



**SMP Amendment**  
Critical Areas and  
Nonconforming  
Structures, Uses, and Lots

City Council Meeting  
October 2, 2018

# What is a SMP amendment?

- Local governments at times decide to amend their Shoreline Master Programs to address a change in local shoreline conditions, the comprehensive plan or zoning, or improved data.
- Clean up or housekeeping amendments are anticipated after comprehensive updates.
- Shoreline amendments must be approved by the local elected officials and submitted to Ecology for approval.
- The current regulations remain in effect until the amendment is approved by Ecology.

# What is the purpose of this amendment?

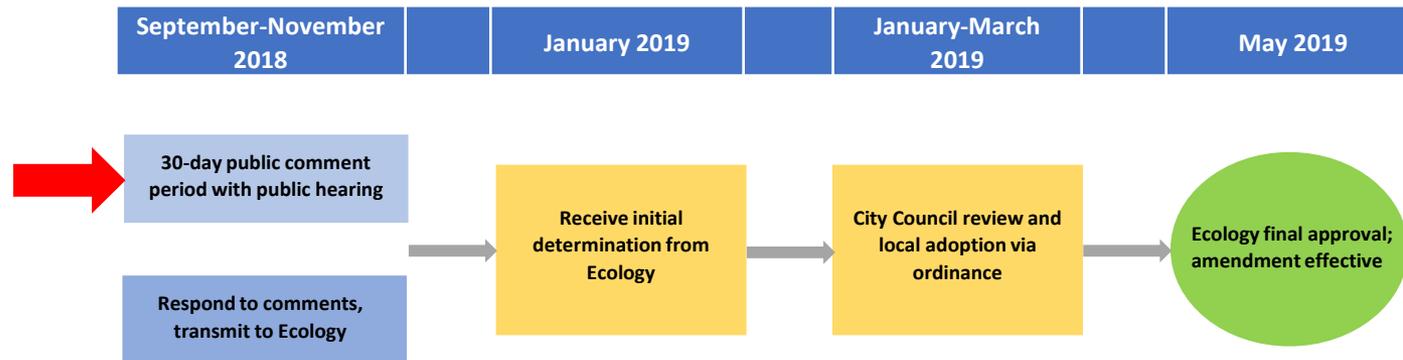
The purpose of the amendment is limited generally to two topics:

- Integrate recently updated **critical areas regulations**
- Address **nonconforming** structures, uses, and lots *to improve clarity of allowed actions (e.g., rebuilding) of all nonconforming structures and specific allowances for expansion of single-family residential primary structures.*
- **Other topics cannot be added** to the amendment at this time but can be included in a future amendment. The addition of any topic not included in the amendment will require a new public review process (30-day public comment period and public hearing).

# Where are we in the process?

- Amendments must be developed consistent with the requirements of WAC 173-26-110.
- City is participating in the **optional joint local/state review process** – only one public hearing and one 30-day public comment period required.
- Required public process completed in June; second public process complete at end of 30-day public comment period on **October 10**.

# Where are we in the process?



## Next steps:

- Make changes to draft amendment based on public comments and City Council direction
- Transmit to Ecology for initial determination
- Council will consider amendment again after Ecology review

# CRITICAL AREAS

# Why not just keep the existing critical areas regulations?

- The updated regulations provide greater protection for critical areas and better reflect the goals and policies of the Comprehensive Plan.
- Integrating updated regulations will relieve staff and the public from navigating two sets of regulations (e.g., referencing the correct set, using the correct application, recognizing different standards, permit types, and review requirements).
- Critical areas regulations in the existing SMP largely date from 2006 – the last time the City’s CAO was comprehensively updated.
- Critical areas regulations in the existing SMP (Section 4.1.5 and Appendix B) would benefit from revisions to improve clarity, readability, and consistency with the SMA.

# What's changing?

- First, what's not changing?
  - The existing SMP includes critical areas regulations. The SMP amendment is simply updating these regulations to reflect the City's recent CAO update.
- Major housekeeping effort – Eliminate Appendix B: reduces redundancy and internal conflict
- Changes in SMP are same changes made during CAO update

# What's changing?

## General

- Staff site visit required for all land use applications with critical area
- Use of precautionary principal and mitigation sequencing required in review
- Review required for some allowed activities (e.g., trails, “interrupted buffer”)

## Critical Aquifer Recharge Areas

- Aquifer recharge protection area (ARPA) requirement in the R-0.4, R-1, and R-2 zoning districts

## Streams

- Buffer widths are increased for most stream types

# What's changing?

## Geologically Hazardous Areas (Steep Slopes)

- Standard setback requirement changed from height of slope or 50 feet, whichever is greater, to height of slope only up to maximum of 75 feet or as determined by assessment
- New range of factors of safety for non-habitable structures and other uses/activities

## Wetlands

- No exemption for small wetlands
- Updated methods and categories based on current state and federal guidance
- Specific requirements for delineations, including when required, how recorded, and 5-year timeline

## Winslow Ravine

- More restrictions on what is allowed in buffer

# **NONCONFORMING STRUCTURES, USES, AND LOTS**

# What is nonconforming?

SMPs, **like zoning codes**, have typically categorized existing uses and structures that are not consistent with current regulations as “nonconforming” development.

