

OPEN HOUSE – SMP AMENDMENT

CALL TO ORDER – Call to Order, Agenda Review, Conflict Disclosure

REVIEW OF MINUTES – September 28, 2017, October 18, 2017 and October 26, 2017

PUBLIC COMMENT ON SMP AMENDMENT/OPEN HOUSE

SHORELINE MASTER PROGRAM AMENDMENT

NEW/OLD BUSINESS

ADJOURN

OPEN HOUSE – SMP AMENDMENT

CALL TO ORDER – Call to Order, Agenda Review, Conflict Disclosure

Chair J. Mack Pearl called the meeting to order at 6:59 PM. Commissioners in attendance were Jon Quitslund, William Chester, Michael Killion and Kimberly McCormick Osmond. Lisa Macchio and Don Doman were absent and excused. City Staff present were Planning Director Gary Christensen, Senior City Planner Christy Carr and Administrative Specialist Jane Rasely who monitored recording and prepared minutes.

The agenda was reviewed. There were not any conflicts disclosed.

REVIEW OF MINUTES - September 28, 2017, October 18, 2017 and October 26, 2017

Motion: I move approval of the minutes for September 28, October 16 and October 26, 2017, move approval as distributed.

Quitslund/Killion – Passed Unanimously.

PUBLIC COMMENT ON SMP AMENDMENT/OPEN HOUSE

Moved to after the presentation and discussion.

SHORELINE MASTER PROGRAM AMENDMENT

Senior City Planner Christy Carr brought the Planning Commission up to date on the schedule due to City Council changing their timeline for passing the Critical Areas Ordinance. Chair Pearl asked for more overview before diving into specific issues. Commissioner Quitslund stated he wanted to understand the issues shoreline owners were faced with before making any changes. Commissioner McCormick Osmond was leery of making housekeeping changes separate from substantive changes because she felt housekeeping could slide into substantive without meaning to. The Commissioners felt review of the documents for all types of amendments should occur simultaneously. Chair Pearl stated they needed to have plan and stick to it so they did not get sidetracked.

Ms. Carr gave a brief update on the Department of Ecology's initial review of the Critical Areas Ordinance update.

PUBLIC COMMENT

Dick Haugen, Citizen – Stated this was the first time in four years he had heard anything positive or felt there were open-minds to making changes and he was extremely optimistic about the potential outcomes.

Michael Zigich, Citizen – Thanked the Planning Commission for taking on a document that had quite a few flaws and asked for a summary of the SMP for individuals. He felt the shoreline property owners' input should be incorporated into the work being done.

Charles Schmid, Citizen – Requested the Growth Management Hearing Board's recommendations be put on the City's website.

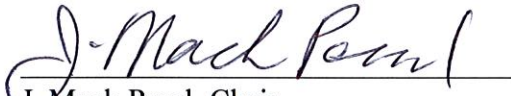
NEW/OLD BUSINESS

None.

ADJOURN

The meeting was adjourned at 8:14 PM.

Approved by:


J. Mack Pearl, Chair


Jane Rasely, Administrative Specialist



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Stay in touch!

SHORELINE MASTER PROGRAM AMENDMENT

Please provide your name and the best way to contact you about future meetings (email, mailing address, or phone number)

✓ Barbara Robbins bharobbs@gmail.com, 206-794-9191

✓ Barry FETTERMAN barryfetterman@mc.com

✓ M.C. Halvorsen mchalvorsen@hotmail.com

✓ KARL KREUTZER ibfishock@gmail.com

✓ CHARLES SCHMID ABC ceschmid@att.net

MICHAEL ZIGLIK

Maradel K. Gale

✓ LINDA & RICK WASH Walsh1R@AOL.COM

Dee Deegan



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SHORELINE MASTER PROGRAM AMENDMENT

Please provide your name and the best way to contact you about future meetings (email, mailing address, or phone number)

JOHN P. GREENWAY

842 2490

Jimmy Lawrence

11

11

Linda Whitehead

Larry Futhard

842-9505



Planning Commission Open House and Special Meeting
November 30, 2017 6:00 – 9:00 PM

PLEASE PRINT

Name	Phone/E-Mail	Join ListServ Yes/No	Would like to speak	Subject

See SMP Open House Sign-in sheet from same night.

The existing SMP includes several small differences between the critical areas ordinance currently in effect which cause confusion and creates difficulty in administration. To improve implementation effectiveness, staff recommends removing these differences since the proposed critical areas regulations provide sufficient protection of ecological function and hazard minimization. The following shoreline-specific critical areas regulations in existing SMP are proposed to be removed:

- Wetland Category III buffers for wetlands with low level of function for habitat and low impact of land use – 60 foot buffer in shoreline reduced to 40 feet to be consistent with CAO (consistent with Ecology guidance for wetland buffers).
- Wetland Category IV buffers for wetlands with low impact of land use – 40 foot buffer in shoreline reduced to 25 feet to be consistent with CAO (consistent with Ecology guidance for wetland buffers).
- This section in B-9 (Geologically hazardous areas, see page 293 of existing SMP) deleted (now covered by standards for existing development in revised CAO):
 - 2. Redevelopment of existing structures
 - a. If an existing structure is damaged or is intentionally demolished the new structure must meet all the provisions of a new structure.
 - b. Structural alteration to an existing legally constructed structure that does not increase the structural footprint and are determined by the City Engineer as having a minimal potential for increasing landslide hazard and meets the minimum buffer dimensions in B-9(E)(3)(i);
- SMP Section 4.1.5.8.3 deleted related to minor development on steep slopes (see item 8 below).

Note on SMP consistency: Staff is working with the Department of Ecology to ensure that the incorporated by reference CAO is consistent with the SMP. Minor modifications to proposed revisions may result, relating largely to process (e.g., there cannot be a non-shoreline permit or appealable decision required in the SMP, it needs to be reviewed with the underlying shoreline permit or exemption. The review criteria can be the same.)

Appendix B will include the CAO for reference only (see item 4, below). Appendix B will include only those sections incorporated by reference.

