

## MEMORANDUM

**Date:** February 8, 2018  
**To:** Planning Commission  
**From:** Christy Carr, AICP  
Senior Planner  
**Subject:** SMP Amendment – Nonconforming/Existing Structures

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The February 8, 2018 meeting will focus on nonconforming/existing structures (Guiding Theme 1 and 2). [Note: Whether or not to revisit specific performance standards (Guiding Theme 7) will be discussed at a future meeting due to time constraints.] **Specific proposed revisions to policy and regulatory language will be provided by staff at a future meeting, based on the outcomes of the policy discussion. It is anticipated the SMP Amendment will be on the next regularly scheduled meeting, February 22, 2018.**

**The following policy questions are proposed to be discussed:**

- Consideration of optional approach to define existing development as “conforming” (need to be specific about structures vs. uses) – note, City’s SMP uses the term “existing development,” but does not use the optional approach
- Clarifying applicability language for existing development
- Policy direction for **repair, replacement (voluntarily demolished or unintentionally destroyed) and expansion** of all types of existing structures.
  - Regulations for voluntarily demolished structures – primary, accessory, and essential accessory
  - Regulations for unintentionally destroyed structures
  - Regulations for expanding existing structures – primary, accessory, and essential accessory – that do not conform to current SMP regulations (e.g., located within shoreline buffer, do not meet 30 percent side yard setback)
  - Regulations for expansion and reconstruction of structures within geologically hazardous areas and their setbacks (top and bottom of slope) whether voluntarily or unintentionally destroyed

**Background material to frame the discussion:**

- SMP Handbook Chapter 14 – Legally Existing Uses and Development
  - <https://fortress.wa.gov/ecy/publications/parts/1106010part14.pdf>
- SMP Handbook Chapter 4 – No Net Loss of Shoreline Ecological Functions
  - <https://fortress.wa.gov/ecy/publications/parts/1106010part4.pdf>
- WAC 173-27-080 – Nonconforming use and development standards

- <http://apps.leg.wa.gov/WAC/default.aspx?cite=173-27-080>
- Excerpts from City's SMP – word search “nonconforming” highlighted – attached, section titles listed below:
  - Section 1.3.5.2 – Applicability of Bainbridge Island Shoreline Master Program (page 18)
  - Section 3.1 – Shoreline Designation Policies and Regulations (General) (page 22)
  - Section 4.1.3.4 – Vegetation Management – Regulations – Exceptions (page 77)
  - Section 4.1.3.5.9 – Vegetation Management – Regulations – Special Provisions for Point Monroe District (page 81)
  - **Section 4.2.1 – Nonconforming Uses, Non-Conforming Lots, and Existing Development (entire section provided, focus on applicability, goal, policies and existing development sub-sections – existing uses and lots will not be discussed) (page 121-128)**
  - Section 5.9.5 – Regulations – Residential Development Overwater (page 187)
  - Section 8.0 – Definitions (no net loss, nonconforming development, normal maintenance, normal repair)( page 247-248)
  - Appendix B-9 – Critical Areas – Geologically Hazardous Areas – Redevelopment of existing structures (page 293)
- Excerpts from the SMP Update process (2012-2013 only):
  - At its February 2, 2012 study session, the Planning Commission considered new legislation provided in ESSB 5451 that provides the discretion to local governments to include existing development as “conforming,” provided any changes to the structure must meet the adopted standards. The Commission agreed that **retaining the terminology and provisions** of this section would provide more certainty and the same protection to existing development that the provisions of 5451 would provide for residential development.
  - At its March 13, 2013 study session, Council focused primarily on issues related to nonconformity, including whether terminology other than “non-conforming” should be used in the SMP Update. The Council **previously had made a preliminary recommendation to continue using the concept and term “non-conforming,” rather than using the discretionary option** offered by SSB 5451. After further discussion, the Council **amended their recommendation, and directed staff to use the term “existing development” in the SMP Update to refer to legally permitted development that does not meet development standards in the revised code.** This is the same term used in the Critical Areas Ordinance.
  - At its March 13, 2013 study session, the Council also discussed the current and proposed SMP regulations relating to nonconforming structures, and reviewed how such structures are treated by shoreline, critical areas and zoning regulations. After considerable discussion, the Council agreed to **retain the provision that allows structures destroyed by an accident or natural disaster to be rebuilt in the same footprint.** However, the Council **recommended that structures that are voluntarily demolished by a property owner should be required to be rebuilt to conforming standards.** Council also agreed that **limited expansion within the buffer and away from the water would continue to be allowed for all existing primary single-family residences.**
  - At its March 13, 2013 study session, approved Council motions included:
    - I would move that we set the threshold for rebuilt if demolished voluntary at 0%
    - I move that a similar if not literally lifting out of the CAO restriction on rebuilding adjacent to a critical slope is inserted in the SMP to take care of that gap (staff presumes this means the Council's intent was to not allow

reconstruction of existing structures in geologically hazardous areas and their buffers)

**Recommended Planning Commission Action:**

- Review background materials
- Consider and be prepared to discuss policy questions; a goal will be to complete a table similar to what is shown below. *Staff will populate the table with the existing regulations for use at the meeting.*

Structure Type	Action			
	Repair	Replacement (Demolished)	Replacement (Destroyed)	Expansion
Single family primary residential structure				
Single family accessory structure				
Single family essential accessory structure <sup>1</sup>				

1. Single family essential accessory structure definition: An accessory structure that contains a use or is intended for a use that is essential to a single-family residential principal use. The following structures shall be considered an essential residential structure: a garage or carport, one septic system (including one tank and one on-site septic drainfield), one well house and associated well head, and existing decks attached to the primary structure.