A nonconforming structure, use or lot was **lawfully established** but does not comply with **current** regulations.

Many existing structures within the shoreline jurisdiction became nonconforming with the adoption of the City’s 2014 SMP update because of **new regulations**.

# What is nonconforming?

...Okay, but **nonconforming to what?**

- **Structures** can be nonconforming to one or more regulations

*A common example along shorelines is a **single-family residence** that does not meet current dimensional standards. In these cases, the use is consistent with the shoreline regulations, but the structure does not meet one or more standards in the existing regulations.*

- Location within shoreline buffer
- Height
- Shoreline structure view setback
- Shoreline side yard setback

*Piers and docks that are larger than the current regulations allow also are examples of nonconforming structures.*

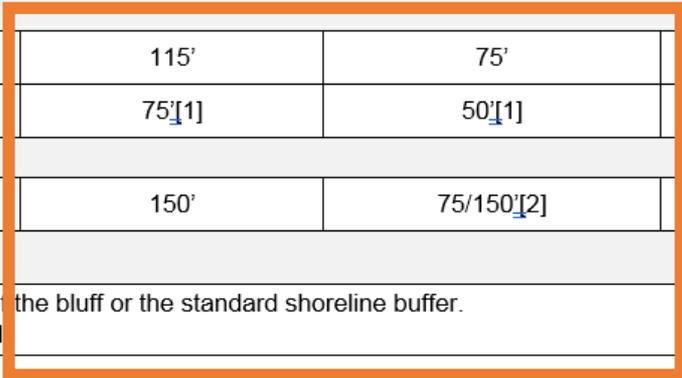
# Existing Shoreline Buffer Requirements

Many residential structures are nonconforming to the shoreline buffer requirement.

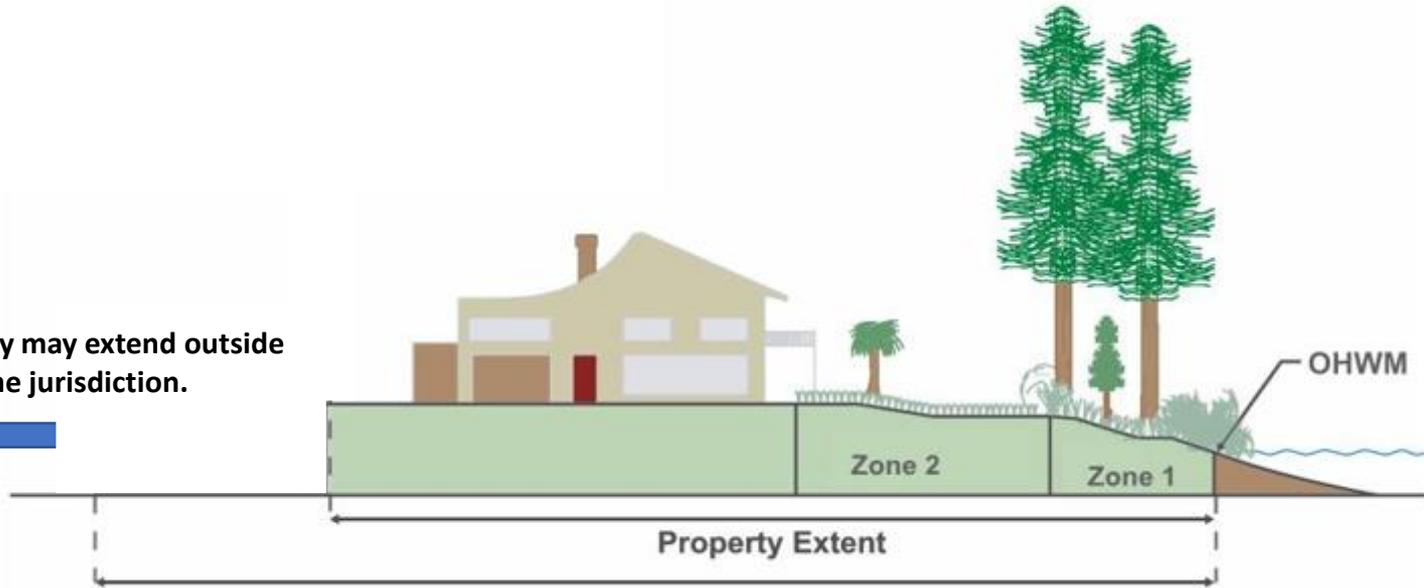
Table 4-3 Shoreline Buffer Standards Table