SHORELINE MASTER PROGRAM AMENDMENT

SMP Section: **4.1.5**
Appendix B

Topic: **Critical Areas**

Item	SMP Citation	Proposed language	Discussion/Basis for Change
1	4.1.5.1 Applicability	This section provides policies and regulations that apply to critical areas including critical saltwater and freshwater habitats as defined by WAC 173-26-221(2)(c)(iii) and (iv), including those portions of streams and wetlands, and flood plains or other flood prone areas within the shoreline jurisdiction. These policies and regulations apply in addition to the critical areas protection standards for fish and wildlife habitat conservation areas found in Appendix B. All shoreline uses and activities, including development which does not require a shoreline permit, must conform to these provisions. Shoreline development and activities associated with critical areas will be reviewed under the no net loss provisions of Section 4.1.2, Environmental Impacts, and may also be reviewed under Section 4.0, General (Island-wide) Policies and Regulations; Section 4.1.6, Water Quality and Stormwater Management; Section 4.1.3, Vegetation Management; and BIMC Chapter 15.18, Land Clearing, when applicable. Other portions of this Program may also apply. <u>This section applies to critical areas defined under 36.70A RCW and WAC 173-26-221(2)(c)(iii) and (iv). Critical areas include the following areas and ecosystems: wetlands, critical aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, geologically hazardous areas, critical saltwater and freshwater habitat.</u>	Simplify language. This language is provided for reference only (extracted from the current SMP) to provide background on terminology: <i>The following general policies and regulations apply to all designations. These provisions are to be used in conjunction with the more specific shoreline use (referred to as “uses”) and shoreline modification activity (referred to as “activities”) policies and regulations found in Sections 4.0 and 5.0 respectively.</i> Shoreline Modifications – Those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, pier, weir, dredged basin, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, or application of chemicals. Activity – Human activity associated with the use of land or resources. Development – A use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or materials; bulkheading; pile driving; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the Act at any state of water level, subject to RCW Chapter 90.58 or its successor [RCW 90.58.030(3)(d) or its successor]. This term may include activities related to subdivisions and short subdivisions; clearing activity; land modification (grade and fill work); building or construction; and activities that are exempt from the substantial development permit process or that require a shoreline variance or conditional use.

SHORELINE MASTER PROGRAM AMENDMENT

SMP Section: **4.1.5**
Appendix B

Topic: **Critical Areas**

Item	SMP Citation	Proposed language	Discussion/Basis for Change
2	4.1.5.2 Goal	Comprehensively manage shoreline uses and activities to protect, enhance, and restore existing ecological functions and ecosystem-wide processes of critical areas by utilizing the most current, accurate, and complete scientific and technical information.	No change proposed.
3	4.1.5.3 Policies	1. <u>Provide a level of protection to critical areas that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources.</u> Protect shoreline resource areas, including but not limited to critical areas, including: a. Critical Aquifer Recharge Areas b. Fish and Wildlife Habitat Conservation Areas c. Frequently Flooded Areas d. Geologically Hazardous Areas e. Wetlands f. Critical Saltwater and Freshwater Habitat Areas g. Critical Habitat 2. Encourage development proposals to include elements of preservation, conservation, restoration, or enhancement of critical areas, including saltwater habitat and fish and wildlife conservation areas, through incentives and ecosystem-wide restoration planning. 3. Locate, design, construction, and manage all shoreline uses and activities in ways that assure no net loss of shoreline ecological functions and ecosystem-wide processes, and protect critical saltwater habitat, including fish and wildlife habitat conservation areas. <u>34.</u> Locate and design shoreline uses, activities, and/or development to avoid risks to people and property. See also	1. Simplify language. No need to repeat list of critical areas. Need to confirm removal of critical habitat. Not listed in WAC 173-26-221 as a critical area required to be included in SMP. 2-7. Simplify language.

SHORELINE MASTER PROGRAM AMENDMENT

SMP Section: **4.1.5**
Appendix B

Topic: **Critical Areas**

Item	SMP Citation	Proposed language	Discussion/Basis for Change
		Section 3.0, Shoreline Designation Policies and Regulations, for additional provisions. 5. Ensure that proposed shoreline uses, activities and/or development proposed adjacent to critical areas or their buffers, will not adversely impact shoreline ecological functions and/or ecosystem wide process or critical areas, fish and wildlife habitat conservation areas and critical saltwater habitat. 46. Promote and manage water-related shoreline uses and activities, such as public access and recreation, that are compatible with critical areas, provided they do not adversely impact ecological function. 7. Monitor critical areas, including critical saltwater habitats, and fish and wildlife habitat conservation areas, to assure that these areas are not being adversely impacted by approved development or restoration projects.	
4	4.1.5.4 Regulations -- General	1. <u>The following sections of Chapter 16.20, Critical Areas Ordinance, dated xxxxxx, are incorporated herein by this reference, and as provided in Appendix B for reference purposes only, as supplemented or modified by Section 4.1.5.4.2 and Section 4.1.5.5:</u> a. <u>BIMC 16.20.030, Protection of critical areas</u> b. <u>BIMC 16.20.050, Standards for existing development, as applicable and consistent with this Program</u> c. <u>BIMC 16.20.070, Review procedures</u> d. <u>BIMC 16.20.090, Trees and vegetation</u> e. <u>BIMC 16.20.100, Aquifer recharge areas</u> f. <u>BIMC 16.20.110, Fish and wildlife habitat conservation areas</u> g. <u>BIMC 16.20.120, Frequently flooded areas</u> h. <u>BIMC 16.20.130, Geologically hazardous areas</u>	(Existing numbering) 1. Revised to incorporate by reference updated critical areas ordinance. Sections inconsistent with SMA not included. 2. Deleted to simplify language – monitoring required in shoreline when compensatory mitigation is required (SMP Section 4.1.3). This language does not specify that monitoring is only required when mitigation is required – not all development adjacent to critical areas needs to be monitored. 3. Deleted, required reports covered in BIMC 16.20.180.

