



**Planning Commission
Regularly Scheduled Meeting
Thursday, February 8, 2018
7:00 – 9:00 PM
Council Chamber
280 Madison Ave N
Bainbridge Island, WA 98110**

AGENDA

- 7:00 PM CALL TO ORDER
 Call to Order, Agenda Review, Conflict Disclosure
- 7:05 PM REVIEW MINUTES
 November 9, 2017
 November 16, 2017
 November 30, 2017
- 7:20 PM PUBLIC COMMENT
 Accept public comment on off agenda items.
- 7:35 PM [SHORELINE MASTER PROGRAM AMENDMENT](#)
 Christy Carr, Senior City Planner
- 8:15 PM WALLACE COTTAGES SUBDIVISION ([PLN50589 SUB](#))
 Recommendation
 Kelly Tayara, Associate City Planner
- 8:55 PM NEW/OLD BUSINESS
- 9:00 PM ADJOURN

*****TIMES ARE ESTIMATES*****

Public comment at meeting may be limited to allow time for Commissioners to deliberate. To provide additional comment to the City outside of this meeting, e-mail us at pcd@bainbridgewa.gov or write us at Planning and Community Development, 280 Madison Avenue, Bainbridge Island, WA 98110

For special accommodations, please contact Jane Rasely, Planning & Community Development 206-780-3758 or at jrasely@bainbridgewa.gov

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

PUBLIC COMMENT – Accept public comment on off agenda items

OVERVIEW OF EXISTING TREE & CLEARING REGULATIONS

NEW/OLD BUSINESS

ADJOURN

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

Chair J. Mack Pearl called the meeting to order at 7:05 PM. Commissioners in attendance were Jon Quitslund, William Chester, Michael Killion, Lisa Macchio, Kimberly McCormick Osmond and Don Doman. City Staff present were Planning Director Gary Christensen, Senior City Planner Jennifer Sutton and Administrative Specialist Jane Rasely who monitored recording and prepared minutes.

The agenda was reviewed. Chair Pearl mentioned there would be an addition to the agenda for a Planning Commission liaison to the Island Center Steering Committee. There were not any conflicts noted.

Planning Director Gary Christensen briefed the Commission on the Island Center Subarea Planning process and stated 9 applicants had been nominated to the Steering Committee. Senior City Planner Jennifer Sutton briefed the Commissioners on the expected workload. Commissioner Killion stated his desire to be part of the Steering Committee to expand the type of work he performed as a member of the Planning Commission. Everyone agreed that Commissioner Killion should be the liaison.

Commissioner Macchio asked about the Planning Commission's workload for 2018. Mr. Christensen stated he would bring that information forth at a future meeting.

PUBLIC COMMENT – Accept public comment on off agenda items

None.

OVERVIEW OF EXISTING TREE & CLEARING REGULATIONS – Study Session

Senior City Planner Jennifer Sutton introduced and provided an overview of the work the Tree and Low Impact Development Ad Hoc Committee work. She then reviewed how the current regulations worked (see attached).

NEW/OLD BUSINESS

None.

ADJOURN

The meeting was adjourned at 8:35 PM.

Approved by:

J. Mack Pearl, Chair

Jane Rasely, Administrative Specialist

CALL TO ORDER – Call to Order, Agenda Review, Conflict Disclosure
PUBLIC COMMENT – Accept public comment on off agenda items
SMP GENERAL AMENDMENT – Study Session
NEW/OLD BUSINESS
ADJOURN

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

Chair J. Mack Pearl called the meeting to order at 7:00 PM. Planning Commissioners in attendance were Jon Quitslund, William Chester, Michael Killion, Lisa Macchio, Kimberly McCormick Osmond and Don Doman. 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 reported.

PUBLIC COMMENT – Accept public comment on off agenda items

None.

Chair Pearl and Director Gary Christensen apologized to the citizens attending the meeting for the confusion regarding the meeting's start time.

SMP GENERAL AMENDMENT – Study Session

Senior City Planner Christy Carr gave an overview of the process for the general amendment.

PUBLIC COMMENT

Peter Voorhies – Spoke about the need to give reasonable notice of meetings.

Ms. Carr continued with the study session of Critical Areas Ordinance, Vegetation Management and proposed next steps. (See attached materials provided at meeting.)

PUBLIC COMMENT

Ed Rymarz - Spoke about FEMA not letting a flooded home be rebuilt.

Rich Weaver – Spoke about not being allowed to provide additional protection to your house if you have to rebuild.