Additional

SHORELINE USE	UPLAND DESIGNATION				
	Natural	Island Conservancy	Shoreline Residential Conservancy	Shoreline Residential	Urban
<p>The shoreline buffer consists of two management areas Zone 1 and Zone 2. Zone 1 is located closest to the water; it is a minimum of 30 feet in all designations, except in Natural and Island Conservancy the minimum is 50' and expands to include existing native vegetation. Zone 2 is the remaining area of the shoreline buffer. See figure XXX</p>					
<p>Category A: Low bank lots with 65% Canopy Area in Zone 1, OR spit/barrier/backshore, marsh lagoon, or rocky shores.                      Category B: Low bank with less than 65% Canopy Area in Zone 1, or lots with a depth &lt; 200' or High Bluff.                      Geomorphic Class (i.e. low bank, High Bluff) shall be determined by Battelle 2004 Nearshore Characterization and Inventory.</p>					
<b>Developed lots</b>					
Category A	200'	150'	115'	75'	30'
Category B	200'	100' <sup>[1]</sup>	75' <sup>[1]</sup>	50' <sup>[1]</sup>	30 [1]
<b>Undeveloped lots</b>					
	200'	150'	150'	75/150' <sup>[2]</sup>	30'
<p>1. For High bluff properties the greater distance of 50' from the top of the bluff or the standard shoreline buffer.                      2. If adjacent to the Priority Aquatic designation then 150' is required</p>					



Property may extend outside shoreline jurisdiction.



200 FT Shoreline Jurisdiction

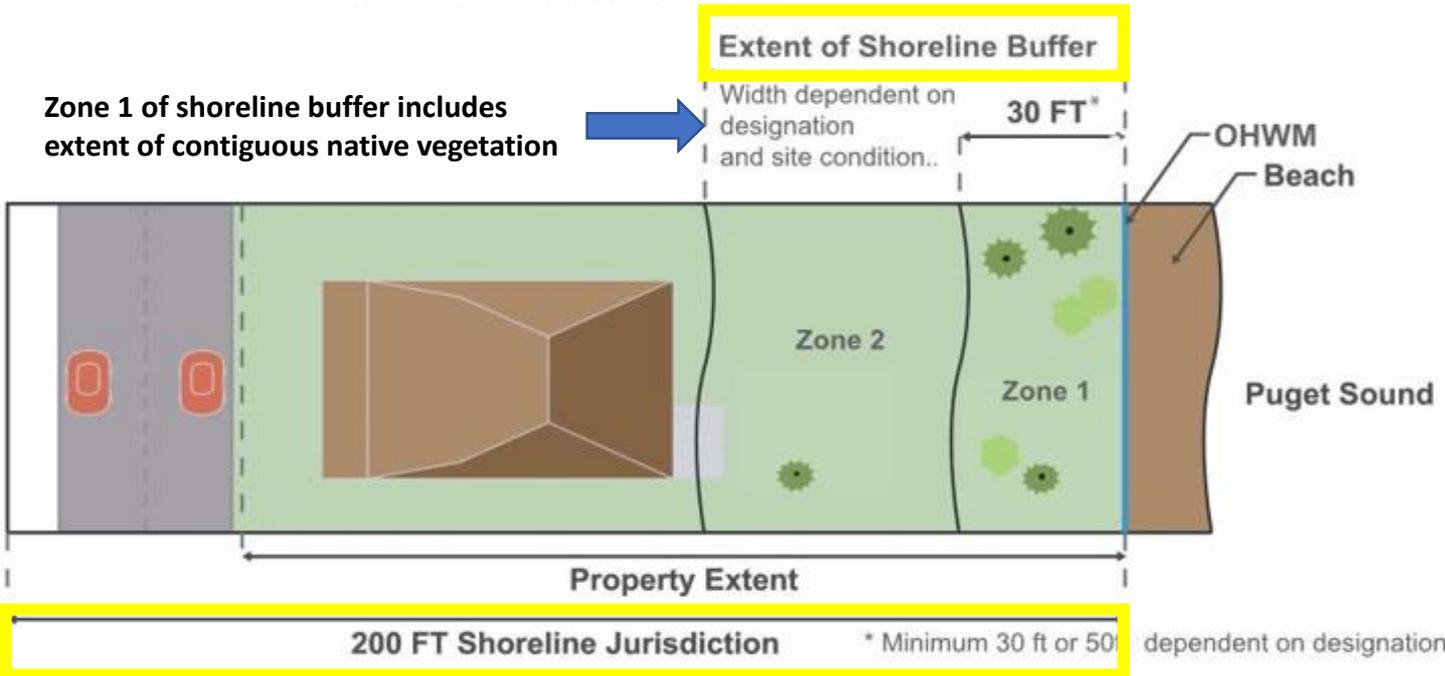
Zone 1 of shoreline buffer includes extent of contiguous native vegetation



Extent of Shoreline Buffer

Width dependent on designation and site condition..

