



DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

MEMORANDUM

**Date:** January 8, 2019  
**To:** City Council  
**From:** Christy Carr, AICP  
Senior Planner  
**Subject:** Shoreline Master Program Amendment

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I. INTRODUCTION – WHERE WE LEFT OFF

At its December 11, 2018 business meeting, the City Council directed staff to bring back language differentiating between single family accessory structures and essential single family accessory structures. No other changes to the draft amendment were requested by the City Council. The City Council did not provide any input on other proposed revisions or policy questions.

With the exception of deleting the aquifer recharge protection area (ARPA) from the critical areas chapter and some minor word choice revisions, no changes were made based on public comments as provided in the summary of public comments provided at the December 11, 2018 City Council meeting.

As such, the draft amendment is relatively unchanged from the September 11, 2018 public hearing draft, with the following exceptions, highlighted in yellow:

- The ARPA is deleted
- The allowable expansion for single-family primary structures changed from no limit to a limit of up to 500 square feet (footprint expansion) over the life of the structure
- The term “essential single family residential accessory structure” is retained, and these structures may be rebuilt in the same footprint if destroyed by any means
- (Non-essential) residential accessory structures must be rebuilt to current standards if destroyed by any means

II. ADDITIONAL REVISIONS NEEDING COUNCIL REVIEW

In addition, staff is requesting input on revised language not previously discussed by the City Council, highlighted blue:

- Revisions to SMP 4.0.1.7, related to conflicts within the SMP and with the Bainbridge Island Municipal Code (BIMC)
- Revisions to the definition of nonconforming structures

SMP 4.0.1.7: This section has been referred to as “the most restrictive clause” and is seen by some members of the public as a means to apply the most restrictive or onerous standard, even if it is not applicable. While, to staff’s knowledge, this has not occurred even once since the adoption of the City’s 2014 SMP, staff would like input from the City Council on whether or not to change the language in SMP 4.0.1.7.

The City currently handles conflicts between code sections in one of two ways: (1) by making a code interpretation under BIMC 2.16.020.D.3 when a person files an interpretation request; or (2) by making an interpretation as part of the processing of a development application. Both of these actions result in an appealable decision. Ecology suggested the language in the public hearing draft SMP in order to avoid creating a separate process and to essentially make the default the interpretation that best meets the objectives and purposes of the Shoreline Management Act. Subsequently, staff developed the following revised language to be more specific (new language is underlined and strikeout text is used to show language to be removed):

Public hearing draft language

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.~~

Proposed revised language

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 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.

Definition of nonconforming structures: The current recommendation from the Planning Commission is to do away with the “existing development” term and instead rely on the more commonly used “nonconforming structure.” In the draft language recommended by the Planning Commission, the term “nonconforming structure” means

an existing structure that was lawfully constructed prior to the effective date of this Program (November 26, 1996), as amended, but is no longer fully consistent with present regulations such as setbacks, buffers or yards; area; bulk; height or density standards due to subsequent changes to the Program.

This definition is based on WAC 173-27-080, which says that:

"Nonconforming development" or "nonconforming structure" means an existing structure that was lawfully constructed at the time it was built but is no longer fully consistent with present regulations such as setbacks, buffers or yards; area; bulk; height or density standards due to subsequent changes to the master program.

Staff believes that using the nonconforming structure terminology would make the code clearer by resolving concerns raised by the public with regard to the use of a specific date. Staff recommends

revising what is currently being proposed by the Planning Commission and instead using the WAC definition as stated above, pending input from the City Council.

### III. TONIGHT’S AGENDA ITEM

Three documents are provided for tonight’s agenda item:

- The draft SMP amendment in strikethrough/underline format, highlighting Council’s requested revisions related to essential residential accessory structures and miscellaneous revisions outlined above
- Clean versions of the draft SMP amendment (for better readability), including only those pages with significant changes (Section 4.1.5 and 4.2.1) – the clean versions do not show highlighted revisions in the full draft SMP amendment that have not received Council approval
- Resolution 2019-05, Approving the draft SMP amendment related to critical areas and nonconforming structures, uses, and lots and authorizing staff to transmit the draft amendment to the Department of Ecology

**Staff anticipates that the City Council will (a) provide input on revised language related to essential single family residential accessory structures, SMP 4.0.1.7, and the definition of nonconforming structures and (b) approve Resolution 2019-05 authorizing staff to transmit the draft SMP amendment to the Department of Ecology.**

### IV. NEXT STEPS

Once the City Council adopts Resolution 2019-05, staff will transmit the draft SMP amendment to Ecology for initial review.