Jack Sutherland – Spoke about having previously conforming homes being classified as non-conforming after the 2014 SMP was passed, designation of Shoreline Residential Conservancy and valuation.

John Greenway - Thanked the Planning Commission for addressing the setback of the waterfront.

Dick Haugen – Asked for a summarization of the information for the public. He also mentioned how hard it is to follow all the changes being made over a long period of time.

Peter Voorhies - Stated that a house that was conforming at the time it was built should never be non-conforming.

Keith Butler – Stated the SMP document did not meet usability for practical application. He suggested software programs for analyzing readability.

Rob Hershberg – Asked for the depths of the buffer zones to be reevaluated.

Carlton Anderson – Stated there was no place in the current SMP for anyone to enjoy living close to the sea.

Colin Baxter – Stated the SMP Road Ends program had been a disturbance to his family by creating trespassers on their property and asked for help to end what he called the “siege” his family was under.

Dick Haugen – Asked when stage two of the review would begin. Ms. Carr stated hopefully at the beginning of 2018.

NEW/OLD BUSINESS

Director Gary Christensen updated the Commissioners on the Department work plan as well as Comprehensive Plan implementation. (See attached power point presentation).

ADJOURN

The meeting was adjourned at 9:38 PM.

Approved by:

J. Mack Pearl, Chair

Jane Rasely, Administrative Specialist

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



DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

MEMORANDUM

Date: February 8, 2018
To: Planning Commission
From: Christy Carr, AICP
Senior Planner
Subject: SMP Amendment – Nonconforming/Existing Structures

The February 8, 2018 meeting will focus on nonconforming/existing structures (Guiding Theme 1 and 2). [Note: Whether or not to revisit specific performance standards (Guiding Theme 7) will be discussed at a future meeting due to time constraints.] **Specific proposed revisions to policy and regulatory language will be provided by staff at a future meeting, based on the outcomes of the policy discussion. It is anticipated the SMP Amendment will be on the next regularly scheduled meeting, February 22, 2018.**

The following policy questions are proposed to be discussed:

- Consideration of optional approach to define existing development as “conforming” (need to be specific about structures vs. uses) – note, City’s SMP uses the term “existing development,” but does not use the optional approach
- Clarifying applicability language for existing development
- Policy direction for **repair, replacement (voluntarily demolished or unintentionally destroyed) and expansion** of all types of existing structures.
 - Regulations for voluntarily demolished structures – primary, accessory, and essential accessory
 - Regulations for unintentionally destroyed structures
 - Regulations for expanding existing structures – primary, accessory, and essential accessory – that do not conform to current SMP regulations (e.g., located within shoreline buffer, do not meet 30 percent side yard setback)
 - Regulations for expansion and reconstruction of structures within geologically hazardous areas and their setbacks (top and bottom of slope) whether voluntarily or unintentionally destroyed

Background material to frame the discussion:

- SMP Handbook Chapter 14 – Legally Existing Uses and Development
 - <https://fortress.wa.gov/ecy/publications/parts/1106010part14.pdf>
- SMP Handbook Chapter 4 – No Net Loss of Shoreline Ecological Functions
 - <https://fortress.wa.gov/ecy/publications/parts/1106010part4.pdf>
- WAC 173-27-080 – Nonconforming use and development standards