30 FT\*

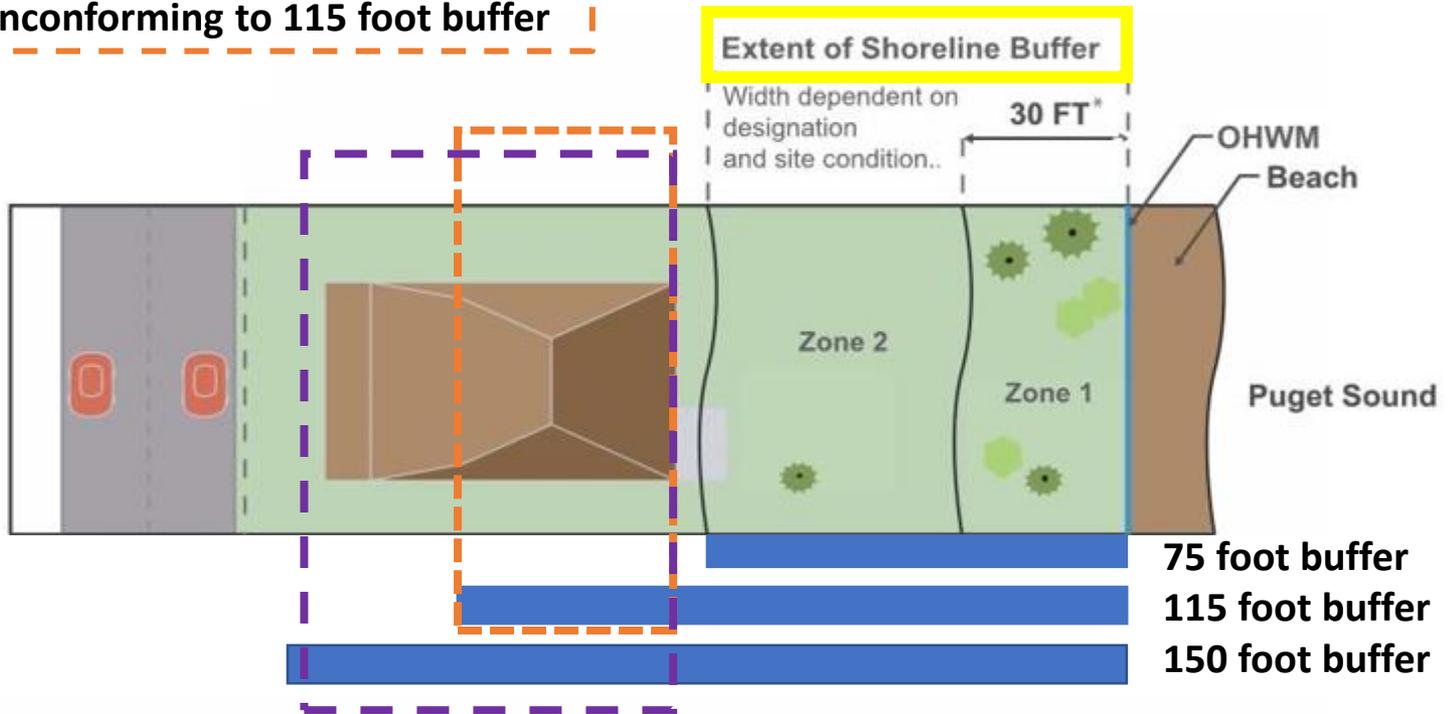


200 FT Shoreline Jurisdiction

\* Minimum 30 ft or 50 dependent on designation.

Nonconforming to 150 foot buffer

Nonconforming to 115 foot buffer



# What is nonconforming?

...Okay, but **nonconforming to what?**

- **Uses** are nonconforming with the “Shoreline Use and Modification Table”
  - If use is listed in table as “X” – Prohibited Use, then an existing use of that type is nonconforming
- **Lots** are nonconforming if they do not meet current dimensional standards (zoning code)
  - Basically, small or skinny lots
  - Lot area (size in square feet)
  - Depth and width

# What are the existing rules?

There are **different regulations** for different **types of structures**:

- Primary single family residential structures
- Accessory single family residential structures
- Essential single family residential accessory structures
- Multifamily structures
- Commercial and industrial structures
- Aquatic structures

# What are the existing rules?

There are **different regulations** for different **types of demolition**:

**Intentional** demolition  
(you tear it down)



**Not clear:**

- Can you rebuild?
- If so, how much?

