



DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

MEMORANDUM

**Date:** September 11, 2018  
**To:** City Council  
**From:** Christy Carr, AICP  
Senior Planner  
**Subject:** Shoreline Master Program Amendment

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I. INTRODUCTION AND BACKGROUND

The subject of the September 11, 2018 City Council public hearing is an amendment to the City's Shoreline Master Program (SMP) related to critical areas regulations and nonconforming uses, structures, and lots.

Amendments related to **critical areas (SMP Section 4.1.5)** focus on integrating regulations recently updated as part of the critical areas ordinance (CAO, see BIMC 16.20). The updated critical areas regulations cannot be applied within the shoreline jurisdiction until an amendment to the SMP integrating these regulations is locally adopted by City Council and approved by the Department of Ecology.

Amendments related to **nonconforming uses, structures, and lots (SMP Section 4.2.1)** are intended to improve clarity and implementation effectiveness of the SMP. The amendments focus on clarification of allowed actions (e.g., rebuilding) of all nonconforming structures and specific allowances for expansion of single-family residential primary structures.

II. PLANNING COMMISSION REVIEW

The Planning Commission discussed the SMP Amendment at regular and special meetings between January and the end of August, including a public hearing on May 24, continued to June 7, 2018. On August 30, 2018, the Planning Commission recommended, by unanimous vote, the amendments related to critical areas and nonconforming uses, structures, and lots for City Council consideration at their September 11, 2018 public hearing.

III. SUMMARY OF AMENDMENTS – CRITICAL AREAS

The intent of the amendment is simply to integrate recently updated critical areas regulations into the SMP consistent with procedures and policies of the Shoreline Management Act (SMA). The SMP

amendment does not include any regulations that are new or different than those in the recently updated critical areas ordinance.

The City's existing SMP contains critical areas regulations in two places – Section 4.1.5 and Appendix B. Appendix B is essentially a carbon copy of BIMC 16.20, as it existed prior to the CAO update. Section 4.1.5 has some “shoreline-specific” critical areas provisions and some redundant regulations also present in Appendix B. A major housekeeping change in the draft amendment is to eliminate Appendix B and consolidate all critical areas regulations in Section 4.1.5. This improves readability of the document and eliminates redundancies and internal inconsistencies.

While regulations in the CAO and SMP do not – and cannot, due to consistency issues with the SMA – have to be exactly the same, there are distinct and important reasons for integrating the updated critical areas regulations into the SMP, including, but not limited to:

- 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.
- New critical areas regulations include more protective standards for aquifer recharge areas, wetlands, and fish and wildlife habitat conservation areas/streams, and more rigorous review criteria (e.g., precautionary principal and mitigation sequencing).
- The aquifer recharge protection area (ARPA) requirement does not apply within shoreline jurisdiction. Notably, 42 percent of the island's R-2 parcels are within the shoreline jurisdiction.
- Relieving 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).

#### IV. SUMMARY OF AMENDMENTS – NONCONFORMING USES, STRUCTURES, AND LOTS

The draft revisions related to nonconforming uses, structures, and lots are provided in the agenda packet as a “clean” version of SMP Section 4.2.1 since the significant number of changes and reorganization of the section would make it difficult to review a strikethrough/underline version. A strikethrough/underline version will be available at the start of the 30-day public comment period on September 10.

The majority of draft revisions are intended to improve clarity and eliminate vagueness, repetition, and/or internal conflict. In addition, the Planning Commission's draft revisions include a number of changes to allowed actions for nonconforming structures.

Proposed revisions include:

- **Use of the term nonconforming.** The current SMP uses the term “existing development” to refer to existing structures lawfully constructed prior to the effective date of the City's SMP. This term is confusing because “existing” development may not be “nonconforming” development; additionally, “existing development” is not used consistently throughout the SMP – it is interchanged with existing structures and nonconforming structures. 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 that has a specific definition and requirements provided in the SMA.