- <http://apps.leg.wa.gov/WAC/default.aspx?cite=173-27-080>
- Excerpts from City's SMP – word search “nonconforming” highlighted – attached, section titles listed below:
 - Section 1.3.5.2 – Applicability of Bainbridge Island Shoreline Master Program (page 18)
 - Section 3.1 – Shoreline Designation Policies and Regulations (General) (page 22)
 - Section 4.1.3.4 – Vegetation Management – Regulations – Exceptions (page 77)
 - Section 4.1.3.5.9 – Vegetation Management – Regulations – Special Provisions for Point Monroe District (page 81)
 - **Section 4.2.1 – Nonconforming Uses, Non-Conforming Lots, and Existing Development (entire section provided, focus on applicability, goal, policies and existing development sub-sections – existing uses and lots will not be discussed) (page 121-128)**
 - Section 5.9.5 – Regulations – Residential Development Overwater (page 187)
 - Section 8.0 – Definitions (no net loss, nonconforming development, normal maintenance, normal repair)(page 247-248)
 - Appendix B-9 – Critical Areas – Geologically Hazardous Areas – Redevelopment of existing structures (page 293)
- Excerpts from the SMP Update process (2012-2013 only):
 - At its February 2, 2012 study session, the Planning Commission considered new legislation provided in ESSB 5451 that provides the discretion to local governments to include existing development as “conforming,” provided any changes to the structure must meet the adopted standards. The Commission agreed that **retaining the terminology and provisions** of this section would provide more certainty and the same protection to existing development that the provisions of 5451 would provide for residential development.
 - At its March 13, 2013 study session, Council focused primarily on issues related to nonconformity, including whether terminology other than “non-conforming” should be used in the SMP Update. The Council **previously had made a preliminary recommendation to continue using the concept and term “non-conforming,” rather than using the discretionary option** offered by SSB 5451. After further discussion, the Council **amended their recommendation, and directed staff to use the term “existing development” in the SMP Update to refer to legally permitted development that does not meet development standards in the revised code.** This is the same term used in the Critical Areas Ordinance.
 - At its March 13, 2013 study session, the Council also discussed the current and proposed SMP regulations relating to nonconforming structures, and reviewed how such structures are treated by shoreline, critical areas and zoning regulations. After considerable discussion, the Council agreed to **retain the provision that allows structures destroyed by an accident or natural disaster to be rebuilt in the same footprint.** However, the Council **recommended that structures that are voluntarily demolished by a property owner should be required to be rebuilt to conforming standards.** Council also agreed that **limited expansion within the buffer and away from the water would continue to be allowed for all existing primary single-family residences.**
 - At its March 13, 2013 study session, approved Council motions included:
 - I would move that we set the threshold for rebuilt if demolished voluntary at 0%
 - I move that a similar if not literally lifting out of the CAO restriction on rebuilding adjacent to a critical slope is inserted in the SMP to take care of that gap (staff presumes this means the Council's intent was to not allow

reconstruction of existing structures in geologically hazardous areas and their buffers)

Recommended Planning Commission Action:

- Review background materials
- Consider and be prepared to discuss policy questions; a goal will be to complete a table similar to what is shown below. *Staff will populate the table with the existing regulations for use at the meeting.*

Structure Type	Action			
	Repair	Replacement (Demolished)	Replacement (Destroyed)	Expansion
Single family primary residential structure				
Single family accessory structure				
Single family essential accessory structure ¹				

1. Single family essential accessory structure definition: An accessory structure that contains a use or is intended for a use that is essential to a single-family residential principal use. The following structures shall be considered an essential residential structure: a garage or carport, one septic system (including one tank and one on-site septic drainfield), one well house and associated well head, and existing decks attached to the primary structure.

2. The provisions of the Program apply to new development and activities and are not retroactive. 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 may be maintained, repaired, and remodeled if destroyed or damaged by natural causes as provided in **Section 4.2.1 Nonconforming Uses, Nonconforming Lots, and Existing Development**. 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 Chapter 90.58 RCW, the Shoreline Management Act and this Shoreline Master Program. All uses, even those not meeting the definition of development, are subject to the provisions and development regulations of this Shoreline Master Program, even though a permit may not be required.
3. Any person wishing to undertake activities constituting “development” within shoreline jurisdiction shall apply to the Administrator for a Shoreline Permit. Based on the provisions of this Master Program, the Administrator shall determine if a Letter of Exemption, a Substantial Development Permit, a Shoreline Conditional Use Permit, and/or a Shoreline Variance is required. Substantial development shall not be undertaken within the jurisdiction of the Act and this Master Program unless a Substantial Development Permit has been obtained and the appeal period has been completed and any appeals have been resolved and/or the project proponent is allowed to proceed under the provisions of the Act or by court order. “Substantial development” shall be defined as it is by the Act (RCW 90.58.030) and supplementing provisions of the Washington Administrative Code (WAC 173-27-040).
4. Developments exempt from a Substantial Development Permit, which are outlined in BIMC Section 2.16.165, shall require a Letter of Exemption. A project that qualifies as “exempt development” may also require a Shoreline Conditional Use Permit, and/or a Shoreline Variance.
5. This Master Program shall apply to every individual, firm, partnership, association, organization, corporation, local or state governmental agency, public or municipal corporation, or other entity which develops, owns, leases or administers lands, wetlands, or waters that fall under the jurisdiction of the Act.
6. Applicability of this Master Program to federal lands and agencies shall be consistent with WAC 173-27-060.