**Unintentional** destruction  
(fire, earthquake, etc.)



**Clear:** You may rebuild

**Focus of amendment**



# What's changing?

- Nonconforming term
- Primary residential structure
- Accessory residential structure
- Essential accessory residential structure
- Multifamily structure
- Commercial and industrial structure
- Aquatic structure (piers, docks, floats)
- Nonconforming uses
- Nonconforming lots

The major change is that structures may be rebuilt **regardless of how they were taken down** – either intentionally demolished or unintentionally destroyed.

The intent of the change is to **align the regulations with the no net loss standard**, which includes existing structures in baseline conditions.

The Planning Commission's recommended draft deletes this goal statement: "Residential structures that do not conform to this program should, over time, **as the owner proposes changes to the structure, conform as completely as possible to this program**, with due regard to unique site conditions and property rights."

# What's changing?

- **Nonconforming term**
  - Primary residential structures
  - Accessory residential structures
  - Essential accessory residential structures
  - Multifamily structures
  - Commercial and industrial structures
  - Aquatic structures
- Nonconforming uses
- Nonconforming lots

# What's changing?

## Nonconforming term

- The current SMP uses the term “**existing development.**”
- This **term is confusing** because “existing” development may not be “nonconforming” development; additionally, “existing development” is not used consistently throughout the SMP.
- During the 2014 SMP update process, the Planning Commission recommended the use of the term “nonconforming;” however, the City Council subsequently changed the term to “existing development.”
- The Planning Commission **again recommends use of the term nonconforming** since it is a long-standing and well-understood land use term.

# What's changing?

- Nonconforming term
- **Primary single-family residential structures**
- Accessory single family residential structures
- Essential single family accessory residential structures
- Multifamily structures
- Commercial and industrial structures
- Aquatic structures
- Nonconforming uses
- Nonconforming lots

# What's changing?

## Primary single family residential structure

- The Planning Commission is recommending that a nonconforming single-family primary structure **can be rebuilt/reconstructed in the same footprint and to the same height** existing immediately prior to either intentional demolition unintentional destruction.
- This is a **change** from how the SMP is currently implemented: A nonconforming single-family primary structure **may be demolished up to 50 percent** of its square footage and retain any portion of the footprint that is nonconforming. If the structure is demolished **over 50 percent** of its square footage, the new structure **must be fully conforming with present regulations**. This is borrowed from the zoning code for nonconforming structures.
- The proposed change would create nonconforming shoreline regulations that are **more permissive** than nonconforming zoning regulations.