SHORELINE MASTER PROGRAM AMENDMENT

SMP Section: **4.1.5**
Appendix B

Topic: **Critical Areas**

Item	SMP Citation	Proposed language	Discussion/Basis for Change
		i. <u>BIMC 16.20.140, Wetlands</u> j. <u>BIMC 16.20.150, The Winslow Ravine</u> k. <u>BIMC 16.20.160, Performance and maintenance surety</u> l. <u>BIMC 16.20.180, Critical area reports</u> m. <u>BIMC 16.20.190, Definitions, except where conflict exists, then the definitions in this Program shall apply.</u> 2. <u>Provisions of the City's Critical Areas Ordinance relating to requirements for reasonable use exceptions do not apply. In these cases, relief may be granted through Section 4.2.1.7 of this Program or through a shoreline variance.</u> 1. Development, uses, and activities proposed within shorelines of the state shall meet the requirements of the City's shoreline-specific Critical Areas Regulations as contained in Appendix B, in addition to the requirements found elsewhere in the Master Program. 2. Development, uses, and activities adjacent to critical areas, including critical saltwater habitats and fish and wildlife habitat conservation areas, proposed within shorelines of the state shall be monitored to assure that these areas are not being adversely impacted by approved development or restoration projects, consistent with Section 4.1.2 monitoring and mitigation requirements and the monitoring and mitigation requirements in Appendix B. 3. Special Reports. For development proposed on property with marine bluffs, steep slopes, erosion hazard areas and/or landslide hazard areas, a geotechnical report shall be required to assess potential hazards and propose measures to mitigate such hazards consistent with the requirements of this Master Program and attached appendices.	

SHORELINE MASTER PROGRAM AMENDMENT

SMP Section: **4.1.5**
Appendix B

Topic: **Critical Areas**

Item	SMP Citation	Proposed language	Discussion/Basis for Change
5	4.1.5.5	Regulations – Fish and Wildlife Habitat Conservation Areas and Critical Saltwater Habitat	No changes proposed at this time.
6	4.1.5.6 Regulations – Frequently Flooded Areas	1. All new development and new uses within the jurisdiction of this Master Program shall comply with the provisions of Section B 11, Frequently Flooded Areas located in Appendix B of this Master Program.	Language provided in critical areas ordinance adopted by reference (which references BIMC 15.16, Flood Damage Prevention).
7	4.1.5.7 Regulations – Geologically Hazardous Areas	1. All new development and new uses within the jurisdiction of this Master Program shall comply with regulations for Geologically Hazardous Areas as set forth in the shoreline-specific Critical Areas Regulations contained in Section B 9 of Appendix B of this Master Program. 2. Additional standards for marine bluffs (i.e., slopes greater than 40 percent that exceed a vertical height of 10 feet within the marine shorelines jurisdiction) are provided in section 4.1.5.8, Special Reports and Determination of Buffers, and 4.1.5.9, Regulations – Bluff Drainage, below.	Language provided in critical areas ordinance adopted by reference.
8	4.1.5.8 Special Reports and Determinations of Buffers	1. Applicants proposing development adjacent to a marine bluff shall submit a geotechnical engineering report prepared in accordance with the requirements of this Master Program and the shoreline-specific Critical Areas regulations contained in Appendix B. In terms of this regulation, “adjacent” means development proposed either within 50 feet from the crest of a marine bluff or within a distance equal to the height of the slope from the crest (measured from the top), whichever is greater. 2. The geotechnical engineering report shall be prepared by a Washington State licensed professional civil engineer with a specialty in geotechnical engineering or an engineering geologist with a Washington State specialty license in engineering geology as specified in RCW 18.220, Geologists. The report shall be based upon the most appropriate and current science, existing and proposed uses, risks of slope	1 and 2. Language provided in critical areas ordinance adopted by reference. 3. Prohibited and allowed minor development language provided in critical areas ordinance adopted by reference (provided here for reference only): 1. <i>Prohibited activities. Development of habitable structures and critical facilities is prohibited in landslide hazard areas and landslide hazard area setbacks.</i> 2. <i>Allowed activities. The following minor development may be allowed in landslide hazard areas on slopes forty (40) percent or greater and landslide hazard area setbacks if the development standards of this Section are met:</i> a. <i>Surface water management, including outfalls</i>

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Topic: **Critical Areas**

Item	SMP Citation	Proposed language	Discussion/Basis for Change
		failure, and coastal erosion rates over at least 100 years, if applicable. 3. All proposed development on the face of a marine bluff or in the required buffer area shall be prohibited, except: a. Development may be allowed as specified in Appendix B; Subsection B-9(E)(3)(a)(i)(F) of this Master Program; b. Minor development for public access (e.g., public trails, stairs, or view points) may be allowed, provided that environmental impacts are mitigated and the development can meet the factor of safety in Appendix B; subsection B-9(E)(1); and c. Minor development permitted in the Shoreline Buffer and Site-specific Vegetation Management Area pursuant to Sections 4.1.3.8 through 4.1.3.11 such as boathouses, decks, stairs, trams, piers, and docks except at the toe of unstabilized feeder bluffs and the development can meet the factor of safety in Appendix B; subsection B-9(E)(1). 4. All alterations to the vegetation within a geological hazardous area shall provide a Bluff Management Plan developed by qualified professional(s) to address vegetation management for slope stability and ecological functions and processes for a ten year period. The plan at a minimum shall include: a. A geotechnical analysis of slope stability as defined in B-9, Geologically Hazardous Areas of Appendix B. b. A site plan showing existing vegetation location and species. c. An analysis of identified vegetation appropriate for removal or alteration. d. An analysis of vegetation management strategies for slope stability. e. A mitigation plan developed according to Section 4.1.2, Environmental Impacts and Section 4.1.3, Vegetation Management.	b. <i>Septic facilities, including drainfields</i> c. <i>Trails and stairs</i> d. <i>Cable lifts and trams</i> e. <i>Public or private utilities or streets</i> f. <i>Seismic or other safety upgrades to protect existing habitable structures</i> g. <i>Other non-habitable structures</i> **Consider "toe of unstabilized feeder bluff" provision – could be unnecessary because development wouldn't meet a factor of safety. 4. Tree and vegetation requirements in critical areas ordinance address vegetation alteration and provide thresholds for review and submittal requirements.

