

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

MEMORANDUM

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

I. INTRODUCTION AND BACKGROUND

This memo provides an update on the draft Shoreline Master Program (SMP) Amendment since the initial public hearing on September 11, 2018. This memo repeats information provided in the staff memo for the public hearing and provides updated information **in blue bold text**. New background materials include:

- Nonconforming Policy Questions
- Revised SMP Amendment – Excerpts only of changes related to ARPA deletion
- Summary of Public Comments

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 the 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, 2018, 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 its September 11, 2018 public hearing.

The Planning Commission provided clarifications and revised recommendations with respect to nonconforming single-family residential structures, which were discussed at the November 8 and 22, 2018 Planning Commission meetings.

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.

At its October 16, 2018 study session, the City Council made the policy decision to not include the aquifer recharge protection area (ARPA) requirement within the shoreline jurisdiction. The revised SMP Amendment provided in the background material includes only those pages/sections from which the ARPA language was deleted (to avoid sending the entire SMP).

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

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. **Original proposed revisions are summarized at the end of this document.**

Policy questions currently under consideration by the City Council include:

Question	PC Recommendation	Initial Council Input
Can intentionally demolished nonconforming structures be rebuilt? If so, which ones?	Yes. All structures may be rebuilt in same footprint except for non-water-oriented commercial and multifamily.	Concur that single-family primary structures and their appurtenances (essential accessory structures) may be rebuilt.
Can nonconforming structures be expanded? If so, what is the limit to expansion?	Yes. Single-family primary structures may be expanded up to 500 square feet over the life of the structure.	Some level of concurrence that single-family primary structures may be expanded up to 500 square feet.

The document titled, *Nonconforming Policy Questions*, tees up the remaining policy questions within the framework of the draft SMP Amendment, Section 4.2.1.

V. MISCELLANEOUS REVISIONS

Over the course of the Planning Commission’s consideration of the draft amendment, two miscellaneous revisions were made based on public input to clarify applicability of the overall program and the course of action to follow in the event of a conflict. Staff requests City Council input on these miscellaneous revisions. [Black text is existing, red text is proposed.]

1.3.5 Applicability of Bainbridge Island Shoreline Master Program

1. The Bainbridge Island Shoreline Master programs applies to 200 feet landward of ordinary high water mark and all marine waters out to the midline of Puget Sound, Port

Madison, Agate Pass, Port Orchard and Rich Passage. The SMP does not apply to freshwater lakes or streams on Bainbridge Island.

2. The provisions of ~~the~~ this Program apply to both existing and new development, uses, lots, and activities as follows: ~~and are not retroactive.~~

a. Development, uses, lots, and activities lawfully occurring, established or constructed prior to the effective date of the initial adoption of the this Program (November 26, 1996), or amendments thereto, are not required to meet this Program's requirements, unless new development or changes to a development, use, lot or structure that would require review under this Program are proposed.

b. All existing legally constructed single-family residences and accessory structures, including lawns, landscaping and recreation areas, which do not meet the ~~adopted~~ standards of this ~~Shoreline Master~~ Program are allowed to continue, and are allowed to ~~may~~ be maintained, repaired, ~~and remodeled~~ or replaced. ~~if destroyed or damaged by natural causes as provided in Section 4.2.1 Nonconforming Uses, Nonconforming Lots, and Existing Development.~~

~~c. Residences may be expanded, provided the expansion meets the provisions of this Program, including addressing environmental impacts and meeting the standard for no net loss of ecological functions and ecosystem wide processes as provided in Section 4.1.2, Environmental Impacts.~~ All proposed uses and development occurring within shoreline jurisdiction must conform to be consistent with Chapter 90.58 RCW, the Shoreline Management Act and this ~~Shoreline Master~~ Program.

~~d. All u~~Uses and activities that do, even those not meeting the definition of development, are may be subject to the provisions and ~~development~~ regulations of this ~~Shoreline Master~~ Program, ~~even though a permit may not be required.~~

4.0.1 Regulations - General

7. Where provisions of this Master Program or other provision in BIMC conflict, liberal construction pursuant to RCW 90.58.900 shall apply to give full effect to the objectives and purposes of the Act. ~~the more restrictive provisions shall apply unless specifically stated otherwise.~~

This proposed language has been revised based on subsequent public input and staff discussion:

7. Where provisions of this Master Program or other provisions in BIMC conflict, ~~the more restrictive provisions shall apply unless specifically stated otherwise.~~ the conflict shall be resolved by the Director of Planning and Community Development Department by applying the provision that provides the most protection of shoreline ecological functions consistent with the purposes and intent of the Shoreline Management Act. If the Director's decision is made in response to a code interpretation request filed under BIMC 2.16.020.D, the decision shall be appealable in the same manner as other code interpretations. If the Director's decision is made in the processing of a development permit, the Director's decision shall be appealable as part of the permit decision.

VI. SUMMARY OF PUBLIC COMMENTS

At the direction of the City Council, a second joint/local public process and public hearing was held after the nonconforming chapter was added to the original critical areas ordinance (CAO) integration

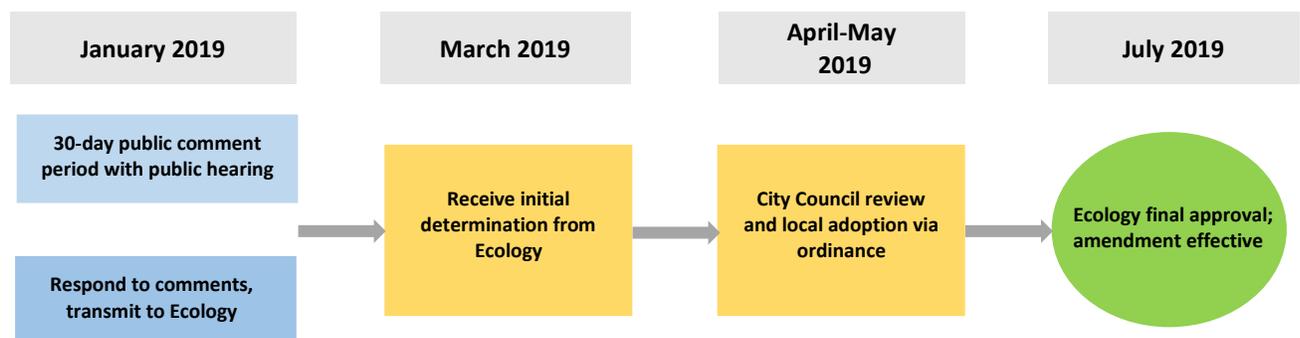
amendment. As such, comments date back to the first public process (May 11 through June 11, 2018), although there were no substantive public comments received during that timeframe. The second public process ran from September 10 through November 9, 2018.

Background materials include a summary of public comments with staff response. Comments sent directly to the City Council are not included in the summary unless they were forwarded to staff.

VII. 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 ran from September 10 through **November 9, 2018**. **The City has requested an extension of the comment period.** After the close of the public comment period, the process is for the City to forward 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 the 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 **summer 2019**.

[Revised timeline.]



High-level summary of Planning Commission recommendation

- **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).