- **Intentionally demolished structures.** The current SMP differentiates, and has different allowances for, intentionally demolished vs. unintentionally destroyed (by natural catastrophic event) structures. The Planning Commission is recommending several changes to allowances for nonconforming structures. The intent of this change is to better align the regulations with the no net loss standard. All development within the shoreline jurisdiction is required to achieve “no net loss of shoreline ecological function and process.” Existing conditions at the time of the City’s SMP update, including nonconforming structures, are considered the baseline for the no net loss standard. If that is the case, then allowing rebuilding/reconstruction within the existing footprint – whether due to intentional demolition or unintentional destruction – would achieve no net loss. The Planning Commission’s recommended draft deletes this sentence from Section 4.2.1’s 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.” The proposed change underscores that single-family residential development is a preferred shoreline use and clarifies that the SMP is not designed to “phase out” nonconforming single-family residential development over time.
  - **Single-family residential primary structures:** The existing language is unclear related to whether a nonconforming single-family primary structure can be rebuilt/reconstructed if it is intentionally demolished. The Planning Commission is recommending that a nonconforming single-family primary structure, whether it is intentionally demolished or destroyed by a catastrophic event (e.g.; fire), 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 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 current practice is the same as the City’s current requirements for nonconforming structures in the zoning title [See BIMC 18.30.030.C: “If a building is harmed or destroyed by more than 50 percent of its square footage, the building must be reconstructed in compliance with the requirements for the zone in which it is located.”]. The proposed change would create nonconforming shoreline regulations that are more permissive than nonconforming zoning regulations.
  - **Single-family residential accessory structures:** The existing language reads: “If an existing residential accessory structure is damaged, destroyed or intentionally demolished, the reconstruction shall be in conformance with all standards of the Program” – which means it does not matter if the structure is intentionally demolished or unintentionally destroyed. If, for example, you want to replace an existing boathouse that exceeds the maximum size requirement, you could a) replace up to 50 percent of the square footage and maintain the existing size or b) replace only up to the maximum size requirement, resulting in a smaller boathouse. The Planning Commission is recommending that a nonconforming accessory structure, whether it is intentionally demolished or destroyed by a catastrophic event, can be rebuilt/reconstructed in the same footprint and to the same height existing immediately prior to the

demolition/destruction. This is similar to the City's current requirements for nonconforming structures other than buildings in the zoning title [See BIMC 18.30.030.D: "Any structure other than a building that is damaged or removed to an extent that exceeds 50 percent of its square footage may be replaced or reconstructed in substantially the same location and of substantially the same design as the pre-damaged or pre-removed structure."].

- **Single-family residential essential accessory structures:** The existing language allows for replacement of single-family residential essential accessory structures in the same footprint whether intentionally demolished or destroyed by a catastrophic event. Single-family residential essential accessory structures include decks attached to houses, garages, carports, wellhouses, and septic systems. The Planning Commission is recommending deleting this term.
- **Residential and commercial aquatic structures:** The term "aquatic structure" is vague and undefined and is proposed to be changed to overwater structure. The existing language allows for nonconforming docks, piers, and buoys to be replaced in the same footprint and to be replaced/reoriented through a shoreline conditional use permit if the new structure is more consistent with SMP provisions. Other overwater structures (e.g., covered moorage) may be replaced up to 50 percent of the footprint. The recommended change is to allow docks, piers, floats, and buoys to be replaced or reoriented, if more consistent with SMP provisions, without a shoreline conditional use permit and for other overwater structures to be replaced only if the replacement is considered repair pursuant to WAC 173-27-040(2)(b).
- **Multifamily primary structures:** No changes proposed; language clarification only.
- **Commercial and industrial structures:** The existing language allows for reconstruction after intentional demolition only in conformance with all provisions of the SMP; reconstruction after unintentional destruction may be within the same footprint. The Planning Commission recommends commercial and industrial structures demolished or destroyed by any means may be reconstructed only in conformance with the standards of the SMP; except, nonconforming commercial structures utilized wholly for water-oriented uses may be reconstructed to the same footprint.
- **Public facilities and transportation:** No changes proposed; language clarification only.
- **Expansion of single-family primary structures.** Currently, single-family primary structures are the only nonconforming structures allowed to be expanded. This is not proposed to be changed. The existing language allows for expansion of nonconforming single-family primary structures under certain provisions, including "only one such expansion may occur within the lifetime of the development" and a total limit on the amount of expansion allowed (the allowed building area for Point Monroe or encumbered lots or 25 percent of the existing building footprint). The Planning Commission's recommendation does not include a total limit on the expansion allowed; rather, any amount of expansion would be allowed if the no net loss standard was demonstrated through use of either the Single-Family Residence Shoreline Mitigation Manual or a site-specific impact analysis. New criteria for allowing the removal of significant trees to accommodate expansion are also proposed (the existing language does not generally allow significant tree removal).

## V. NEXT STEPS

The City is developing this amendment with the Department of Ecology (Ecology) under the optional joint review process for amending shoreline master programs, which combines the local and state public comment periods. The 30-day joint public comment period runs from September 10 through October 11, 2018. After the close of the public comment period, the City forwards the amendment to Ecology with a response to any comments received during the public process, and any changes made based on those comments. Ecology makes an initial determination of consistency with the SMA and SMP guidelines. Once receiving the initial determination from Ecology, staff would present the draft amendment to City Council for review and local adoption. The locally adopted amendment would then go back to Ecology for final approval. Final approval is anticipated in spring 2019.