SHORELINE MASTER PROGRAM AMENDMENT

SMP Section: **4.1.5**
Appendix B

Topic: **Critical Areas**

Item	SMP Citation	Proposed language	Discussion/Basis for Change
		f. The Administrator may include additional conditions for a site-specific analysis and require a third party review by a qualified professional at the cost of the applicant.	
9	4.1.5.9 Regulations – Bluff Drainage	1. Surface drainage shall be directed away from marine bluffs. When no other solution is feasible, surface drainage piping may be located on the face of a steep slope when contained in a tight line (closed, non-leaking pipe) and in such a way that erosion will not be increase at the base of the bluff and provided that physical access along the shoreline is not degraded. Furthermore, conditions may be applied to mitigate the aesthetic impacts of the proposed drainage systems as viewed from public areas.	Revise if needed and relocate text to SMP Section 4.1.6, Water Quality and Stormwater Management. LID required in SMP Section 4.1.6 and BIMC 15.20, including allowing an outfall only if on-site stormwater management not feasible; however, nothing this specific in BIMC 15.20.
10	4.1.5.10 Regulations – Wetlands	1. All development, development proposals and alterations that are located within or adjacent to shoreline jurisdictional wetlands or their buffers, or that are likely to significantly impact shoreline jurisdictional wetlands shall prepare a wetland analysis pursuant to Subsection B 4.7 10 of Appendix B, of this Master Program. The wetland analysis shall include the wetland rating (using the Washington State Wetland Rating System for Western Washington (2006) or as revised by Ecology), a functional assessment of potential buffers (based on Ecology's best available science for wetlands), and noting of any water features and other critical areas and their related buffers in the proximity of the proposed development. 2. Wetlands will be delineated using the Regional Supplement to the Army Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region or the current Washington State Department of Ecology methodology. The wetland buffer for shoreline wetlands shall be established pursuant to the provisions of Subsection B-10 in Appendix B of this Master Program.	Language provided in critical areas ordinance adopted by reference.

SHORELINE MASTER PROGRAM AMENDMENT

SMP Section: **4.1.5**
Appendix B

Topic: **Critical Areas**

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		3. Alteration of wetlands and their buffers is prohibited, unless: a. Such a prohibition is deemed a violation of constitutional or statutory limitations on regulations of private property; or b. The proponent can conclusively demonstrate to the satisfaction of the Administrator that the impacts are unavoidable. 4. In either case of subsection 3.a or 3.b, above, the proponent shall provide mitigation to achieve no net loss of wetland functions and values, according to an approved mitigation plan prepared consistent with this Master Program, including Section B-4 and B-6 of Appendix B, shoreline-specific Critical Areas Regulations.	

SMP Amendment Proposed Work Plan

November 30, 2017

The following summary of proposed revisions was developed by staff based on topics and issues identified through implementation and permit review since July 2014. The focus of these revisions is largely housekeeping in nature: clerical (correction/consistency), implementation efficiency (clarification/simplification) and integration (of other codes/policies). Revisions are anticipated in almost every section; however, a section is not listed below if only clerical or implementation efficiency revisions are anticipated. **Although the Planning Commission and City Council may consider policy decisions as they arise throughout the process, significant policy changes are not anticipated as part of the amendment.** All revisions must demonstrate consistency with all goals, policies, and designation criteria of the SMP.

SMP Section	Topic	Summary of Proposed Topics to Consider
4.1.5	Critical Areas	Integration of BIMC 16.20 pending Council adoption
Appendix B	Critical Areas	Integration of BIMC 16.20 pending Council adoption
4.2.1	Existing Development (Nonconforming)	Nonconforming Uses, Nonconforming Lots, and Existing Development • Revisit optional approach to consider legally existing structures as conforming structures • Clarify applicability of "most restrictive" clause • Clarify difference between existing (nonconforming) structure and nonconforming use • Clarify consistency between general regulations and specific regulations (SMP 4.2.1.4) • Correct "entirely contained within the building" error (SMP 4.2.1.6.3.1.2.c) • Clarify that existing structures destroyed by natural disasters can be replaced if meeting geologically hazardous area provisions (SMP 4.2.1.6.1.2) • Revisit/clarify single family primary structures alteration/expansion (SMP 4.2.1.6.3.2) – applies only to within shoreline buffer, provide definition of landward, clarify "building configuration," 25 percent of existing building footprint, clarify building area vs. development area, clarify what "bulk dimensions" and "lifetime" mean • Correct numbering structure of SMP 4.2.1.6.5; clarify non-essential residential accessory structures • Clarify SMP 4.2.1.7 – Encumbered and Nonconforming Lots – provide definition of redevelopment, clarify if it applies to critical areas or just critical area buffers, clarify what building area means, clarify if applicant can reduce buffers first (e.g., landslide hazard buffer) before being considered encumbered • Ensure consistency of SMP 4.2.1.7.1.e with critical areas section • Improve consistency of SMP 4.2.1.8 – Aquatic Structures – with Single Family Mitigation Manual • Clarify SMP 4.2.1.8.1 – what is included in "materials and standards"? • Clarify SMP 4.2.1.8.2 – where does it apply and to what? • Provide clarity/detail in SMP 4.2.1.8.1.a – what are thresholds for when conditional use permit required?
4.0	Table 4-1 Table 4-2 Table 4-3	Table 4-1 (Use and Modification Table) • Clarify footnotes (revisit #22 re: mixed use physical separation) • Correct inconsistencies between table and text (e.g., subdivisions)