1.3.6 Program provisions

1. Exempt developments shall not be undertaken within the jurisdiction of the Act and this Master Program, unless a Letter of Exemption has been obtained documenting that the

3.0 Shoreline Designation Policies and Regulations

3.1 General

The Master Program establishes seven shoreline designations based on a combination of existing shoreline features and conditions and types of existing and potential future use. When applied to geographic areas of the island, these designations form an overlay for addressing shoreline considerations to the City's land use regulations. Uses which are consistent with a particular designation are encouraged, while uses which are in conflict are discouraged or prohibited. A conditional use process is available when further review is needed to determine whether the use is compatible with the particular designation at the proposed site. Table 4.1, Shoreline Use and Modification Table, provides a summary of uses in relation to the various shoreline designations. Legally existing uses and activities which are incompatible with their shoreline designation are subject to provisions for shoreline uses and structures which do not conform to the SMP. (See Section 4.2.1, Nonconforming Uses, Non-Conforming Lots, and Existing Development)

Shoreline Designation Map

The official Bainbridge Island Shoreline Designation Map (Appendix A) shall be in the custody of the Department of Planning and Community Development and shall be available for public inspection during normal business hours.

The purpose of the map is to depict those areas of Bainbridge Island within the jurisdiction of the Master Program and the various shoreline designations.

Designation Boundaries

Where the shoreline jurisdiction or designation is uncertain, the official shoreline designation map shall be used to determine boundary location. If the conflict cannot be resolved using the shoreline designation map, the following rules shall apply:

1. Boundaries indicated as approximately following the center lines of streets, highways, alleys or other roadways shall be construed to follow such center lines.
2. Boundaries indicated as approximately following lot, fractional section, or other subdivision lines shall be construed as following such subdivision lines.
3. Boundaries indicated as parallel to or extensions of features identified in subsections 1 and 2 above shall be so construed.
4. When not specifically indicated on the Shoreline Designation Map, distances shall be determined by the scale of the map.
5. If there is no designation on the map, then the Shoreline Residential Conservancy designation applies.

Where existing physical or cultural features are at variance with those shown on the Shoreline Designation Map and cannot be determined with certainty by applying subsections 1 through 4

wide processes are not compromised. Trimming and pruning are generally preferred over removal of native shoreline vegetation.

10. Develop specific regulations for Point Monroe, based on vegetation and management practices appropriate for dune communities, sand spits, barrier beaches, barrier estuaries or barrier lagoons.

4.1.3.4 Regulations – Exceptions

1. Vegetation management standards shall not apply retroactively to existing lawfully established conforming and **nonconforming uses and developments**, including maintenance of existing residential landscaping, such as lawns and gardens. Property owners are strongly encouraged to voluntarily improve shoreline vegetation conditions over the long term.
2. Existing buffers and setbacks that have been established through previously approved subdivisions and indicated on the face of an approved plat shall be recognized and adhered to.
3. The following shall be exempt from the provisions of Section 4.1.3.
 - a. Maintenance trimming of vegetation that has a main stem or supporting structure which is less than three (3) inches in diameter; except that tree topping or other vegetation removal is not exempt.
 - b. Buffer enhancement through the removal of noxious or invasive weeds, provided the following are met:
 - i. The vegetation removal is based on consultation with the Kitsap County Noxious Weed Board or the species being removed are on the Washington State Noxious Weed List (WAC 16-750, or its successor); and
 - ii. The vegetation removal is conducted in a manner consistent with best management practices (BMP); and
 - iii. Replanting occurs in the disturbed area in accordance with Section 4.1.2.5, Revegetation Standards.
 - c. Removal of hazard trees, as defined in Appendix B, where a report by an arborist or other qualified professional demonstrates to the satisfaction of the Administrator that trimming is not sufficient to address the hazard provided:
 - i. Mitigation is provided in accordance with Section 4.1.2, Environmental Impacts, including:
 - A. Requiring that the downed tree be retained on the site to provide or enhance wildlife or marine habitat; and/or
 - B. When possible, require that the hazard tree be topped for safety and remain as a wildlife snag; or
 - ii. When a hazard tree is located in a geologically hazardous area, the applicant shall submit a Bluff Management Plan pursuant to Section 4.1.5, Critical Areas. The hazard tree may be removed prior to the approval of the plan if it is necessary to protect life and property.