# What's changing?

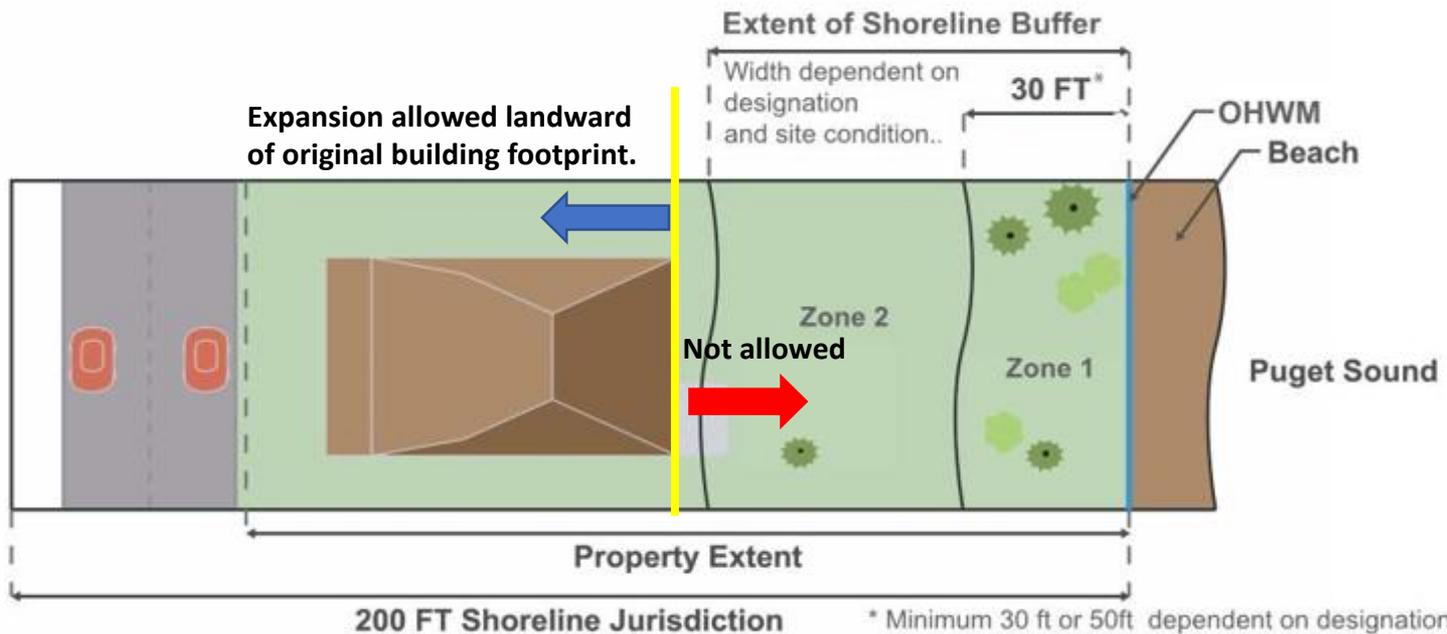
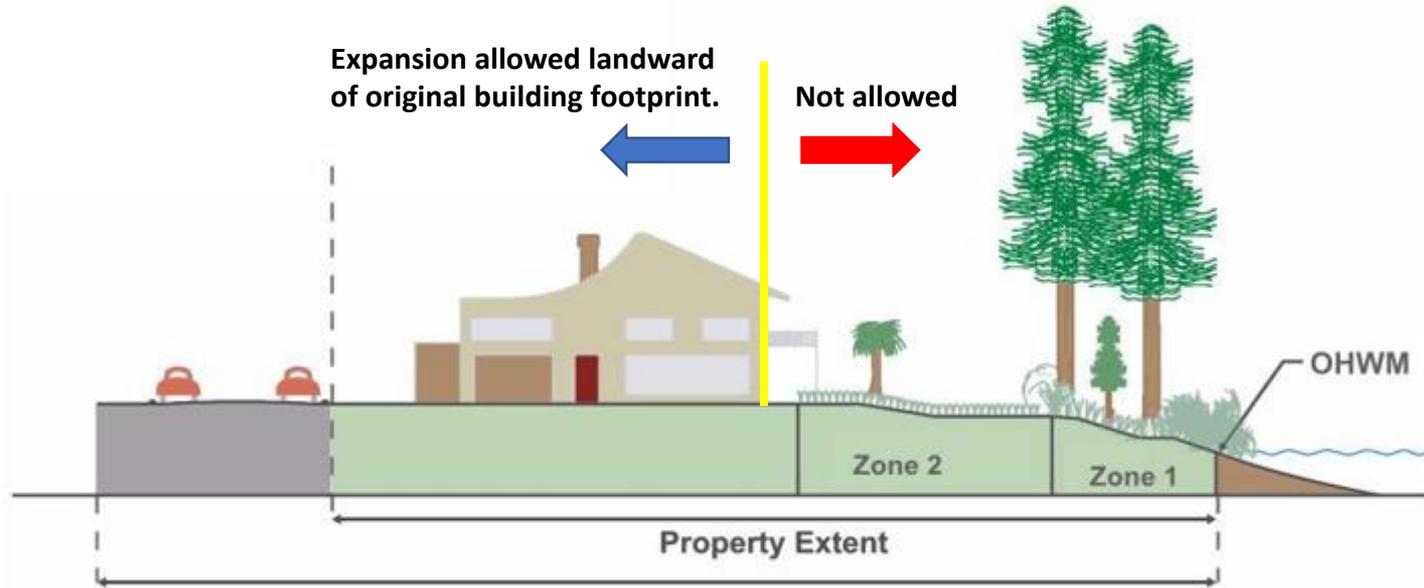
## Primary single family residential structure – expansion