SMP Section	Topic	Summary of Proposed Topics to Consider
		• Revisit requirement for shoreline conditional use permit for all retaining walls • Clarify primary vs. accessory utilities • Clarify allowance of overwater structures when used as public trails Table 4-2 (Dimensional Standards) • Address missing footnotes (#5 and 7) • Clarify utilities setbacks Table 4-3 (Buffers) • Revise for improved readability and ease of administration • Clarify when “expands to include existing native vegetation applies” • Clarify that all shallow lots (<200 feet deep) are assigned narrower buffer • Clarify how buffer is measured for high bluff properties (i.e., what is between Zone 1 at OHWM and top of bluff) • Clarify criteria for Category A and B lots • Add figure reference and reference to Section 4.1.3 • Clarify what geomorphic classes are or where information about them is located • No change in required buffer widths is anticipated
4.1.2	Environmental Impacts	• Clarify that mitigation follows a sequence/“when mitigation is required” language – if an impact cannot be avoided, mitigation is required • Simplify and clarify applicability section, clarify “development, use, activity” • Move vegetation management regulations to Section 4.1.3 (e.g., 4.1.2.5, Revegetation Standards) • Clarify and emphasize that either use of the Single-Family Mitigation Manual or submittal of a site-specific impact analysis is required; clarify when manual can be used • Delete references that don’t exist • Revisit “in perpetuity” requirement when mitigation is required (SMP 4.1.2.7) • Clarify mitigation and monitoring requirements (SMP 4.1.2.8), consider threshold (e.g., not required for > \$1000) for performance, mitigation/monitoring • Clarify that new impervious surface area requires mitigation (only mentioned in Single-Family Mitigation Manual); better tie to manual • Consider new language that requires prioritizing where mitigation planting is located – has to go where it will have most ecological benefit
4.1.3	Vegetation Management	• Relocate and revise, if needed, vegetation management-related regulations from SMP 4.1.2.5 ○ SMP 4.1.2.5.1 – Revegetation Standards – improve clarity ○ SMP 4.1.2.5.3 – Clarify what “altered or reduced” means; when applicable? ○ SMP 4.1.2.5.4 – Revise for clarity; remove requirement for offsite mitigation to be in Zone 1

SMP Section	Topic	Summary of Proposed Topics to Consider
		• Clarify applicability section, non-retroactive nature of regulations • Clarify which requirements apply to new development vs. existing development • SMP 4.1.3.4 – Exceptions – clarify what is allowed without City review or approval, replace this section with tree and vegetation regulations (including exemption for yard and garden activities) from critical areas ordinance, remove requirement to leave downed hazard tree on site (if left, considered sufficient mitigation) • SMP 4.1.3.5 – Create new section that just explains establishment of shoreline buffers (2 options); revisit HMP requirement and review process; remove references to documents that don't exist or consider programmatic approach to vegetation maintenance by City or other land managers (SOP manual, also referenced in SMP 4.1.3.7) • Provide mechanism for some level of significant tree removal (e.g., develop significant tree removal criteria) • Revisit requirements for vegetation removal/replacement outside shoreline buffer (native and non-native, significant trees) • SMP 4.1.3.6 – Clarify “1/3 2/3” provision, applicable to new development only? • SMP 4.1.3.7 – Clarify applicability, provide consistency with other vegetation maintenance provisions, define “modified area,” delete minor pruning section, refer to critical areas tree and vegetation regulations, revisit requirement for clearing permit, clarify connection to SMP 4.1.4, Land Modification, as referenced, clarify utilities • SMP 4.1.3.7.2 – Consolidate with new section relating to just shoreline buffers, clarify what “dimensions altered” means, clarify requirement for when Zone 1 must be restored • SMP 4.1.3.7.3 – Clarify what “minimum necessary for public use” means, improve connection to Single-Family Mitigation Manual, clarify whether stairs need to be grated and type of mitigation required if not grated • SMP 4.1.3.8.1 and 3 – Revise entire sections for clarity; no changes to size thresholds anticipated • SMP 4.1.3.8.4 – View maintenance – clarify and simplify; reference critical areas tree and vegetation requirements?, delete requirement for Bluff Management Plan • SMP 4.1.3.11 – Shoreline Structure Setback View Requirements – Clarify applicability, relocate option to build in Zone 2 language, correct figure references, simplify language, clarify what constitutes “most waterward point”
4.1.4	Land Modification	• Eliminate requirement for clearing permit for “all clearing” to allow for nominal landscaping activities (e.g., 25 cubic yards/200 square foot thresholds) • Clarify language, better integrate with other sections
4.1.6	Water Quality and Stormwater Management	• Integrate new (2016) stormwater regulations (BIMC 15.20) • Add direct discharge criteria (i.e., when is one allowed? Considered necessary?) • Update wood treatment regulations per agency guidelines • Improve consistency with Single-Family Mitigation Manual
Appendix D	Single-Family Mitigation Manual	• Better integrate into code language – when it can be used and how it relates to vegetation management requirements

SMP Section	Topic	Summary of Proposed Topics to Consider
		• Provide alternatives to rain garden for new impervious surface area; clarify where rain garden must be located when required (inside or outside shoreline buffer) • Update per current agency guidance/requirements (e.g. Corps of Engineers, WDFW)
5.3	Boating Facilities	• Revisit liveaboard threshold (currently 10 percent) • Revisit management and operations (implementation)
6.3	Overwater Structures	• Improve consistency with Single-Family Mitigation Manual and other agency mitigation requirements • Clarify grammar in prohibitions section • Clarify length thresholds (how to determine) • Clarify buoy density
8.0	Definitions	• Add missing definitions (e.g., significant tree, alteration, redevelopment) • Clarify definitions
Appendix A	Shoreline Designation Map	• Correct inconsistencies between paper and GIS maps (one identified) • Correct error (one identified) • No changes to shoreline designations anticipated other than corrections
Appendix E	Special Area Maps	• Include corrected maps • Consider construction limit lines for Manzanita Bay and Fletcher Bay
All	Global edits	• Clerical and implementation efficiency edits anticipated in every section
--	Climate Change/Sea Level Rise	• Incorporate climate adaptation/sea level rise into goals, policies and regulations.
5.2	Aquaculture	• To be included in amendment pending outcome of current limited amendment.