- d. Procedures for review and approval of allowed activities occurring under the scope of the SOP, including procedures for documenting activities.
- 8. Minor vegetation removal outside the shoreline buffer or site-specific vegetation management area on a developed property not associated with new construction may be allowed, as provided in this program with an approved clearing permit provided:
 - a. The Administrator may grant approval of minor vegetation clearing if it meets the provisions of this Program and the following:
 - i. The minor vegetation clearing allowed within a three (3) year period will include an area no greater than 200 square feet in area and/or no more than 3 non-significant trees per 20,000 square feet up to a maximum of six (6) trees; and
 - ii. Native vegetation will not be removed from the Shoreline Buffer or Vegetation Management Area; and
 - iii. All applicable standards of an approved Vegetation Management Plan are met; and
 - iv. The replanting is performed pursuant to Section 4.1.2.5, Revegetation Standards; and
 - v. A Bluff Management Plan is provided pursuant to Section 4.1.5, Critical Areas for any vegetation alteration in a geologically hazardous area.
 - b. Proposed clearing must meet the provisions of Sections 4.1.2, Environmental Impacts and 4.1.4, Land Modification.
- 9. **Special Provisions for Point Monroe District.** Shoreline Buffers or Site-specific Vegetation management Areas are not required for properties located in the Point Monroe District; the following specific vegetation provisions shall apply:
 - a. All properties in the Point Monroe District shall retain existing native vegetation and shall be subject to a Point Monroe vegetation management area (PVMA).
 - b. The PVMA shall include areas that are:
 - i. Within thirty (30) feet of the OHWM and within the required side yard and the salt marsh fringe; and
 - ii. Outside any designated development area as approved pursuant to Section 5.9.6(2).
 - c. The PVMA shall be managed and maintained in vegetation communities appropriate to dune, sand spit, barrier beach, barrier estuary, or barrier lagoon, including salt marsh.
 - d. Developed properties shall retain existing native vegetation (including dune grass and salt marsh plant communities) in those areas that are not developed with legally established impervious surfaces.
 - e. Any new development or alterations and expansion of **existing development** shall assess impacts to existing vegetation and meet the no net loss standard pursuant to Section 4.1.2, Environmental Impacts.

resources, or to enhance public access to the shoreline. Beach enhancement is prohibited if undertaken upland of Priority Aquatic designation.

4.2 General Use

4.2.1 Nonconforming Uses, Non-Conforming Lots, and Existing Development

4.2.1.1 Applicability

This section applies to shoreline uses and/or structures that were lawfully established or constructed prior to the effective date of the initial adoption of the Master Program (November 26, 1996) or its amendments, but which do not conform to present regulations or standards of the Master Program.

4.2.1.2 Goal

It is the purpose of this program to recognize legally established primary residential structures, and to allow them to be maintained, repaired, remodeled, replaced and in some cases expanded in conformance with these rules. 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.

It is further the purpose of this program to ultimately, over time, have uses and commercial structures conform to the provisions of this program. Over time, uses and commercial structures that do not conform to the standards of this program should be phased out as uses cease or redevelopment of structures occurs.

Note: Existing structures and uses that do not conform to this Program are not required to meet its requirements, unless the owner proposes changes to a structure or use that would require review under this Program.

4.2.1.3 Policies

1. Lawfully constructed commercial and industrial structures shall be allowed to be repaired, maintained, and remodeled provided that the alteration does not increase the nonconformity.
2. Lawfully constructed structures, established uses, public facilities, transportation structures, and/or lots of record located within the shoreline jurisdiction prior to the effective date of the Master Program but which do not conform to the present policies, regulations or standards, shall be allowed to continue and be repaired and maintained.
3. Lawfully constructed residential structures may be repaired, maintained and remodeled provided the alteration meets the goals and provisions of this program.

4. Lawfully constructed residential structures may be expanded in some circumstances, provided the expansion will not result in adverse impacts to shoreline ecological functions and processes, and mitigation is provided.
5. Once discontinued, re-establishment of nonconforming uses located in the shoreline jurisdiction shall be restricted.
6. Lawfully constructed commercial structures that are located in the shoreline jurisdiction are to be phased out over time. Depending on the extent and intensity of the nonconformity, a primary residential structure and primary appurtenance, may be allowed certain alteration or expansion, provided that adverse impacts to shoreline ecological functions and shoreline processes are mitigated or restored.
7. Lawfully constructed structures that are destroyed by fire, explosion, flood, or other casualty may be restored or replaced without increasing or expanding the nonconformity, and are encouraged to decrease nonconformity. Legally established overwater structures that are destroyed may be reconstructed to the same size, but the configuration may be altered to reduce the impact to the shoreline environment provided the size of the nonconformity is not increased. Such redevelopments may be permitted provided that impacts to shoreline functions and processes are mitigated or restored, and the reconstruction application is submitted within two years of the date of destruction.
8. Provisions for reconstruction of a lawfully constructed residential house shall allow certain expansions of the existing structure when it can be demonstrated that the expansion will not result in adverse impacts to shoreline ecological functions and shoreline processes are mitigated or restored.
9. Legally created nonconforming lots of record may be developed provided that adverse impacts to shoreline ecological functions and shoreline processes are mitigated or restored.
10. Redevelopment of nonconforming public rights-of-way and associated existing transportation structures may be permitted for purposes of facilitating essential public access, development of public trails and/or public shoreline access.