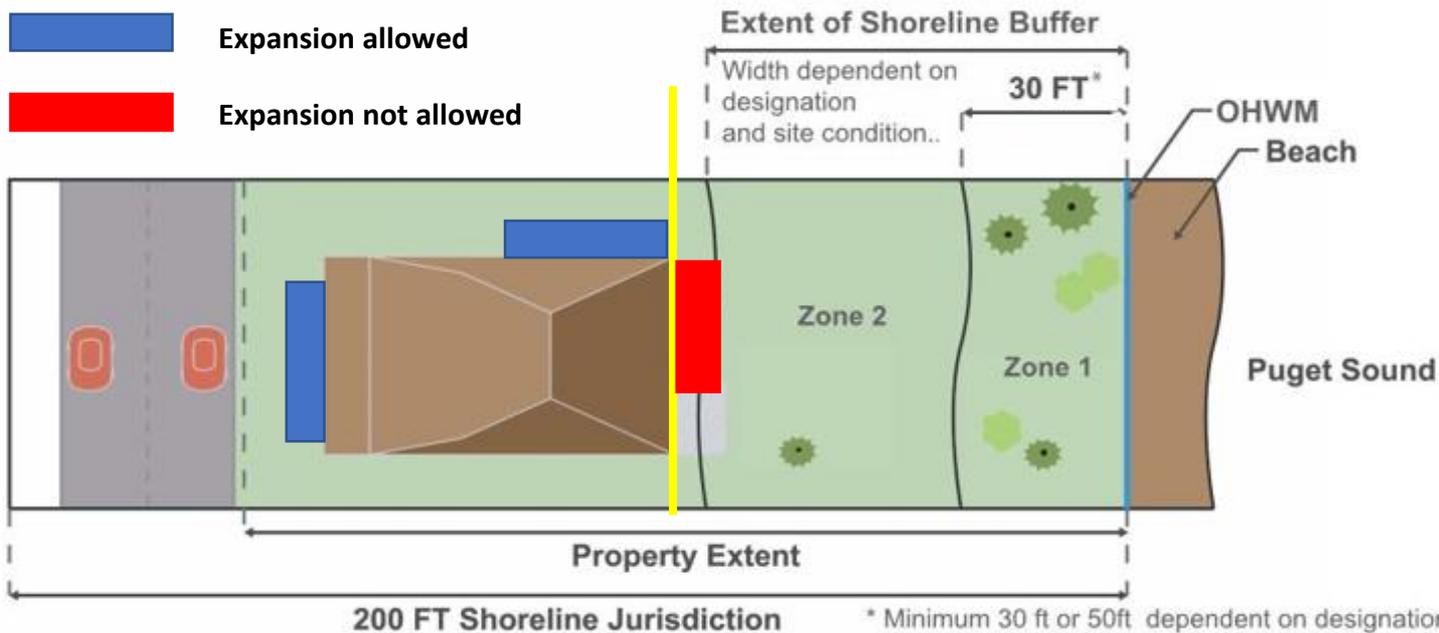
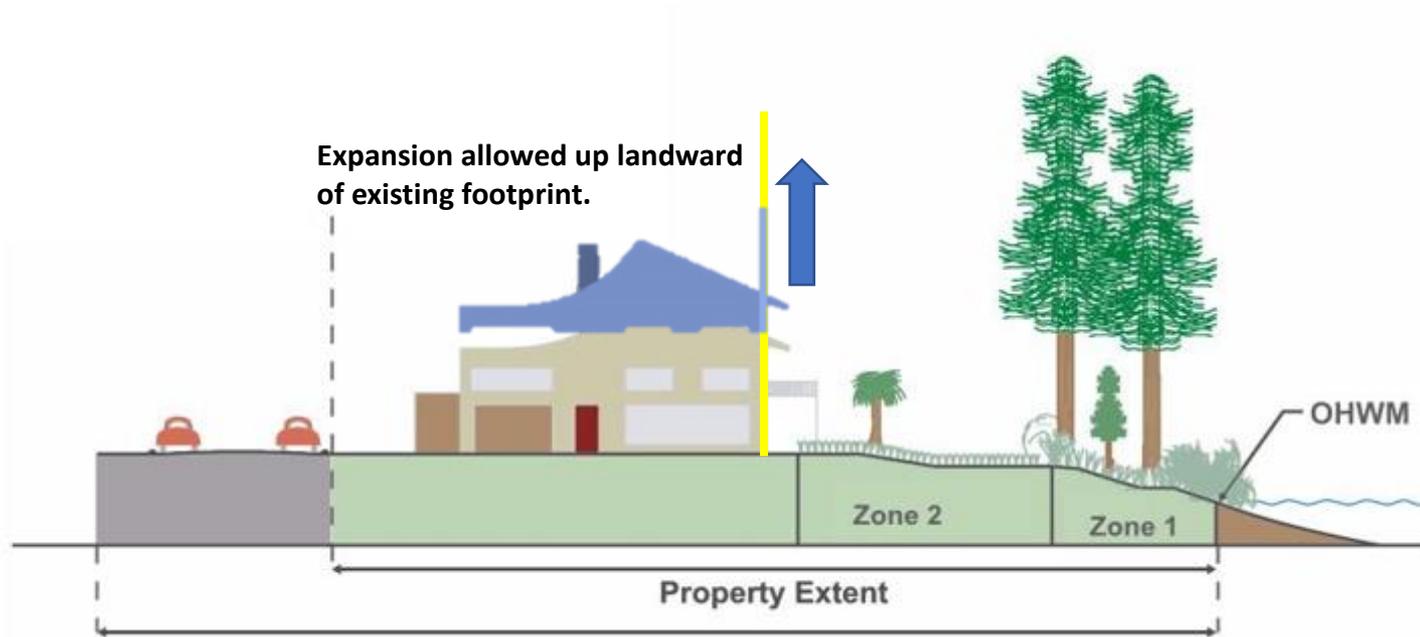
- **Existing SMP** allows limited expansion:
    - Only once within lifetime of development
    - Only up to 25% of the existing footprint
  - The Planning Commission is recommending that a nonconforming single-family primary structure **can be expanded without any size limitations** if certain criteria are met:
    - Expansion must be landward of original footprint
    - No enlargement or expansion in Zone 1 of shoreline buffer
    - Cannot significantly affect existing neighboring views
    - No removal of exceptional/landmark trees per BIMC 16.18
    - Significant tree removal may be allowed
- 
- Already in existing SMP
- Proposed changes