Chapter 18.30

NONCONFORMING LOTS, USES, AND STRUCTURES

Sections:

18.30.005 Intent.

18.30.010 Applicability.

18.30.020 Nonconforming use of land.

18.30.030 Nonconforming structures and buildings.

18.30.040 Conditions of continuance of nonconforming use of structure.

18.30.050 Nonconforming lots.

18.30.060 Nonconforming agricultural use or structure.

18.30.070 Nonconforming manufactured homes.

18.30.005 Intent. 

These regulations address the treatment of lots, uses, and structures that predate some portions of this title and do not conform with at least some provisions of this title. The following sections of the BIMC also address nonconformities, and in the case of conflict between any two or more development standards or criteria, the more specific shall apply.

A. BIMC 16.12.030.C.1, Shoreline Master Program – Nonconforming Uses, Nonconforming Lots, and Existing Development;

B. BIMC 16.20.040.D, Critical Areas – Standards for Existing Development. (Ord. 2011-02 § 2 (Exh. A), 2011)

18.30.010 Applicability. 

This chapter shall apply to structures, uses and lots that become nonconforming as a result of the passage of this title, or any subsequent amendments. (Ord. 2011-02 § 2 (Exh. A), 2011)

18.30.020 Nonconforming use of land. 

A nonconforming use of land may be continued; provided, that:

A. The use is not enlarged, increased, or extended to occupy a greater area of land or structure than was occupied on the date of adoption of this code;

B. The use is not moved in whole or in part to any other portion of the lot or parcel; and

C. If the use ceases for a period of more than 180 days, the subsequent use of the land shall be conforming (this provision shall not apply to any dwelling unit constructed as an affordable housing unit under Chapter [18.21](#) BIMC). (Ord. 2011-02 § 2 (Exh. A), 2011)

18.30.030 Nonconforming structures and buildings. SHARE

A nonconforming structure may remain and be used; provided, that:

A. Changes to the structure that would alter or increase the nonconformity are not permitted.

1. Any vertical or horizontal extension of a nonconforming wall must meet the applicable standards.

2. Adding to the footprint of a nonconforming structure is permitted as long as the addition meets the requirements of BIMC Title [18](#);

B. If moved, the structure shall be made to conform to regulations of this code;

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 (this provision shall not apply to any dwelling unit constructed as an affordable housing unit under Chapter [18.21](#)

BIMC); and

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, if a complete application is submitted for any and all required construction permits within 180 days of the damage or removal.

(Ord. 2011-02 § 2 (Exh. A), 2011)

18.30.040 Conditions of continuance of nonconforming use of structure. SHARE

A nonconforming use of a structure may be continued; provided, that:

A. The structure is not enlarged or moved;

B. It may be changed to another nonconforming use by the hearing examiner;

C. If it is superseded by a conforming use, the nonconforming use may not thereafter be resumed; and

D. If it is discontinued for a period of six consecutive months or for a total of 18 months in any three-year period, it may not thereafter be resumed (this provision shall not apply to any dwelling unit constructed as an affordable housing unit under Chapter [18.21](#) BIMC). (Ord. 2011-02 § 2 (Exh. A), 2011)

18.30.050 Nonconforming lots. SHARE

Any nonconforming single lot, tract or parcel of land that was lawfully created and recorded with the county auditor's office may be used for the purposes permitted by this title notwithstanding the minimum lot area, lot width and lot depth required. (Ord. 2011-02 § 2 (Exh. A), 2011)

18.30.060 Nonconforming agricultural use or structure. SHARE

As of November 9, 2011, all existing structures and heavy use areas are considered conforming. Where a property with an allowed or approved conditional agricultural use is not in conformity with the requirements of this title, the city shall not require that the entire property and existing structures be

brought into compliance with the BIMC as a condition of approval to expand or change the property or its structures. Where an existing agricultural structure or area does not meet a required setback from a property line, the structure or area can be expanded on the side opposite that property line, but only if that expansion does not lengthen any wall of a structure or side of an area that is already nonconforming with the required setback. However, expansions or changes to the agricultural uses or structures will not be approved if they would create a new nonconformity or increase an existing nonconformity. (Ord. 2011-02 § 2 (Exh. A), 2011)

18.30.070 Nonconforming manufactured homes.

A manufactured home that was built before June 15, 1976, and was legally placed and maintained prior to the date of adoption of the ordinance codified in this chapter and does not meet the requirements of this chapter, shall be deemed to be a legal nonconforming building, i.e., nonconforming as to date of construction. (Ord. 2011-02 § 2 (Exh. A), 2011)

BIMC 16.20 – Existing code

D. Standards for Existing Development.

1. Existing Structures and Related Improvements. Structures and related improvements that were legally built or vested prior to the effective date of Ordinance No. 2005-03 that do not meet the setback or buffer requirements of this chapter may continue to exist in their present form, and may be altered, including remodeled, reconstructed, or expanded, if such alteration complies with the provisions of this section.
2. Existing structures, not located in a geologically hazardous area, that were legally built or vested prior to the effective date of Ordinance No. 2005-03 may be altered if:
 - a. There is no change in the footprint of the building;
 - b. The remodel is entirely inside the existing building;
 - c. There is no further encroachment into the buffers required pursuant to this chapter unless a variance is first approved; or
 - d. Any expansion of the building footprint is exclusively on the sides that do not touch the buffers.

3. Existing property improvements other than structures, including driveways, parking areas, yards, play areas, storage areas, and similar improvements that were legally established or vested prior to the effective date of Ordinance No. 2005-03 may be altered if:

- a. There is no change in the location of the improvement;
- b. Any alteration of the improvement is entirely inside of the existing boundaries of the improvement;
- c. There is no further encroachment into the buffers unless a variance is first approved; or
- d. Any increase in the area of the improvement is exclusively on the sides that do not touch the buffers.