4.2.1.4 Regulations – General

1. Nonconforming uses and developments and/or existing buildings and structures that were lawfully constructed or existed prior to the effective date of initial adoption of this Program (November 26, 1996), or its amendments, but which do not meet the specific standards of this Program, may be continued subject to the provisions of this section; provided that shoreline modifications shall conform to Section 6.1, General Shoreline Modification Provisions, and Section 6.2, Shoreline Stabilization.
2. A complete application for any reconstruction under this section must be submitted within two (2) years of the date of damage or removal, and upon approval of the application, redevelopment must be completed within one (1) year of the

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.

2. An existing primary multifamily residential structure or portion thereof may be reconstructed, altered, or expanded, including the footprint and/or the height increased, to the extent allowed by this Program, if the following are met:
 - a. Public access is provided pursuant to Section 4.2.4.6, Regulations – Public Access Design and Location Standards; and
 - b. Mitigation of the shoreline buffer is provided to meet no net loss, as detailed in Section 4.1.2, Environmental Impacts, including revegetation standards in Section 4.1.2.5(3).

4.2.1.6.5 *Existing Structures – Residential: Accessory Structures*

1. If an existing residential accessory structure is damaged, destroyed or intentionally demolished, the reconstruction shall be in conformance with all standards of the Program, except:
 - a. An existing essential single family residential accessory structure may be reconstructed as follows:
 - b. Replacement structure is the same bulk dimension as the existing structure.
 - c. Replacement structure may be located within Zone 2 provided mitigation occurs in accordance with 4.1.2.5, Regulations – Revegetation Standards.
 - d. Attached decks essential to a single family residence may be replaced in the same location.
 - e.. 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.

4.2.1.7 Regulations – Encumbered and Nonconforming Lots

1. Single-family development and redevelopment, except in the Point Monroe District, that is proposed on a legal nonconforming lot located in the shoreline jurisdiction or proposed for a shoreline property that is significantly encumbered by shoreline or critical area buffers, may be allowed without a shoreline variance when the following criteria are met:
 - a. A lot contains a building area of 2,500 square feet or more available for a single-family residence and normal appurtenances and unrestricted by buffers from shorelines or critical areas shall comply with the provisions of this Program. The building area means the entire area that will be disturbed to construct the home, normal appurtenances (except drainfields), and landscaping; or
 - b. A lot that does not meet the requirement of subsection 1.a above, shall meet the following:

- i. Landslide hazard provisions of Section 4.1.5, Critical Areas, and Appendix B and provide the maximum buffer dimension feasible for critical areas; and
- ii. Provide a building area not to exceed 2,500 square feet with maximum lot coverage of 1,200 square feet. The building area shall be located on the portion of the lot providing the maximum Shoreline Buffer dimension with consideration given to view; and
- iii. All single-family residential development approved under this section shall meet the shoreline structure view setback provisions in Section 4.1.3.11, Regulations – Shoreline Structure Setback View Requirement; and
- c. The area between the structure and the shoreline and/or critical area shall comply with revegetation standards in Section 4.1.2.5(3), the vegetation conservation standards of Section 4.1.3, Vegetation Management, and provisions of Section 4.1.5 Critical Areas, and Appendix B; and
- d. Development may not take place waterward of the ordinary high water mark; and
- e. Facilities such as a conventional drainfield system may be allowed outside of the building area specified above, and allowed within buffer areas, except wetlands buffers. Such facilities shall not be located closer than 75ft to OHWM; and shall be subject to regulations of Section 4.1.5, Critical Areas.

4.2.1.8 Regulations – Nonconforming Public Facilities & Transportation

- 1. Nonconforming public facilities shall be allowed to continue and to be repaired, maintained, or remodeled.
- 2. Redevelopment of nonconforming public rights-of-way and associated transportation structures are allowed for purposes of facilitating essential public access, development of public trails, and/or public shoreline access, provided that no other alternative is feasible and redevelopment shall be otherwise consistent with the provisions of this Program, including but not limited to the provisions for public access and no net loss of shoreline ecological functions and processes.

4.2.1.8 Regulations - Existing Residential and Commercial: Aquatic Structures and Accessory Aquatic Structures

- 1. Existing docks floats, and buoys may be repaired and replaced in the same foot print and shall comply with this Program's requirements for materials and standards, to the extent practicable.
 - a. Except that as a conditional use, an existing dock may be modified, reoriented or altered within the same general location to be more consistent with the provisions of this Program.