# What's changing?

## Primary single family residential structure – expansion

- Proposal up to a total of 4,000 square feet of existing and proposed hard surfaces requires **shoreline exemption and use of mitigation manual**
- Proposal over 4,000 square feet existing and proposed hard surfaces requires **shoreline conditional use permit and site-specific impact analysis**





# What's changing?

- Nonconforming term
- Primary single family residential structures
- **Accessory single family residential structures**
- Essential single family residential accessory structures
- Multifamily structures
- Commercial and industrial structures
- Aquatic structures
  
- Nonconforming uses
- Nonconforming lots

# What's changing?

## Accessory single family residential structure

- The Planning Commission is recommending that a nonconforming single-family accessory structure **can be rebuilt/reconstructed in the same footprint and to the same height** existing immediately prior to the demolition/destruction.
- This is a **change** from how the SMP is currently implemented: A nonconforming single-family accessory structure **may be demolished up to 50 percent** of its square footage and retain any portion of the footprint that is nonconforming. If the structure is demolished **over 50 percent** of its square footage, the new structure **must be fully conforming with present regulations**. This is borrowed from the zoning code for nonconforming structures.
- The proposed change **aligns** nonconforming shoreline regulations with nonconforming zoning regulations.

# What's changing?

- Nonconforming term
- Primary single family residential structures
- Accessory single family residential structures
- **Essential single family residential accessory structures**
- Multifamily structures
- Commercial and industrial structures
- Aquatic structures
  
- Nonconforming uses
- Nonconforming lots

# What's changing?

## Essential single family residential accessory structure

- An accessory structure that contains a use or is intended for a use that is essential to a single family residential principal use:
  - a garage or carport
  - one septic system (including one tank and one on-site septic drainfield)
  - one well house and associated well head
  - existing decks attached to the primary structure
- Intended to be more restrictive for “non-essential” accessory structures to decrease nonconformities over time
- **Deleted this term** – all accessory single family residential structures treated the same

# What's changing?

- Nonconforming term
- Primary single family residential structures
- Accessory single family residential structures
- Essential single family residential accessory structures
- **Multifamily structures**
- Commercial and industrial structures
- Aquatic structures
- Nonconforming uses
- Nonconforming lots

# What's changing?

## **Multifamily structure**

- No changes – language clarification only

# What's changing?

- Nonconforming term
- Primary single family residential structures
- Accessory single family residential structures
- Essential single family residential accessory structures
- Multifamily structures
- **Commercial and industrial structures**
- Aquatic structures
  
- Nonconforming uses
- Nonconforming lots

# What's changing?

## Commercial and industrial structures

**Intentional demolition:** May be reconstructed only in conformance with all existing provisions (may result in smaller or reconfigured structure)

**Unintentional destruction:** May be constructed within existing footprint



- **Demolished by any means** may be reconstructed only in conformance with all existing provisions
- Nonconforming commercial structures used wholly for **water-oriented uses** may be reconstructed to the same footprint even if intentionally demolished

# What's changing?

- Nonconforming term
- Primary single family residential structures
- Accessory single family residential structures
- Essential single family residential accessory structures
- Multifamily structures
- Commercial and industrial structures
- **Aquatic structures**
- Nonconforming uses
- Nonconforming lots

# What's changing?

## Aquatic structures

- Changed term from **“aquatic structures”** to **“overwater structures”** for consistency
- **Removed requirement for conditional use permit** to reorient or alter for nonconforming docks, piers, floats, and buoys within same general location (only if results in greater consistency with SMP)
- **Deleted “up to 50%” replacement provision** for nonconforming overwater structures other than docks, piers, floats, and buoys
- Replacement of nonconforming overwater structures other than docks, piers, floats, and buoys may be replaced if such **replacement is authorized as normal repair** consistent with WAC 173-27-040(2)(b) -- *Essentially considers replacement to be repair*

# What's changing?

- Nonconforming term
- Primary single family residential structures
- Accessory single family residential structures
- Essential single family residential accessory structures
- Multifamily structures
- Commercial and industrial structures
- Aquatic structures
- **Nonconforming uses**
- **Nonconforming lots**

# What's changing?

## Nonconforming **uses**

- No changes – language clarification only

## Nonconforming **lots**

- Included critical area itself (instead of just critical area buffer) as something that results in an encumbered lot
- Language clarification

# **MISCELLANEOUS PROPOSED AMENDMENTS**

# What's changing?

## Clarifying language related to:

- Applicability
- What happens in the event of a conflict between regulations

These items were brought up via public comment and included in the amendment since they are somewhat related to nonconforming development.

- Definitions
  - Select definitions revised to improve clarity
  - Critical areas regulations integrated; eliminated duplication