4. Alterations permitted by this section shall not be exempt from applicable city review or permit requirements or other applicable city codes.

commencement of reconstruction. A one (1) year extension may be granted, provided that a written request is submitted no later than twenty-one (21) days prior to either deadline and provided that the owner is not responsible for the delay.

3. An existing use designated by the adoption of an applicable amendment hereto as a conditional use that lawfully existed prior to the adoption of the Program or the adoption of an applicable amendment hereto and which has not obtained a conditional use permit, shall be considered a legal nonconforming use and may be continued subject to the provisions of this section without obtaining a conditional use permit.
4. A structure for which a variance has been issued but which does not comply with applicable requirements of this Program as amended shall be considered a legal existing structure and the requirements of this section shall apply.
5. Any permitted remodel or expansion shall not cause adverse impacts to shoreline ecological functions and/or processes.

4.2.1.5 Regulations - Nonconforming Uses

1. Nonconforming uses shall not be altered or expanded in any way that increases the nonconformity.
2. If a nonconforming use is discontinued for twelve (12) consecutive months, any subsequent use shall be conforming; except that if a nonconforming use is operated within a nonconforming structure that is accidentally damaged or destroyed and reconstruction is proposed under Section 4.2.1.6.1(3), then the use may be re-established within the same time period as the reconstruction for the nonconforming structure pursuant to Section 4.2.1.4(2)
3. A nonconforming use cannot be changed to another nonconforming use.
4. Change of ownership, tenancy, or management of a nonconforming use shall not affect its nonconforming status, provided that all provisions are met.

4.2.1.6 Regulations – Existing Development

4.2.1.6.1 General Provisions – Nonconforming Structures

1. Existing structures may be maintained, repaired, renovated, or remodeled provided all the following is met:
 - a. Changes to the structure that would alter or increase the nonconformity are not permitted;
 - i. Any vertical or horizontal extension of a wall must meet the provisions of this program.

- ii. Adding to the footprint of an existing structure is permitted as long as the addition meets the requirements of this program.
 - b. There is no further encroachment into the buffers unless allowed by this program or through an approved variance;
 - c. Renovations or remodels are entirely contained within the building;
 - d. If moved, the structure shall be made to conform to regulations of this program.
2. If an existing primary structure is damaged or destroyed by fire, explosion, earthquake, flooding or other casualty, it may be reconstructed to the bulk dimension existing immediately prior to the catastrophic event, provided the use is conforming or meets the provisions of Section 4.2.1.4, Regulations-General, and 4.2.1.5, Regulations – Nonconforming Uses, above.
- a. This provision shall not apply to structures that are destroyed due to a criminal act initiated by the property owner; and
 - b. The replacement structure shall not warrant new shoreline stabilization for the life of the new structure.
 - c. The replacement structure meets geologically hazard provision for existing development in Section 4.1.5, Regulations – Nonconforming Uses, and Appendix B.

4.2.1.6.2 Existing Structures – Commercial and Industrial (Primary and Accessory)

- 1. Existing commercial structures shall not be altered or expanded in any way that increases the nonconformity without first obtaining a variance.
- 2. Reconstruction of existing commercial structures and buildings intentionally demolished or destroyed in any other manner than described in Section 4.2.1.6.1(2), shall be in conformance with all standards of the Program.

4.2.1.6.3 Existing Structures – Residential Single-Family: Primary Structures

- 1. If an existing primary residential structure is damaged or destroyed as described in Section 4.2.1.6.1(2), the existing primary residential structure configuration may be altered or expanded pursuant to subsections 4.2.1.6.3(2-4).
- 2. An existing primary residential structure may be altered or expanded to the extent allowed by this Program, provided:
 - a. Enlargement or expansion of the building configuration, including any new impervious surfaces located within the Shoreline Buffer shall be located landward of the existing or original building footprint, only one such

expansion may occur within the lifetime of the development, and the expansion shall not exceed:

- i. The allowed building area for Point Monroe District, Section 5.9.6(2).
 - ii. The allowed building area for encumbered lots, Section 4.2.1.7.
 - iii. For structures not meeting i or ii; twenty five percent (25%) of the existing building footprint.
- b. Any vertical expansion must meet height requirements of this Program;
 - c. Remnant foundation and/or impervious surfaces located within the Shoreline Buffer shall be removed;
 - d. Mitigation of the shoreline buffer is provided in accordance with Section 4.1.2, Environmental Impacts;
 - e. The remodel or expansion shall not cause adverse impacts to shoreline ecological functions and/or processes; and
 - f. All other applicable standards and provisions are met, including regulations of this Program, the Bainbridge Island Municipal Code, the septic system requirements of the Kitsap Health District, and any state and federal laws.
3. Permitted expansion of an existing structure shall not substantially impact the existing views of the water from primary waterfront residences or public rights-of-way to any greater degree than a fully conforming structure.
 4. Increases in structure footprint outside of the Shoreline Buffer shall be allowed, even if all or a portion of the existing footprint is within the Shoreline Buffer. In such case, the addition or enlargement shall be treated as a separate building or structure in determining conformity to all of the requirements of this Program.

4.2.1.6.4 Existing Structures – Multifamily Residential: Primary Structures

1. If an existing primary multifamily residential structure is damaged or destroyed by fire, explosion, earthquake, flooding or other casualty, it may be reconstructed to the bulk dimension existing immediately prior to the catastrophic event, including building height and footprint of the structure.
 - a. This provision shall not apply to structures that are destroyed due to a criminal act involving the property owner; and
 - b. The replacement structure shall not warrant new shoreline armoring for the life of the new structure; and
 - c. The reconstruction shall not cause adverse impacts to shoreline ecological functions and processes.
 - d. The replacement structure meets geologically hazard provision for existing development in Section 4.1.5, Critical Areas, and Appendix B.