2. Except for docks and floats, repair and replacement up to 50% of the footprint of any existing aquatic structures, including shoreline modifications, or buildings or portions thereof within the Aquatic or Priority Aquatic designations, shall only be done once within any five year period. Such replacements shall comply with this Program's requirements for materials and standards to the extent practicable. If the structure is composed of several components, then the 50% shall be calculated independently for each component.
3. The replacement shall meet Section 4.1.2, Environmental Impacts, including the mitigation sequencing standards of Section 4.1.2.6, Regulations-Mitigation, to meet the standard of no net loss of shoreline ecological functions and/or processes. Shoreline stabilization shall also meet the alternative analysis provision of Section 6.2.8(1).

4.2.2 Cultural Resources

4.2.2.1 Applicability

The following provisions apply to cultural, archaeological and historic resources that are either recorded by the State Historic Preservation Office, affected Indian tribes and/or by local jurisdictions, or have been inadvertently uncovered. Archaeological sites located both in and outside shoreline jurisdiction are subject to Chapter 27.44 RCW (Indian graves and records) and Chapter 27.53 RCW (Archaeological sites and records) and development or uses that may impact such sites shall comply with Chapter 25-48 WAC (archaeological excavation and removal permit) as well as the provisions of this Master Program. Shoreline development and activities associated with cultural resources 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 4.1.5, Critical Areas; Section 4.1.6, Water Quality and Stormwater Management; Section 4.1.3, Vegetation Management; Appendix B; and BIMC Chapter 15.18, Land Clearing, when applicable. Other portions of this Program may also apply.

4.2.2.2 Policies

1. Due to the limited and irreplaceable nature of the resource(s), prevent the destruction of or damage to, any site having historical, cultural, scientific or educational value as identified by the appropriate authorities, including affected Indian tribes, and the Washington State Department of Archaeology and Historic Preservation.
2. Ensure that public or private uses and activities are compatible with any site having historic, prehistoric, cultural, scientific or educational purpose or value as identified by the appropriate authorities.
3. Develop guidelines to direct private and public development with regard to historic structures and areas. Require on-site interpretive signs, plaques or other interpretive

Sections 4.1.2, Environmental Impacts. An access easement shall be recorded on the face of the plat or title report.

- a. If one or more dwelling unit exists prior to the division of land or further residential development, the feasibility of providing a common access shall be determined by the Administrator.
7. New or altered residential developments of more than four (4) dwelling units adjacent to the waterfront, shall dedicate, improve, and maintain public access area sufficient to ensure usable access to the shoreline for all residents of the development and the general public. The amount and configuration of public access shall depend on the proposed use(s), provisions in Section 4.2.4, Public Access – Visual and Physical, and the following criteria:
- a. Subdivisions within the shoreline jurisdiction that have views of water areas shall provide a public pedestrian viewing area.
 - b. Subdivisions adjacent to public waterways and marine waters shall provide visual and physical access to public waterways, public marine waters, and public tidelands that are physically accessible at low tide or low water.
 - c. Subdivisions subject to requirements for dedication of land to provide open space or mitigate recreation demands of the development shall dedicate such land on or adjacent to public waterways or marine shorelines, as applicable, unless the ecological sensitivity of such land precludes public access. Portions of the dedicated area may be fenced or otherwise restricted to limit public access to ecologically sensitive areas.

5.9.9 Regulations – Residential Development Overwater

1. Live-aboard vessels, shall be allowed only at marinas or in the public open water marina in Eagle Harbor in accordance with Section 5.3, Boating Facilities.
2. All subdivisions shall record a prohibition on new single use private docks on the face of the plat. Shared moorage with less than 6 slips shall meet provisions for community docks in Section 5.3, Boating Facilities. Shared moorage with six (6) or more slips shall meet provisions in Section 5.3
3. An existing overwater primary residential use may continue, and the structure may be repaired, maintained, increased in height and remodeled in accordance with **Section 4.2.1, Nonconforming Uses, Nonconforming Lots, and Existing Development** but the use may not be intensified and the overwater structure may not be enlarged or expanded over water.
4. The upland portion of an existing primary residential structure that is partially located over water may be repaired, maintained, remodeled or expanded to the extent allowed by this program and in accordance with Section 4.2.1.6.3, Existing Structures
Residential Single-Family: Primary Structure.

