also be helpful for project applicants and qualified professionals completing site specific impact analysis reports to “demystify” the concept of no net loss.
- 6. Integration of other codes/policies (stormwater, climate change):** The City’s stormwater regulations have been updated since the SMP update (BIMC 15.20). These should be integrated. A direct discharge criteria should be considered and consistency with the Single-Family Mitigation Manual should needs improvement. The Planning Commission may want to consider acknowledging sea level rise and climate change impacts.

7. **Specific regulations or performance standards:** While staff does not recommend any changes to current thresholds or performance standards, the Planning Commission may want to review and consider revisions to specific regulations. Any revisions would likely trigger the need to review and update background documents (e.g., Cumulative Impacts Analysis). Examples include:
  - a. Limits/requirements on bulkhead repair/replacement (SMP Section 6.2)
  - b. Prohibition of docks (SMP Section 6.3)
  - c. Buffer widths (SMP Section 4.1.3; Table 4-3)
  - d. Limit on liveboards (SMP Section 5.3)
  - e. New construction limit lines for Manzanita and Fletcher Bays (Special Area Maps)
  
8. **Mitigation manual:** The mitigation manual needs to be updated to reflect current standards of other agencies (e.g., US Army Corps of Engineers), provide alternatives for impervious surface impacts and improve consistency/integration with the text of the SMP.
  
9. **Applicability:** The applicability of the SMP in general needs to be clarified. The use of terms such as “development, use or activity,” “human activity,” “whether it requires a permit or not,” among others, is confusing. Complexity and redundancy could be reduced by eliminating the applicability subsection in every section of the SMP.
  
10. **Improve clarity, simplify and reduce complexity; correct errors and omissions**

**Planning Commission Action:**

- Review and revise as needed list of guiding themes, above
- Finalize work plan within context of guiding themes