Exhibit 1

- i. Property loss of any habitable structures or their necessary supporting infrastructure on-site or;
- ii. Risk to any off-site structures or property of any kind; and
- d. Proposed buildings shall be constructed using appropriate engineering methods that respond to the geologic characteristics specific to the site in order to achieve the highest standard of safety feasible.
- e. The proposed development shall not decrease the factor of safety for landslide occurrences below the limits of 1.5 for static conditions and 1.0 for dynamic conditions. Analysis of dynamic conditions shall be based on the minimum horizontal acceleration for the probabilistic maximum considered earthquake as established by the currently adopted version of the International Building Code.
- f. The proposed activity shall not further degrade the values and functions of the associated critical areas.

2. Redevelopment of existing structures

- a. If an existing structure is damaged or is intentionally demolished the new structure must meet all the provisions of a new structure.
- b. Structural alteration to an existing legally constructed structure that does not increase the structural footprint and are determined by the City Engineer as having a minimal potential for increasing landslide hazard and meets the minimum buffer deminsions in B-9(E)(3)(i);

3. Development Design and Location. The following requirements shall apply to any land or vegetation modification or construction within a landslide hazard area and/or its buffer as described herein:

- a. Buffer Requirement: A buffer equal to the height of the slope or fifty (50) feet, whichever is greater, shall be established from all edges of a landslide hazard area except where no other reasonable alternative exists, reduction may be allowed as follows:
 - i. Buffer Reduction.
 - A. Buffer reductions may be allowed provided a critical areas report, pursuant to Section B-9(D)(1)(2) and any other related section of Appendix B, demonstrates to the Director that the buffer reduction will not reduce the level of protection to the proposed development, adjacent properties, and other associated critical areas as required by Section B-9(E)(1).
 - B. For slopes forty (40) percent or greater the buffer may in no case be reduced to less than ten (10) feet. A decision by the Director to reduce buffer shall be based on a critical areas report pursuant Section B-9(D)(1)(2) that may includes a third-party independent review by a qualified geotechnical engineer pursuant to BIMC Section B-9(D)(1)(d);
 - ii. Increased Buffer. The buffer may be increased beyond that specified in subsection (a) above if the Director determines a larger buffer is necessary to prevent risk of damage to proposed development, adjacent development, and uses and the associated critical areas;
 - iii. Building Setback. All building and structures shall have a minimum setback of (15) feet from the outer edge of the buffer around landslide hazard areas to allow for construction activity; and
 - iv. Vegetation Retention. Unless otherwise provided or as part of an approved alteration, removal of vegetation from an erosion or landslide hazard area or related buffer shall be prohibited.

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demonstrates through a site assessment or functional analysis that the interrupted buffer area is functionally isolated from the critical area. The director shall consider the hydrologic, geologic, and/or biological habitat connection potential and the extent and permanence of the physical separation.

2. Fish, Wildlife and Wetland Restoration Activities. Fish, wildlife, and/or wetland restoration or enhancement activities not required as project mitigation; provided, that the project is approved by the jurisdictional agency (Washington State Department of Fish and Wildlife, U.S. Army Corps of Engineers, or other appropriate local, state, federal, or tribal jurisdiction).

16.20.050 Standards for existing development

A. Existing structures and related improvements. Structures and related improvements that were legally built or vested prior to the effective date of Ordinance No. 2017-17 that do not meet the requirements of this chapter may continue to exist in their present form, and may be altered, including remodeled, reconstructed, or expanded, if such alteration complies with the provisions of this Section and all other applicable sections of this Chapter.

B. Existing buildings that were legally built or vested prior to the effective date of Ordinance No. 2017-17 may be altered only one time within the lifetime of the structure and:

1. The expansion of the footprint is outside a landslide hazard area or landslide hazard area setback unless required for safety or seismic upgrades;
2. Any expansion of the footprint is located only within a critical area buffer. No expansion of the footprint is allowed within a wetland or fish and wildlife habitat conservation area;
3. Any expansion of the footprint within a critical aquifer recharge area is located outside the Native Vegetation Protection Area pursuant to BIMC 16.20.090.E.
4. Cantilevers over critical areas are not allowed;
5. The expansion of the footprint at ground level does not exceed 500 square feet;
6. Any expansion of the footprint is used only as indoor living space or to accommodate accessibility;
7. Any expansion of the footprint is no closer to the critical area than the existing footprint; and
8. 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 of this Chapter.

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C. Existing property improvements other than buildings, including driveways, parking areas, yards and landscaped areas, play areas, storage areas, decks less than 5 feet in height, patios, and similar improvements that were legally established or vested prior to the effective date of Ordinance No. 2017-17 may be altered if:

1. There is no change in the location of the improvement;
2. Any expansion of the footprint is located only within the required buffer. No expansion of the footprint is allowed within the critical area itself and cantilevers over critical areas are not allowed;
3. Any expansion of the footprint is no closer to the critical area than the existing footprint; and
4. Any expansion of the footprint within a critical aquifer recharge area is located outside the Native Vegetation Protection Area pursuant to BIMC 16.20.090.E.

D. Buffer modifications pursuant to BIMC 16.20.110 and 16.20.140 shall not be granted for existing development.

E. Alterations permitted by this Section must comply with other applicable city code or land use review requirements and require submittal of a critical areas permit application in accordance with the permit and review procedures required for the affected critical area(s).

16.20.060 Administration

A. Interpretation. The provisions of this chapter shall be held to be minimum requirements in their interpretation and application and shall be liberally construed to serve the purposes of this chapter.

B. Procedures. The director is authorized to adopt written procedures for the purpose of carrying out the provisions of this chapter.

C. Inventory of Critical Areas. This chapter shall apply to all critical areas located within the jurisdiction of the city. The approximate location and extent of these areas on Bainbridge Island is displayed on various inventory maps available at the city's Department of Planning and Community Development. Maps and inventory lists are guides to the general location and extent of critical areas. Critical areas not shown are presumed to exist on Bainbridge Island and are protected under all the provisions of this chapter. In the event that any of the designations shown on the maps or inventory lists conflict with the site-specific conditions, site-specific conditions shall control.

D. Suspension – Revocation. In addition to other penalties provided for elsewhere, the director may suspend or revoke a permit if it is found that the applicant or permittee has not complied