- e. Compensating for an impact by replacing enhancing, or providing substitute resources or environments; and
- f. Monitoring the impact and compensation projects and taking appropriate corrective measures when necessary.

Mitigation Plan – A detailed plan indicating actions necessary to mitigate adverse impacts of development.

Monitoring – Evaluating the impacts of development proposals over time on the biological, hydrological, pedological, and geological elements of ecosystem functions and processes and/or assessing the performance of required mitigation measures through the collection and analysis of data by various methods for the purpose of understanding and documenting changes in natural ecosystems and features compared to a baseline or pre-project conditions and/or reference sites.

Mooring Buoy – A floating object anchored to the bottom of a water body that provided tie-up capabilities for vessels.

Muds – Sediments in which the size of the particles is smaller than 0.0625mm.

Mudflat – Low, unvegetated mud substrate that is flooded at high tide and uncovered at low tide.

Multi-family Dwelling or Residence – A building containing two or more dwelling units or more than one dwelling unit on one lot, including, but not limited to, duplexes, apartments, and condominiums.

Natural Riparian Habitat Corridor – The waterside environment maintained in its natural state, primarily for fisheries and wildlife habitat, and water quality improvements, and, secondarily, for flood control works, while allowing controlled access to avoid damage to the resource.

Native Vegetation – Plant species typically found on an undeveloped marine shoreline that are indigenous to the Central Puget Lowland eco-region and suitable to the specific site conditions.

Native Vegetation Equivalent – Plant species that are equivalent in providing the same site-specific functional arrays as would a native species. Functional arrays may include forage, floodwater restraint, hiding habitat, or other physical or biologic roles in the ecosystem, that individually or in combination correspond to those of the native species. As with natives, the role and mix of an alternative species may vary depending on the site and its surrounding ecosystem. Invasive/exotic species shall not be considered equivalent species.

Nearshore or Nearshore Zone – The area of marine and estuarine shoreline, generally extending from the top of the shoreline bank or bluff to the depth offshore where light penetrating the water falls below a level supporting plant growth, and upstream in estuaries to the head of the tidal influence. It includes bluffs, beaches, mudflats, kelp and eelgrass beds, salt marshes, gravel spits, and estuaries.

Not Net Loss – As a public policy goal, the maintenance of the aggregate total of the City's shoreline ecological functions at its current level of environmental resource productivity. As a

development and/or mitigation standard, no net loss requires that the impacts of a particular shoreline development and/or use, whether permitted or exempt, be identified and prevented or mitigated, such that it has no resulting adverse impacts on shoreline ecological functions or ecosystem-wide processes. Each project shall be evaluated based on its ability to meet the no net loss standard commensurate with its scale and character.

Nonconforming Development – A shoreline use or structure which was lawfully constructed or established prior the effective date of the applicable Shoreline Management Act/SMP provision, and which no longer conforms to the applicable shoreline provisions [WAC 173-27-080(1), or its successor].

Nonwater-oriented – Nonwater-oriented uses serve to describe those uses which have little or no relationship to the shoreline and are not water-dependent, water-related, or water-enjoyment, or considered priority uses under the Shoreline Management Act. Nonwater-oriented uses, means those uses that are not water-dependent, water-related, or water-enjoyment. Nonwater-oriented use examples include professional offices, automobile sales or repair shops, storage facilities, and automobile gas stations.

Normal Appurtenance – See Appurtenance.

Normal Maintenance – Those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. [WAC 173-27-040(2)(b), or its successor]. (See Normal Repair.)

Normal Repair – To restore a structure or development to a lawfully established state comparable to its original condition within a reasonable period after decay or partial destruction, except where repair involves total replacement which is not common practice, or causes substantial adverse effects to the shoreline resource or environment. This does not include any activities that change the character, scope or size of the original structure or development beyond the original design. [WAC 173-27-040(2)(b), or its successor]. (See Normal Maintenance).

Normal Protective Bulkhead – See Bulkhead.

Obligate Vegetation – The sum total of macrophytic plant life that occurs in areas where the frequency (>99% of the time in wetlands) and duration of inundation or soil saturation produce permanently or periodically saturated soils of sufficient duration to exert a controlling influence on the plant species present. USACE 1987 Wetland Delineation Manual.

OHW, Ordinary High Water Mark – That mark that will be formed by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, that the soil has a character distinct from that of the abutting upland in respect to vegetation as that condition existed on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by the City or Washington State Department of Ecology, provided that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high water and the ordinary high water mark adjoining fresh water shall be the line of mean high water. [See RCW 90.58.030(2)(b), or its successor and WAC 173-22-030(6), or its successor].

- 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.